



Your Guide to Legal Fatherhood

WI BUREAU OF CHILD SUPPORT



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What is paternity?

“Paternity” means “legal fatherhood.” It is another way of saying the child’s father is the legal parent. The process of making a man the legal father is called “paternity establishment.” Establishing paternity (legal fatherhood) allows the father to have his name on his child’s birth record.

Why is it important to establish paternity?

A baby has a right to a mother **and** a father, even when his or her parents are not married. When the father’s name is added to the child’s birth record, the child has special rights. These rights may include:

- Child support
 - Health insurance
 - Tribal enrollment rights for Native American children
 - Inheritance rights
 - Social Security benefits if the father dies or becomes disabled
 - Access to the father’s family’s health history by the child’s doctor.
- This is important because conditions such as diabetes and sickle cell run in families

Even if the child’s parents plan to marry or if the child’s parents live together, establishing legal fatherhood guarantees the child’s rights. When legal fatherhood is established, the father’s name is added to the child’s birth record. Then the child can be sure of who both of his or her birth parents are.

When legal fatherhood is established, the father has rights.

- The father’s parental rights have to be considered before his baby can be placed for adoption.
- The father has the right to ask the court for custody (to make decisions about his child) and to have overnight visits with his child (physical placement).
- The father has the right to submit a parenting plan to the courts.

How paternity is legally established

In Wisconsin, there are three ways paternity may be established.

1) Voluntary Paternity Acknowledgment

If both the mother and the man are age 18 or older and are sure that the man is the father, the easiest way to establish paternity is with the *Voluntary Paternity Acknowledgment* form. The father and the mother may sign a *Voluntary Paternity Acknowledgment* form after their baby is born. Completing and mailing this form to Vital Records fully establishes paternity. (The mailing address for Vital Records is on the form.) The father's name will be added to the birth certificate.

If either parent wants genetic testing, the parents should not sign the form until they receive the test results. Parents may ask their local child support agency for genetic tests before signing the *Voluntary Paternity Acknowledgment* form. Child support agencies offer genetic testing for a reduced price. See page 3 for information about genetic tests.

The father and mother may sign the *Voluntary Paternity Acknowledgment* form and have it notarized at the hospital when their baby is born. All hospitals in Wisconsin have this form. Many midwives also have this form.

The *Voluntary Paternity Acknowledgment* form is also available from local child support agencies. Child support agencies can help parents with this form. Telephone numbers for local child support agencies are in the phone book under "County Government" or under the tribal name and online at childsupport.wisconsin.gov.

The *Voluntary Paternity Acknowledgment* form is also available at local register of deeds offices and the state Vital Records Office in Madison.

The *Voluntary Paternity Acknowledgment* form **cannot be used** if the child was conceived or born when the mother was married to another man.

2) Court Ruling

If a man is named as the possible father and does not agree, a court hearing will be scheduled. The court will make a ruling about paternity. Both the man and the mother will be notified of the hearing, and both should attend.

At the hearing, the man's rights and responsibilities will be explained to him. If he wants genetic testing, he should ask the court for the tests.

If the man does not appear at the scheduled time and place, the court may still enter a paternity ruling without the man being present and name the man as the father. This is called a "default judgment." A default paternity judgment is effective on the date the judgment of paternity is entered. Once the judgment is entered, the court may order child support.

3) Acknowledgment of Marital Child (Legitimation)

If the mother and the father get married after their child is born, the parents may sign an *Acknowledgment of Marital Child* form to establish paternity. Parents can get this form at their local child support agency and from the state Vital Records Office. Both the father and the mother should sign this form in front of a notary and mail it to the state Office of Vital Records. The mailing address for Vital Records is on the 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. When parents marry after their child is born, this form needs to be filed so that the dad is named the father on his child's birth certificate.

Questions Parents ask about Paternity Establishment

What if the man or the mother is not sure who the father is?

If the man or the mother is not sure, they **should not sign** the *Voluntary Paternity Acknowledgment* form. Once this form is filed, it has the same effect as a court judgment. The man will be considered the legal father, and a court can order the man to pay child support.

If no legal process has been started, the man or the mother should contact the local child support agency and ask for genetic tests. Child support agencies are listed in the phone book under "county government" or the tribal name and online at **childsupport.wisconsin.gov**. Child support agencies offer genetic tests at a reduced price. Please see your local child support agency to see what fees may apply to your case.

If a legal process has been started, the man and the mother should appear at the hearing at the scheduled time. During the legal process, the child support agency or the court will order genetic tests. If the tests show that the man is not the father, the case will be dismissed. If the tests show a 99% or greater probability of paternity, the man will be presumed to be the father under Wisconsin law.

What do genetic tests do?

Genetic (DNA) tests can be done either by a "buccal swab" test or by a blood test. Most places do the swab test instead of a blood test. For the swab test, cotton swabs are rubbed inside the mouth to obtain cell samples. In both types of testing, samples are taken from the man, the mother, and the child. The results from these tests will determine the probability of a specific man being the father.

The court uses the test results to rule on paternity when the man or mother are not sure or do not agree on the paternity of the child. If the tests show a 99% or greater probability of paternity, the man will be presumed to be the father under Wisconsin law. The man has the right to object to the test results in court.

Who pays for these genetic tests?

The child support agency pays for the tests until paternity is established. If the tests show that a man is the father, he and/or the mother may be ordered to pay for the tests. If the tests show that a man is not the father, he will not be charged for the tests.

If a man believes he is the father, what should he do?

Even if the man plans to help his baby and the mother, it is important to legally establish paternity. If the mother does not agree, the man can go to court to establish paternity. The man's local child support agency may be able to help with this. By establishing paternity, the father's rights and the child's rights are protected. (See page 1 for information about these rights.) A father can build a positive relationship with his child even if he is not in a relationship with the mother. There may be parenting or fatherhood classes and support groups in the area for dads.

When can paternity be established?

Paternity can be established any time after the child is born. However, a court action to establish paternity must occur before the child's 19th birthday. To ensure the child's and the parents' rights, it is best to determine paternity as soon as possible.

What should a father do if the mother or her family does not want him around?

If a man believes he is the child's father, it is his right and responsibility to establish paternity. That is true even if the mother or her family does not want him around. The child support agency may be able to help him with the process of establishing paternity, or he may hire an attorney.

Will the man or the mother need a lawyer?

The child support agency attorney may bring a court action to establish paternity but **cannot** represent either parent. If a man is named as a possible father, he might want legal representation. If he is under 18 and named as a possible father, the court will appoint an attorney for him unless he has his own attorney. If he is 18 or over, he may hire a lawyer.

Will the father have to pay child support?

If a man is found to be the father, he will be expected to support his child.

What if the father is in school?

If the father is in school and cannot help the mother support their baby, the court might wait to set support until he graduates and is working. If the father is under 18, the court might order his parents to help with the support. Parents should talk with their child support worker about this.

What if the father does not have a job or does not make much money?

The court tries to be fair when setting child support payments so that everyone has enough money to live on. The court might order the father to look for work if he is underemployed or unemployed and able to work. The court might order the father into the Children First Program to help him make enough money to pay child support. Voluntary programs may be available to help the father get a job or a better job.

Could the father go to jail?

If the father purposely refuses to pay child support as ordered by a court, he could be charged with contempt of court or criminal non-support.

Can the father get custody of his child?

Under Wisconsin law, when a child's parents are not married, the mother has sole custody (to make legal decisions for the child) until the court orders otherwise. The father does not need to have legal custody to spend time with his child.

If the father and the mother do not agree on legal custody, the father may ask the court for an order to share legal custody. If the father and the mother do not agree on physical placement (time spent with their child), the father may ask the court for a physical placement order.

For court orders, both parents will have to prepare a "Parenting Plan."

The court would then decide what is best for the child. Custody and placement issues may be discussed with the family court counseling service. Parents should contact their family court commissioner's office for counseling services.

What does paternity have to do with the W-2, Wisconsin Shares (child care), and BadgerCare Plus?

If a child or the mother receives benefits from the W-2 program and the father is ordered to pay child support, he might be able to participate in the W-2 Noncustodial Parent Program. This program can help him find a job.

If the father takes part in the W-2 program, he must cooperate with the child support agency. Cooperation includes paying support as ordered by the court. If he owes past-due child support, he and the child support agency will have to agree on a payment plan.

When a child or the mother receives services or cash benefits from the W-2 or SSI Caretaker Supplement program, the state requires that the county or tribe establish a child support order. (Child care is part of the W-2 program.) The mother will be asked to cooperate with the child support agency. This is also true for mothers in the BadgerCare Plus program who were referred to child support.

If the BadgerCare Plus program paid a baby's birth costs and the mother was referred to child support, the court might order the father to pay for some of the birth costs.

For more information, please see the Guides to:

- W-2 Services, Cash Benefits Programs, and Child Support
- Child Support and BadgerCare Plus
- Repaying Birth Costs

More about W-2 and BadgerCare Plus

What if the father threatens the mother, or she is scared to report who the father is?

The mother should contact the police if anyone threatens to hurt her or the child. She may ask the police for a restraining order against a person who threatens her.

If the mother is in the W-2, BadgerCare Plus, WI Shares (child care) or SSI Caretaker Supplement programs and she or her child are threatened, she might have “good cause” to refuse to name the father of the child. The mother will need to fill out some forms and provide evidence that she or the child are in danger. The W-2/Economic Support Agency will then investigate the situation. If the agency worker agrees that the mother or the child is in danger, the mother will not lose any assistance by not reporting the alleged father’s name to the child support agency.

If the mother wants to establish paternity and get support, she can be given “privacy protection.” Privacy protection will protect her address, telephone number, employer, or other personal contact information.

For more information, please see the Guides to:

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Legal Terms

Alleged father: The man named by the mother to be the child's father **OR** a man who believes he is the father and who brings a paternity action. The local child support agency will help the mother and/or the man with the paternity action.

BadgerCare Plus: A health insurance program for children and families.

Biological father: The birth or natural father. The man who makes a woman pregnant.

Children First program: A program that provides job search help, job skills training, basic education, or work experience opportunities to parents who pay child support. The court must order a parent into the Children First Program. Not all counties and tribes offer the Children First program.

Conceptive period: The period of time when a child was likely to have been conceived. For a normal pregnancy, it is a 60-day period, about 240 to 300 days before a birth.

Custody: The authority given to one or both parents by the court to make major decisions regarding the child. One parent (sole custody) or both parents (joint custody) may have custody.

Guardian: A person other than the parent who is legally responsible for a child. Most children do not have a legal guardian. This only happens when a court gives legal custody and placement to someone other than the parents.

Marital Presumption: When a mother is married at the time her baby is conceived or born, the law presumes her husband is the legal father. Only a court can decide otherwise.

Periods of Physical Placement: Periods of time a child spends with a parent.

Primary Physical Placement: Where the child lives most of the time.

Petitioner: A person who brings a legal action or lawsuit, also called the plaintiff.

Respondent: A person against whom a court action is started, also called the defendant.

W-2: A state work program that helps parents find a job. W-2 provides help with child care, transportation, job training, and education.

Need more information?

- Contact your local child support agency for information about your case. Phone numbers are listed under “County Government” or tribal name and online at dcf.wisconsin.gov
- Go to dcf.wisconsin.gov for more information about legal fatherhood and child support. Most public libraries offer free Internet access.

Or contact:

DCF is an equal opportunity employer and service provider. If you have a disability and need to access this information in an alternate format, or need it translated to another language, please call (608) 266-9909 or the Wisconsin Relay Service (WRS) -711 TTY (Toll Free). For civil rights questions, call (608) 422-6889 or Wisconsin Relay Service (WRS) -711 TTY (Toll Free).