

## OPTIONS FOR UNMARRIED PARENTS

THIS INFORMATION IS A GENERAL OVERVIEW. AN ATTORNEY IS STILL YOUR BEST SOURCE OF ADVICE FOR YOUR SPECIFIC CASE.



### **Legal Information & Referral:**

206-621-7691

### **Toll-Free:**

1-866-259-7720

### **TTY:**

206-521-4317

### **Web:**

[www.LegalVoice.org](http://www.LegalVoice.org)

This memo will help unmarried parents who want to establish the paternity of their child. It will also help unmarried parents who want a parenting plan/residential schedule<sup>1</sup> and/or child support order, including same-sex partners who are adoptive parents. Same-sex partners who are adoptive parents may use the procedures and resources described in Section BIII to establish a parenting plan/residential schedule and child support. Non-adoptive parents should contact an attorney.

### **Establishing Paternity**

In Washington, there are two ways to establish the paternity of your child. You can establish paternity through a court action (a parentage action) or by filing a Paternity Acknowledgement (Affidavit) with the Department of Health. These two options are described below in sections A and B.

### **Paternity must first be established in order to develop a parenting plan or residential schedule and to get an order for child support.**

If you want to:

- a. have the father of your child legally determined;
- b. change the child's last name;
- c. set child support or establish inheritance rights for your child;
- d. have a residential schedule ("custody" and visitation) and/or decision-making rights determined; or
- e. take your child out of the country,

then you may want to file a court action.

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<sup>1</sup> A Parenting Plan is a legal document which contains a residential schedule of time the child(ren) will spend with each parent and the restrictions that may be necessary because of a parent's past actions or a child's specific needs. It also contains a section identifying which parent will make decisions about major issues for the child(ren) (education, health care, religious upbringing) and a section which provides for means of settling disputes outside of court, such as mediation, counseling, or arbitration. Parents who were never married have the option of requesting a Residential Schedule only rather than a full Parenting Plan. A Residential Schedule sets out only the time the child(ren) will spend with each parent.

A parenting plan or residential schedule is also important if you are afraid the other parent will take your child, or not return your child from a visit. Getting a court-ordered parenting plan/residential schedule is just the first step in getting the court orders you will need for the police to be able to help you if the other parent refuses to return your child.

If you just want child support, refer to Section C.

If there is an emergency, refer to Section D.

## **A. PARENTAGE ACTION/PETITION FOR ESTABLISHMENT OF PARENTAGE**

A parentage action is a court action to establish the paternity of your child. A parentage action also establishes legal rights between the parents and the child. If the parents are no longer living together, the court may also enter orders to establish child support and a parenting plan/residential schedule.

### **I. Who Can File A Parentage Action?**

Parentage actions only apply when the parents of a child were not married either when the child was conceived or when the child was born. The following are people who can start a parentage action: a parent, the child's guardian, the state,<sup>2</sup> or any "interested party" which would include the child.<sup>3</sup> If the parent is under 18 (a minor), a guardian ad litem may be appointed to help them with the case in court, but may not act as their attorney.

### **II. When Can I File A Parentage Action?**

There is no statute of limitations barring establishment of paternity, so the child may commence a case after reaching adulthood. (There is a limit on back child support and children cannot get child support unless they are dependent on another person or the state).

### **III. What If The Father's Name Is Already On The Birth Certificate?**

A father's name should appear on the birth certificate only if the mother and father are married or both certify that he is the only possible father through paternity acknowledgement. If the father's name is on the birth certificate, this may be sufficient for some purposes, such as claiming benefits for a child of a veteran or for purposes of collecting child support by the state (through the Division of Child Support) but will not be the basis to determine the residential schedule or "custody" of the child. See Section B regarding Paternity Acknowledgement.

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<sup>2</sup> The state usually gets involved through the county prosecutor's office.

<sup>3</sup> If under 18 years of age, the child can only be a party through a guardian.

#### **IV. What If The Mother's Husband Is Not The Father?**

The court or the Division of Child Support can legally assume that the husband is the father of a child born during the marriage, *or within 300 days after it legally ends*. This may then result in an Administrative Order of Child Support if the husband and wife separate or court-ordered child support if they divorce or legally separate. If the husband is not the father, a judge cannot deny or delay the decree of dissolution (divorce) based on the sole reason that the wife is pregnant.<sup>4</sup> However, the court will still treat the husband as the child's father until a court order is granted that says the husband is not the child's father. Getting this order is called "disestablishment of paternity." There are three ways to disestablish paternity. First, the disestablishment can be included (joined) in the dissolution by writing this in the "Petition for Dissolution or, if the respondent, stating this in the answer. Second, the mother, husband, and biological father can sign an *Acknowledgement of Paternity* that would show the father as the child's biological father and not the husband. Third, either biological parent can file a Parentage (paternity) Action asking the court to establish the biological father's paternity and include a parenting plan or residential schedule and child support order. Please see the memo by Legal Voice entitled "Dissolution (Divorce) When the Wife is Pregnant" for additional information on disestablishing paternity. A husband who is not the biological father may still be responsible for support of the child depending on the relationship with the child.

#### **V. What If A Court Order Names Another Man As Father And I Believe I Am The Father?**

You may bring an action challenging the order by filing and serving a Petition for Establishment of Parentage Pursuant to RCW 26.26 (Ch. 302 L 2002 § 509(2)). You must do this within two years of the date the court entered the order. You can locate a list of the forms for this action and the forms themselves on the website <http://www.courts.wa.gov/forms/> under "Guide to Preparing Forms for Parentage"; look for "Parentage (Unmarried Parents) - Establishing Parentage when there is an Adjudicated Father or an Acknowledgment of Paternity Filed with the Washington State Registrar of Vital Statistics."

#### **VI. What If We Already Have A Court Order Establishing Paternity?**

Sometimes a final Order Determining Parentage has been entered in Superior Court but no Parenting Plan was entered. This may happen when one parent does not respond to the parentage action or when the parents were living together at the time the order was entered. In this situation you may file a Petition to Establish a Parenting Plan as a modification of the order determining parentage. In King County, the Family Law Facilitators have a packet of information and documents to help you do this.

However, if you want to change custody, you must say so clearly and the court will treat the petition differently. If you are in this situation, or if you are outside King County, call the Law

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<sup>4</sup> RCW 26.09.030(1)(e); "Dissolution (Divorce) When the Wife is Pregnant", Legal Voice, (2005).

Center's Information and Referral line 206-621-7691 or your local Lawyer Referral service for referral to an attorney.

## **VII. How Can I File A Parentage Action?**

Either parent may bring a parentage action or either parent may contact their local Division of Child Support for a referral to the county prosecutor's office to find out if the prosecutor's office can file the parentage action on behalf of the child. In King County, you can also call or go into the prosecutor's office directly to be screened for whether they can bring the paternity action for you. As part of this parentage action process, the court may also enter orders for child support and a parenting plan/residential schedule. The prosecutor represents the state, not either of the parents. However, the state will file the action and move the case through the necessary procedural steps.

If the prosecutor cannot file a case on behalf of your child, you may hire an attorney to bring a parentage action. Call Legal Voice or your local lawyer referral service for referrals to an attorney in private practice. Attorneys will require a retainer and will then charge an hourly rate to complete the case.

If you can't afford an attorney and wish to proceed *pro se* (representing yourself), you will find more information, instructions, and the forms for "Filing a Petition to Establish Parentage (Paternity)" at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org). If you are in King County and do not have access to the internet, you can copy the forms at the King County law libraries, located in the courthouses in Seattle and Kent (you will have to pay for copying) or you can use the computers at the Seattle law library. If you are filing or responding to a parentage action in King County, you may request a packet on the King County Case Management Schedule for Parentage Actions from Legal Voice; this packet will help you follow extra procedures that are required in King County, but you will still need all of the other forms and instructions described above.

You may be able to get legal advice and help filling out the forms at a neighborhood legal clinic or from an attorney. For referrals, please call the Information and Referral line at Legal Voice (206-621-7691).

## **VIII. Where Can I File My Action?**

If both parents do not live in Washington, or if the child has been in Washington for less than six months, you should get legal advice about "jurisdiction," that is, about whether you may file your action in Washington. Jurisdiction usually will be in the state where conception occurred, or else in the state where the father lives.

If an attorney advises you that you may file in Washington, then your parentage action may be filed in the county where the child resides. If the child does not live in Washington, your case may be filed in the county where the respondent resides or is found. If the presumed or alleged father has died, your case may be filed in the county where probate of the father's estate has been started.

## **B. PATERNITY ACKNOWLEDGEMENT/PETITION FOR RESIDENTIAL SCHEDULE/PARENTING PLAN and/or CHILD SUPPORT**

The parents of the child may sign a Paternity Acknowledgement (also known as an Affidavit of Paternity) after the birth of the child. (In some cases it may be signed before the birth of the child, but Vital Records will not file it until after the child's birth). This usually occurs at the hospital, although the parents may sign it later. In order for the Paternity Acknowledgement to have legal effect, it must be filed with Vital Records (the Department of Health). See the Decision Tree on the last page of this memo to help you decide whether your paternity acknowledgement has legal effect.

### **I. What Is A Paternity Acknowledgement?**

A Paternity Acknowledgement is not a court order. It is a sworn statement by the parents that the named father is the only possible father. If there is a presumed father, he must sign the Acknowledgement as well denying that he is the father. A presumed father is a man that the law presumes is the father due to factual circumstances. Basically, under current law a presumed father is the husband of the mother if the baby was born during the marriage or within 300 days of termination of the marriage. For example, if the father of the baby is not the mother's husband, then the mother and father sign the Paternity Acknowledgement and the husband must sign the Denial of Paternity.

A Paternity Acknowledgement creates a presumption of paternity. If it is not rescinded within certain time frames then a legal relationship exists between the named father and child. The father named in the Paternity Acknowledgement is the legal father. He will be obligated to support the child and the child may be entitled to benefits if the father dies or is disabled. A paternity acknowledgement does not on its own establish child support or residential time with the child. However, once it is filed, the Division of Child Support can establish child support through an Administrative Order.

### **II. What If I Don't Have a Paternity Acknowledgement?**

If you want to get a blank Acknowledgement form and ask the other parent to sign, you can contact your local (DSHS) Division of Child Support or Community Service Office, the Center for Health Statistics (Vital Records) at the Department of Health in Olympia (360-236-4300), or in King County, the Family Law Facilitators at the Superior Court in Seattle or the Regional Justice Center in Kent.

### **III. How Do I Get A Parenting Plan?**

As long as your Paternity Acknowledgement is no longer rescindable, either parent can bring a court action to establish a parenting plan or residential schedule, or to establish child support. For information on whether or not your Paternity Acknowledgement is rescindable, see Paragraph V of this section, "What if I Want to Rescind the Paternity Acknowledgement?"

You may hire an attorney to file this action. Call Legal Voice or your local lawyer referral service for referrals to an attorney in private practice. Attorneys will require a retainer and will then charge an hourly rate to complete the case.

If you can't afford an attorney and wish to proceed *pro se* (representing yourself), you will find more information, instructions, and forms for "Filing a Petition for Parenting Plan (Custody) When Parentage Has Been Established" at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org). If you are in King County, you may get a set of instructions from the family law facilitators at the Superior Court in Seattle or the Regional Justice Center in Kent.

You will need to attach a copy of your Acknowledgement of Paternity to your Petition. Either parent may request a certified copy from the Department of Health; see the publication "How Do I Request a Copy of My Paternity Affidavit?" at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org) or you may call the Paternity Specialists at 360-236-4335 or 360-236-4336 for more information. Be sure to ask how long it will take to get a copy.

You may be able to get legal advice and help filling out the forms at a neighborhood legal clinic or from an attorney. For referrals, please call the Information and Referral line at Legal Voice at 206-621-7691.

#### **IV. What If Another Man Signed The Paternity Acknowledgement And I Believe I Am The Father?**

You may bring an action challenging the paternity acknowledgement by filing and serving a Petition for Establishment of Parentage Pursuant to RCW 26.26 (Ch. 302 L 2002 §509(2)). You can locate a list of the forms for this action and the forms themselves on the website <http://www.courts.wa.gov/forms/> under "Guide to Preparing Forms for Parentage"; look for "Parentage (Unmarried Parents) - Establishing Parentage when there is an Adjudicated Father or an Acknowledgment of Paternity Filed with the Washington State Registrar of Vital Statistics."

You must do this within two years of the filing date of the Paternity Acknowledgement. As you did not sign the Paternity Acknowledgement, the Department of Health may not give you the filing date. Contact an attorney regarding how to proceed without a filing date.

#### **V. What If I Want To Rescind The Paternity Acknowledgement?**

The law allows the mother, father and presumed father to rescind, or revoke, the Paternity Acknowledgement by taking action within a particular time period from the date the Paternity Acknowledgement was filed with the Department of Health (call the Department of Health at 360-236-4300 to get the date of your filing). The date of the filing of your Paternity Acknowledgement impacts HOW MUCH TIME you have to rescind and WHERE AND HOW you rescind your acknowledgement.

In determining WHERE AND HOW to rescind your Paternity Acknowledgement, the following guidelines apply: (A) If your Paternity Acknowledgement was filed June 12, 2002 or earlier,

you would rescind it through the Department of Health (you will need to contact the Department of Health at the above number for information on how to rescind).

(B) If it was filed June 13, 2002 or after, you rescind by filing an action in court.

In determining HOW MUCH TIME you have to rescind your Paternity Acknowledgement, the following rules apply:

(A) Paternity acknowledgements filed prior to July 1, 1997 are rescindable at any time.

(B) Paternity acknowledgements filed from July 1, 1997 to June 12, 2002 are rescindable for the first 60 days after filing.

(C) Paternity acknowledgements filed on or after June 13, 2002 are rescindable for 60 days after filing OR the date of the first hearing in which the party wanting to rescind is before the court in a matter regarding the child **WHICHEVER IS EARLIER**.

The easiest way to determine where your paternity acknowledgement fits within these limitations is to review the Decision Tree at the back of this memo.

If you decide you want to rescind your Paternity Acknowledgement, a guide to the forms needed and the forms themselves are available on the website for the Administrator for the Courts, <http://www.courts.wa.gov/forms/> under “Guide to Preparing Forms for Parentage”; look for “Parentage (Unmarried Parents) - When the Acknowledged Father or the Mother wants to Challenge the Acknowledgment of Paternity.”

## **VI. What If I Want To Challenge The Paternity Acknowledgement And The Rescission Period Has Passed?**

Once the period of rescission has passed, a mother, father or man who denied paternity (presumed father) has two years from the date of paternity acknowledgement filing to challenge the acknowledgement or denial of paternity by bringing an action in court. The action can only be brought if you are claiming that the paternity acknowledgement or denial was based on fraud, duress or material mistake of fact. These are legal terms. It is best to consult an attorney regarding the meaning of these terms and whether the facts in your case suggest fraud, duress or material mistake of fact. If you decide to challenge the paternity acknowledgement you will need to file and serve a Petition for Challenge to Acknowledgement of Paternity. You can find a list of the forms that you will need and the forms themselves on the court’s website at <http://www.courts.wa.gov/forms/> under “Guide to Preparing Forms for Parentage”; look for Parentage (Unmarried Parents) - When the Acknowledged Father or the Mother wants to Challenge the Acknowledgment of Paternity.” Remember, once the two years have passed you are barred from bringing an action.

Below is a simple chart to help you determine whether you may bring an action to rescind or challenge the paternity acknowledgement. This chart only applies to a paternity acknowledgement filed on or after June 13, 2002.

	<u>Within 60 Days</u>	<u>60 Days – Two Years</u>
Mother or Father	Action in court to rescind acknowledgement	Action in court to challenge acknowledgement-fraud, duress or material mistake of fact
Presumed Father	Action in court to rescind denial	Action in court to challenge denial of paternity-fraud, duress or material mistake of fact.

## VII. What Do I Do If The Paternity Acknowledgement Was Signed In Another State And I Want To Get A Parenting Plan?

Each state has their own laws governing paternity establishment. If you signed and filed a paternity acknowledgement in another state, you may still bring an action in Washington to establish a parenting plan (assuming you have met the jurisdictional requirements) however, you will need to demonstrate to the court that your Paternity Acknowledgement or denial is in compliance with the laws of the other state. You will need to know whether your Paternity Acknowledgement is a conclusive determination of paternity or whether it is still rescindable. A good place to start may be simply contacting the agency in the state where you filed your Paternity Acknowledgement. If you still need to pursue it further, you may try starting your legal research at [www.findlaw.com](http://www.findlaw.com).

### C. WHAT IF ALL I WANT IS CHILD SUPPORT?

Before child support can be imposed, parentage has to be determined, either by a filed Paternity Acknowledgement or by court order. Child support amounts will be determined based on the Washington State Support Schedule and can be ordered, though not enforced, prior to the birth of the child.

#### I. Administrative Order

An administrative order is an order issued by an agency (such as the Division of Child Support), not by a court. If paternity has been established through Paternity Acknowledgement or court order and the custodial parent<sup>5</sup> is receiving TANF (public benefits) or Medicaid, the state (Division of Child Support) is authorized and required to establish and collect child support and establish medical provisions on the child's behalf. If you are a domestic violence survivor and are worried that your abuser will retaliate against you if DCS asks him to pay child support or that DCS will give personal information about you to your abuser, you may ask for a "Good Cause" exception. Call Legal Voice or your domestic violence advocate for more information.

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<sup>5</sup> A *Custodial Parent* is the parent with whom a child lives. This term does not necessarily mean that a court has awarded "custody" to the parent; it may simply mean that the parent has physical custody of the child. Once a court has ordered a parenting plan, the parent with whom the child lives most of the time is identified as the *Primary Residential Caretaker* and is considered to be the "custodial parent."

If the custodial parent is not receiving public benefits and paternity has been determined through paternity acknowledgement or court order, DCS can issue an administrative order for child support and medical benefits if the custodial parent fills out an application for support enforcement services. DCS will send a Notice to the non-custodial parent which will set a child support amount; it does not establish a parenting plan or residential schedule. The non-custodial parent may respond to the notice and ask that a different support amount be set.

## **II. Court Order**

If the parents have not signed a paternity acknowledgement and there is no paternity order, DCS will refer the case to the prosecutor in the county where the child resides. Again, this will be automatic if public benefits are being paid or if the custodian has applied for support enforcement services. If the alleged father can be identified and located, the prosecutor will then serve and file a Petition for Establishment of Paternity. If a paternity order is finally entered on the case and the parties do not live together, the court will also enter an Order of Child Support.

### **D. WHAT IF THERE IS AN EMERGENCY?**

If you have been subjected to violence, and are afraid of future violence, you may ask the court for a protection order to give the police the authority to arrest the abuser if he comes near or harasses you. For instructions on filing an order of protection, contact your local court advocate or domestic violence advocate. A protection order can also designate one parent as a legal custodian of a child and specify whether the non-custodial parent has visitation rights. Protection orders expire in one year, so the custody is only temporary. Protection orders are not intended to take the place of parentage actions; their purpose is to keep the parent and/or child safe in an emergency situation. Also, child support is not included in a protection order and a protection order does not establish legal paternity.

If you have started your action by filing a Petition for Establishment of Paternity or Petition for Residential Schedule/Parenting Plan with the court, you may file papers asking for temporary orders, including a court order giving you temporary “custody” and/or restricting the other parent’s access to the child. See the publication “Filing a Motion for Temporary Orders for Parentage Actions and Modifications of Parentage Actions” at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).

To make the restriction permanent, a parenting plan that gives residential time only to one parent must be proposed and approved by the court.

## DECISION TREE FOR PATERNITY ACKNOWLEDGEMENT

THIS INFORMATION IS A GENERAL OVERVIEW. AN ATTORNEY IS STILL YOUR BEST SOURCE OF ADVICE FOR YOUR SPECIFIC CASE.

Is there a signed and filed paternity acknowledgement?

YES ↓ NO →

Was the paternity acknowledgement filed with the state of Washington?

YES ↓ NO →

Did you sign the paternity acknowledgement?

YES ↓ NO →

Was the paternity acknowledgement filed with the Department of Health on 7/1/97 or after?

YES ↓ NO →

Was the paternity acknowledgement filed with the Department of Health on or after 6/13/02?

YES ↓ NO →

Has 60 days passed from the date you filed your paternity acknowledgement?

YES ↓ NO →

Do you wish to challenge the paternity acknowledgement?

YES ↓ NO →

You may bring an action to challenge in court if it is based on fraud, duress, material mistake of fact. It must be done within 2 years of the filing of the paternity acknowledgement.

The only other way to establish parentage is through a court order. You may wish to file a parentage action.

You may still file an action to establish a parenting plan. However, you will need to demonstrate to the court that you have complied with the other state's laws. You will need to know if your paternity acknowledgement is still rescindable.

If another man signed the paternity acknowledgement and you believe you are the father, you may petition the court to establish paternity. You need to do this within two years of the filing date of the paternity acknowledgement.

Your paternity acknowledgement is rescindable. In order to establish a parenting plan, you must file a parentage action.

Your paternity acknowledgement was filed between 7/1/97 and 6/13/02. You had 60 days to rescind. If you did not, it is a conclusive determination of paternity. Consult an attorney about whether you can still file a challenge. Either parent can file a Petition to Establish a Residential Schedule/Parenting Plan.

Either parent or the presumed father may rescind the paternity acknowledgement by bringing an action in court.

You have a legal determination of paternity and either parent may file a Petition to Establish a Residential Schedule/Parenting Plan.