



Unmarried Parents

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Background

Children born out of wedlock are entitled to the same rights and protections as children born in wedlock. Unmarried fathers have rights and duties similar to those of married fathers. One of the most important legal responsibilities of parents is supporting their children. Parents are legally obligated to provide their children with all the necessities of life. The failure of parents to marry does not affect their responsibility to support their children. If parents are unmarried and cannot agree upon how much each should contribute toward the support of their children, the courts may decide. A court can order one parent to make specified payments to the other for [CHILD SUPPORT](#).

State laws provide that biological parents make all the decisions involving their children, including education, health care, and religious upbringing. Parents are not required to secure the [LEGAL RIGHT](#) to make these decisions if they are married and are listed on the child's birth certificate. However, if there is disagreement about who has the right to make these decisions courts can decide.

Unmarried Parents Living Together

Couples who are living together but are not married should take steps to ensure that both are recognized as the legal parents. Both parents can be listed on the birth certificate. A parent who is not listed can be added after the birth of a child if the parent contacts the state Bureau of Vital Statistics in which the birth took place. Most states require unmarried fathers to sign an [AFFIDAVIT](#) or acknowledgment of [PATERNITY](#).

Paternity Actions

A paternity action is a legal proceeding that allows unmarried parents to resolve issues about [CHILD CUSTODY](#) and visitation similar to those dealt with in a [DIVORCE](#) proceeding. Establishing paternity means establishing the identity of the child's father. A father can acknowledge paternity by signing a written

admission or voluntary acknowledgment of paternity. All States have programs under which birthing hospitals give unmarried parents of a newborn the opportunity to acknowledge the father's paternity of the child. States must also help parents acknowledge paternity up to the child's eighteenth birthday through vital records offices or other entities designated by the State. Parents are not required to apply for child support enforcement services when acknowledging paternity.

Paternity cases do not have to involve a dispute between the parties about who the father is. Sometimes the parties will stipulate that they are the parents of the child. If however, parentage is an issue in the case, then it must be handled prior to addressing other matters such as support and visitation. Paternity establishment can provide basic emotional, social, and economic ties between a father and his child. Once paternity is established, a child gains legal rights and privileges. Among these may be rights to [INHERITANCE](#), rights to the father's medical and life insurance benefits, and to social security and possibly veterans' benefits. The child also has a chance to develop a relationship with the father and to develop both a sense of identity and connection. It may be important for the health of the child for doctors to have knowledge of the father's medical history.

Paternity Tests

Paternity can be determined by highly accurate tests conducted on blood or tissue samples of the father, or alleged father, mother and child. These tests have an accuracy range of between 90 and 99 percent. They can exclude a man who is not the biological father and can also show the likelihood of paternity if he is not excluded. Each party in a contested paternity case must submit to genetic tests at the request of either party. If the father could be one of several men, each may be required to take a genetic test. It is almost always possible to determine who fathered a baby and to rule out anyone who did not. There are several different ways to establish whether an alleged father is the natural and legal father of the minor child.

Blood Tests

Paternity blood testing was first performed in the middle half of the twentieth century by comparing blood types of tested parties. This involved isolation of blood sera from antigen-challenged individuals that did not possess certain red blood cell antigens. These antigens are protein molecules that may be combined with sugar molecules and reside in the red blood cell membrane. These sera cause coagulation of red blood cells in individuals that possess that particular red blood cell antigen. In the ABO blood typing system, humans can possess the A antigen (A blood type), the B antigen (B blood type), both the A and B antigen (AB blood type), or neither of these antigens (O blood type). Red blood cell antigen systems of this sort can be used for paternity testing because there are genes that code for the antigens and these are inherited genes. A mother who has Type B blood and a father who has Type O blood could not have a child who has type AB blood. The true father of the child must have the gene for the A antigen. Using RBC antigen systems for paternity testing did not provide for a very powerful test because the frequencies of the genes that coded for the antigens are not very low.

In the 1970s a more powerful test using white blood cell antigens or Human Leukocyte Antigens (HLA) was developed. This produced a test that was able to exclude about 95 percent of falsely [ACCUSED](#) fathers. Several milliliters of blood are required to perform the test. Blood types can not be used to determine who the father is; however, blood types can be used to determine the biological possibility of fatherhood.

DNA Tests

DNA (Deoxyribonucleic Acid) is the genetic material present in every cell of the human body. Except in the case of identical multiple births, each individual's DNA is unique. A child receives half of his or her genetic material (DNA) from the biological mother and half from the biological father. During DNA testing, the genetic characteristics of the child are compared to those of the mother. Characteristics that cannot be found in the mother must have been inherited from the father. DNA paternity testing is the most accurate form of paternity testing possible. If DNA patterns between the child and the alleged father do not match on two or more DNA probes, then the alleged father can be totally ruled out. If the DNA patterns between mother, child, and the alleged father match on every DNA probe, the likelihood of paternity is 99.9 percent. Either a blood test known as Restriction Fragment Length Polymorphism (RFLP) or a procedure called a Buccal scrap is used for DNA testing. A swab is rubbed vigorously against the inside of the subject's cheek. This provides a DNA sample for testing. Children can be tested at any age. Paternity testing can even be done on an umbilical cord blood specimen at birth. DNA testing is one of the easiest medical procedures for children. Since DNA is the same in every cell of the human body, the accuracy of testing performed on cheek cells utilizing the Buccal Swab is the same as an actual blood sample.

Custody and Visitation

In most states, when a child born to an unmarried mother, if there is no [ADJUDICATION](#) or registration of paternity, the mother has [CUSTODY](#). Once paternity has been established, a father has the right to seek custody of or visitation with his child. Even after paternity has been adjudicated or registered, as long as there is no court order on custody, many states presume that the mother has custody of the child. A custody agreement between the parents or a court order can clarify custody and visitation issues. Unmarried parents without custody are entitled to the same visitation rights as divorced parents, absent extraordinary factors such as abuse or [DOMESTIC VIOLENCE](#).

Artificial Conception

Modern medicine and science have allowed opportunities for conceiving children through [ARTIFICIAL INSEMINATION](#), in vitro fertilization, and embryo transplantation. Combined with these techniques is the practice of [SURROGATE MOTHERHOOD](#). These new techniques have also created legal questions and disputes regarding the child's status and the rights and designation of the parents.

Artificial Insemination

When a married woman, with the consent of her husband, conceives a child by artificial insemination from a [DONOR](#) other than her husband, the law generally recognizes the child as the husband's legitimate child. Most states have presumption laws which presume a child born to a married woman is the child of her husband, and the designation of the husband as father in a case involving artificial insemination derives from those laws.

Invitro Fertilization

Invitro fertilization and egg transplantation involves the fertilization of the egg outside the womb. Where the egg is donated by another woman, the birth mother will be treated in law as the legitimate mother of the child.

Surrogate Mothers

Undoubtedly a legally complex area is that of surrogate motherhood. In the most common arrangement, a married couple in which the husband is fertile but the wife is unable to carry a pregnancy, enter into a privately arranged contract with a fertile woman. This fertile woman (the surrogate mother) agrees to be artificially inseminated with the sperm of the fertile husband. Alternatively, the surrogate mother may be impregnated with an embryo produced by the wife's ovum. In either case, the surrogate mother carries the pregnancy until delivery, and then, per the contract, assumes no parental rights or responsibilities and relinquishes the infant to the couple initiating the contract. These reproductive arrangements enable one woman to bear a child for another, thus separating genetic, gestational, and rearing parentage. Surrogate motherhood raises medical, psychological, ethical, and legal questions involving procreative privacy and the nature of parenting and family life.

The desire to have a child who is genetically related to at least one parent may make surrogacy a more attractive option than [ADOPTION](#) for some couples. When women take on the role of surrogate mother to assist members of their own family, few legal complications arise. In some cases where women have agreed to the procedure for financial compensation, major legal issues have arisen. About half the states have laws which address surrogacy. In some states, surrogate mother contracts are illegal and entering into them can result in criminal charges. Other states rule that such contracts are invalid.

In an artificial insemination case, in which the husband is the donor to the surrogate, a court order can be obtained prior to the birth of the child that the husband is the father of the child. After the child is born, the surrogate mother signs consent forms which either terminate her parental rights, leaving the man with sole custody of the child or which allow the wife of the couple to adopt. In a case involving egg fertilization outside the womb and an embryo transplant to the womb of the surrogate, a pre-birth court order can be obtained indicating that the couple is the child's biological parents. In this case, no adoption is necessary.

Welfare

Federal welfare law requires minor custodial parents receiving cash assistance to attend school and live with their parents or in an adult-supervised setting. Congress established these requirements as part of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which created the program for Temporary Assistance for Needy Families (TANF) and abolished the Aid to Families with Dependent Children (AFDC) program. A number of States have also established similar requirements.

Welfare policies that apply specifically to teenage parents pose a special challenge, because many young parents do not head their own cash assistance case. When an assistance case includes an older adult, an adolescent, and a very young child, it is often unclear whether the adolescent or the older adult is the parent of the young child, at least for assistance purposes. States are not supposed to use TANF block grant funds to provide financial assistance to unmarried minor custodial parents who do not have a high school diploma or its equivalent unless they are attending school. To meet this requirement, state welfare agencies must define school attendance requirements, obtain attendance information, and follow up with teenager parents who fail to attend school.

Names

The parents (as recognized by law) of a child are allowed to name the child whatever they choose. This is true for the first, middle and last names. A child is not required to have the last name of the father, or of either

parent. Unmarried parents may give the child the last name of the father on the theory that a name is something inherited and passed down through paternal lineage. Unmarried parents may give the child the last name of the mother on the theory that if men were the ones spending numerous hours in labor, they would hardly be naming their children after women. The parents may select a hyphenated name or an entirely unrelated name.

Taxes

If a couple is unmarried, only one person can claim the child as a dependent for income [TAX RETURN](#) purposes in any given year. An unmarried couple can alternate years or decide that the person with the higher income takes the tax [DEDUCTION](#). While both parents may be entitled to claim a child, only one person can legally take the exemption each year.

Additional Resources

Cupid, Couples, & Contracts: A Guide to Living Together, Prenuptial Agreements, and Divorce Wallman, Lester, Master Media, 1994.

Joint Custody with a Jerk: Raising a Child with an Uncooperative EX Ross, Julie, St. Martin's Press, 1996.

Organizations

American Bar Association

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Chicago, IL 60611 USA
Phone: (312) 988-5603
Fax: (312) 988-6800
URL: <http://www.abanet.org>

Child Welfare League of America

50 F Street NW, 6th Floor
Washington, DC 20001-2085 USA
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National Association of Child Advocates

1522 K Street, NW, Suite 600
Washington, DC 20005-1202 USA

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Encyclopedia of Everyday Law: Unmarried Parents

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