



FROM COUNSEL

A Preventive Law Service of The Fort Riley Legal Assistance Office
Keeping You Informed On Personal Legal Affairs

Establishing Paternity



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1. PURPOSE: To provide information to Soldiers and family members about establishing paternity. Please note, paternity actions are governed by state law. Therefore, this From Counsel addresses generally what you can expect from a paternity action in any state, and not just one state. If you have questions about establishing paternity in a specific state, please speak with a Legal Assistance attorney.

2. FACTS

a. What is the purpose of establishing paternity? Paternity establishment is a procedure to determine the legal father of a child. The husband is presumed to be the legal father if married to the mother when the child was born. If the mother and father were not married at the time the child was born, paternity must be proven before the court will enter an order for child support. Proof will generally consist of an Affidavit Acknowledging Paternity, scientific genetic testing, direct testimony of the mother, or other available evidence. If both parents agree to sign an Affidavit Acknowledging Paternity, the parents do not have to go to court to establish paternity for their child. By signing the [Affidavit Acknowledging Paternity](#), the father waives any rights he may have to obtain a genetic test.

b. How is paternity established? A father can acknowledge paternity by signing a written admission or voluntary acknowledgement 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. An acknowledgment of paternity becomes a finding of paternity unless the man who signed the acknowledgment denies he is the father within 60 days. Generally, this finding may be challenged only on the basis of fraud, duress, or material mistake of fact.

c. Who can request genetic testing and who pays for genetic tests? Either parent may request a genetic test in contested paternity cases. If the state orders the tests, the state must pay the cost of the testing. If the father is identified by the test, some states will charge him for their costs. Parents of a child can agree to purchase a private kit for paternity testing, or the father can pay for a private test if the child is accessible to the father for a mouth swab.

d. Can I refuse to submit to genetic testing? Refusal to submit to a genetic test to determine paternity may result in a court resolving the issue against the refusing party. It also can result in the refusing party being held in contempt of court, which is a crime punishable by fines and imprisonment. It is important to remember that while DNA

evidence is very strong, it alone is not conclusive on the issue of paternity. Each state likely has a paternity statute which provides for other evidentiary items which must be considered.

e. Who can bring a legal action in a paternity case? Generally, the child (or the child's legal representative), the natural mother, a man claiming to be the father, or a government agency can bring a legal action to establish paternity.

f. What rights and benefits does the child receive when paternity is established? Establishing paternity will give your child the same rights and benefits as children born to married parents. These rights and benefits include:

- (1) legal proof of each parent's identity,
- (2) information on family medical history in case of inherited health problems,
- (3) the child's knowledge of the identity of both parents,
- (4) the father's name on the birth certificate,
- (5) medical or life insurance from either parent (if available), and
- (6) financial support from both parents, including child support, Social Security, veteran benefits and military allowances (if applicable), and inheritance.

g. What rights and benefits do the parents receive when paternity is established? Establishing paternity gives the father or mother the right to:

- (1) seek a court order for child support,
- (2) seek a court order for custody or visitation, and
- (3) have a say in certain legal decisions about the child.

h. My child was born outside of wedlock. Can my child be added to DEERS and receive military medical care? Yes. Female sponsors must provide the child's birth certificate and the child's social security card to add the child to DEERS. Male sponsors must provide the child's birth certificate, the child's social security card, and either a court order establishing paternity or a state voluntary acknowledgement of paternity form to add the child to DEERS.

i. My commander received a paternity inquiry from someone claiming I am the father of a child, but paternity has never been established. What are my obligations? Paternity disputes are not resolved by your military chain-of-command. A commander cannot order you to take a paternity test. If there is a valid court order for child support, you must comply. If there is no valid court order and if you admit paternity, you must comply with the support provisions of AR 608-99. If you deny paternity, you must comply with any court order issued in the future.

j. What should I do if I have further questions about paternity matters? Contact the Fort Riley Legal Assistance Office for an appointment at (785) 239-3117.

Last updated by CPT Jared Sprague
September 2024