

# How to Establish Paternity

A child born to a married couple is presumed by law to be the child of both spouses. Legal parentage is less clear when a child's parents are unmarried. The process of proving legal fatherhood, or 'paternity', is called "establishing paternity." In Wisconsin state statute, and in this article, "father" and "fatherhood" refer to the non-birthing biological parent, while "mother" refers to the birthing parent. The gendered words of "he/man/male" for the father and "she/woman" for the mother represent the biological sex, rather than the gender identity of the parent, in alignment with Wisconsin law.

In Wisconsin, there are four ways to establish paternity:

1. Voluntary Paternity Acknowledgment (VPA)
2. Court Order
3. Administrative Determination Based on Genetic Test Results
4. Acknowledgment of Marital Child

**Scroll down to read more on each method . . .**

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## Voluntary Acknowledgment of Paternity

If both parents are 18 or older and are sure of who the father is, the easiest way to establish paternity is with the Voluntary Paternity Acknowledgment (VPA) form.

**Note:** The VPA form cannot be used if the child was conceived or born when the mother was married to someone else. This is true even if everyone knows the husband is not the father. If the mother was married at any time during the period from conception to birth, the law assumes that the spouses are the parents and the spouse's name must be listed on the original birth certificate. If a DNA test later disproves this legal assumption, a judge may remove the spouse's name from the birth certificate and establish the paternity of the biological father.

The VPA may be filed with Vital Records at any time after the baby is born. The mailing address for Vital Records is on the form.

The VPA form is a legal document - completing and mailing this form to Vital Records fully and legally establishes paternity. This means the court may order child support for the baby without having a court hearing to prove who the father is.

It is important to note that this form does not give the father legal custody or placement, but it does give the right for the father to ask the court for custody or placement. In Wisconsin, an unmarried mother has sole legal custody and placement until the court orders otherwise.

## **Where can I get the VPA form?**

- At the hospital when your baby is born. All hospitals in Wisconsin have this form.
- Most midwives have this form.
- From your local child support agency. Child support agencies can help you with this form.
- At your local Register of Deeds Office or the state [Vital Records Office](#) in Madison.

## **What if I change my mind after signing the form?**

Either parent can mail a completed Request to Withdraw Voluntary Paternity Acknowledgment form to the state [Office of Vital Records](#). The withdrawal form must be filed within 60 days of filing the original VPA form. You can only withdraw the VPA form if a court has not yet ruled on a family matter involving the father, mother, and child.

If it has been more than 60 days after filing, or a court has ruled on a family matter involving either parent or the child, the person wanting to overturn the paternity acknowledgment will have to file a court case, alleging fraud, duress, or mistake of fact. This is an issue for which the parents should consult an attorney.

The withdrawal form is available at the same places listed above where you can get the VPA form.

## **Does acknowledging paternity with a VPA affect the father's responsibilities to pay for the baby's birth and hospital care?**

Signing the VPA form doesn't automatically mean the father has to pay for the child's medical bills. However, the hospital might ask the father to agree to be responsible for the bills and to sign a release so his health insurance can cover the costs. If the father has health insurance, filing the VPA form will make it more likely that the insurance will help pay for the baby's care. Insurance companies may have different standards to prove a man is the father before the company accepts the infant as a dependent on the insurance plan.

Once the VPA form is filed with the State Vital Records Office, the court may order the father to pay support for the child. The court order must include medical support, however, either parent may be ordered to provide the medical support. If the pregnancy and birth were covered by BadgerCare Plus, the court might order the father to repay some of the birth costs. If the father has insurance, he will need to provide documentation to the child support agency verifying the portion of the birth costs paid by his insurance.

## **If a couple are planning to get married, would they still use the Voluntary Paternity Acknowledgment form?**

Parents interested in identifying the child's father may want to sign the VPA form even if they intend on getting married, in case of unforeseen circumstances, such as the death of one of the parents or a break-up prior to the marriage. The couple could sign the VPA form in front of notaries at the time of the birth, and keep the form, pending their wedding date. Or, after they're married, they can file an Acknowledgement of Marital Child (Legitimation) form with the State Vital Records Office to establish a marital presumption of paternity, or an assumption that both parties to the marriage are the natural parents of the child. If the parents file the

VPA form and then get married, they may still file an Acknowledgment of Marital Child form.

## **What if either parent is under age 18?**

When a parent is a minor, the parties should seek the services of the local child support agency or a private attorney to establish paternity.

## **What if the biological father is not known?**

The VPA form should not be used if there is more than one possible father of the child. Every man that had sexual relations with the mother during the 'conceptive period', generally 240 to 300 days before the due date, must be considered a possible, or alleged, father. The local child support agency provides paternity establishment procedures that include genetic testing to exclude or identify probable fathers.

## **What if the father lives in another state, is in the military, or is incarcerated?**

The VPA form can be mailed to the father. The father must sign in front of a notary public. Parents may sign the same VPA form separately and in front of different notaries.

### Court Ruling

Paternity can also be established in court. A court case to determine the paternity of a child may be started by:

- The child's biological (birth) mother,
- A man claiming to be the child's father,
- A man presumed to be the father
  - because he was married to the mother at the time of conception or birth, or
  - because of genetic test results, or

- because both parents have voluntarily acknowledged his paternity and no one else is presumed to be the father (i.e. the mother wasn't married to a different man at the time of conception or birth)
- The legal or physical custodian of the child,
- The child themselves,
- The child's guardian ad litem (GAL),
- The State of Wisconsin, or
- A grandparent (if a parent is dependent on that grandparent)

In almost all paternity actions, Wisconsin law requires the court to order genetic testing of the child, mother, and any alleged fathers. A person can be found in [contempt of court](#) for refusing to submit to a genetic test ordered by the court. If the genetic test establishes a probability of paternity of 99.0% or higher, the alleged father is presumed to be the father.

Genetic tests are one form of evidence used to determine the existence of paternity. Other evidence that may be submitted at the pre-trial and trial includes:

- Evidence of sex between the mother and alleged father during the 8 to 10 months before the child's birth;
- Evidence of a relationship between the mother and alleged father at any time;
- An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
- Birth record/birth certificate

## **Court Action Process**

A paternity case is started by filing a summons, notice, and petition for paternity with the clerk of court for the county in which the child or the alleged father resides. There are no state-created forms to use to begin this process. Some counties may have forms specific to their county. It may be a good idea to contact your county child support agency or a child support lawyer to ensure you are creating the right documents for a paternity case.

The person who files the documents must serve them on the other person, who is called the Respondent to the action. The Respondent is usually the alleged father, or it could be the mother or both the mother and alleged father, depending on who has started the action. The person filing the action must generally serve the filed

documents on the Respondent within 90 days of filing with the [clerk of court](#).

The paternity court proceeding generally has three stages: the first appearance, the pretrial hearing, and the trial. All three stages are confidential and closed to the public. If a man named as a possible father isn't able to afford a lawyer, the court may provide an attorney for him if genetic tests don't exclude him as the father and show the probability of his being the father are less than 99 percent. A guardian ad litem (GAL) is appointed for parents under 18 years old, and may be appointed for the child in some circumstances.

## **The First Appearance**

The first hearing in a paternity action is called the first or initial appearance. The first appearance is held 30 days or more after the Summons and Petition are served on the Respondent. At the first appearance, the court must inform the parties of several important things, including:

- The right to request a jury trial
- If the mother or alleged father does not appear at the court hearing, the court may enter a default ruling. That is, the court may determine who the father is even if the mother or alleged father is not at the hearing.
- That defenses to paternity, or reasons why someone may argue that they are not the father, include:
  - sterility or impotence at the time of conception,
  - lack of intercourse with the mother during the eight – ten months prior to the child's birth, or
  - that another man had intercourse with the mother during that period.

If the mother was married at the time of conception or birth, and a man claims that he, rather than the woman's spouse, is the father of the child, a court may decide at the first appearance that determining whether someone other than the spouse is the father is not in the best interests of the child. In that case, the court will dismiss the paternity action without ordering any genetic testing, and the marital presumption that the mother's spouse is the child's father will remain.

## **Pre-trial Hearing**

At the pretrial hearing, witnesses and other evidence relevant to paternity may be presented. After seeing the evidence, the court must evaluate the probability of determining paternity at trial. On the basis of its evaluation, the court may make a recommendation to the parties regarding the paternity action including dismissal or voluntary acknowledgment of paternity. The parties, including a GAL, can accept or refuse the court's recommendation. If any party refuses the recommendation, a trial is set.

## **Trial**

The trial consists of two parts. In the first phase, paternity is determined. This part may be decided by a jury of six, if the Respondent requested a jury. Five of the six jurors must agree on the verdict. The second part of the trial would deal with the issues of custody, placement, child support and other related issues. A jury would not decide the second phase.

## **Judgment of Paternity**

Once the trial is completed, the court enters a judgment of paternity. The judgment contains a determination of the child's paternity, an order requiring either parent to pay child support, an order for the child's legal custody and physical placement, an order regarding which parent will have the right to claim the tax exemption for the child, and orders relating to the payment of health insurance, birth expenses and all related costs and fees of the action, including GAL fees and genetic testing fees.

### **Administrative Determination Based on Genetic Test Results**

This method of establishing paternity has the same legal effect as a judgment of paternity but does not require a court hearing. This procedure begins with a county child support agency ordering the child, the child's mother, and the alleged father to undergo genetic testing. To order the testing, the agency must have probable cause to believe that the alleged father had sex with the child's mother during a possible time of the child's conception. Probable cause may be based on a sworn statement of the child's mother, the alleged father, or the county child support agency based on information provided by the child's mother.

A man can be conclusively determined to be a child's father if all of the following conditions are met:

- The genetic test results show that the man is not excluded as the father and that the statistical probability of paternity is 99% or higher;
- Both the mother and alleged father are at least 18 years old; and
- No other male is presumed to be the father

If a county child support agency receives genetic test results and the above requirements are satisfied, the agency must send notice to the mother and male by regular mail at their last-known addresses. The notice must contain the test results, inform both people that they have the option to send in a written objection to the test results by a certain date (usually at least two weeks away), and notify them that an action may be started for court orders relating to child support, custody, and physical placement.

If either party objects by the date given in the notice, the state must begin a paternity action in court (see #2 above). If neither party objects by that date, the agency will file a report with the state registrar which adds the father to the child's birth record and creates a conclusive determination of paternity.

### Acknowledgement of a Marital Child

If unmarried parents marry after their child is born, the parents may establish paternity by signing an Acknowledgment of Marital Child form. The Acknowledgment of Marital Child form gives the child and the parents the same rights as if the parents had been married before their child was born.

Parents can get this form at their local child support agency and from the Vital Records Office. The parents must sign the form and then submit the form to the state registrar's Office of Vital Records, along with the parties' marriage record. The mailing address for the Vital Records Office is on the form. Local child support agencies can assist parents with the form. Upon receiving the signed form, the state registrar will add the father's name to the child's birth certificate.

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