

Establishing Paternity

Custody for a Child Born Out of Marriage

When a child is born to an unmarried woman, the mother of the child automatically has legal custody of that child and does not need a court order to prove that she has custody. However, if the child was born outside of marriage, paternity must be proven before the court will enter an order to obtain child support.

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. If one parent is unwilling to sign an Affidavit Acknowledging Paternity, a court will decide paternity based on genetic testing, testimony of the mother, or other evidence.

If you are in a situation where the father of your child has taken your child without your permission and the police say that they need a court order proving that you have custody of the child before they can act, try presenting this fact sheet to them. The law clearly states that the mother has custody of a child born outside of marriage. A.C.A. 9-10-113

Why is it important to establish paternity?

Both parents and the child have the right to a parent and child relationship. Everyone deserves a chance to develop, enjoy, and grow in the relationship. The father has the right to contribute to the success of his child's future. By establishing paternity, the father is providing his child with rights and privileges such as:

- The emotional benefits of knowing both parents
- Emotional and financial support from both parents
- Access to family medical records
- Inheritance protections
- Veterans' and Social Security benefits
- Medical and life insurance
- Legal documentation of who their parents are

Should parents planning to marry sign the Affidavit Acknowledging Paternity?

If the parents are not married to each other when the child is born, the man is not the LEGAL father, even if the parents are living together.

One way to establish a legal relationship between father and child is for the father to sign the Affidavit that acknowledges his paternity.

What if the mother married someone else?

If the mother was married when she became pregnant or at the time of the birth of the child, the husband is the legal father and must be shown on the child's birth certificate.

If the husband/ex-husband is not the biological (natural) father of the child, the mother and the husband/ex-husband must complete, in front of a notary, the section (Denial of Husband's Paternity) in the back of the Affidavit Acknowledging Paternity.

If this section has been completed and the Affidavit is given to the hospital staff before the birth certificate is filed, the biological (natural) father will be listed as the father on the birth certificate so long as the biological father acknowledges paternity and completes the Affidavit Acknowledging Paternity.

If the Affidavit is not submitted before the birth certificate is filed, the husband/ex-husband will be listed as the father and a court order will be required to remove the husband/ex-husband's name from the birth certificate.

How is paternity acknowledged?

When your baby is born, the hospital staff is required to ask for information to complete the baby's birth certificate.

They will also have the Paternity Acknowledgment form for the mother and father to sign saying that he is the biological father.

What if we are not sure who the father is?

If either parent is unsure, do not sign the Paternity Acknowledgment form. You should have a paternity test, which is sometimes called a DNA or genetic test.

What will the genetic test show?

The genetic test will show if a man is NOT the biological father of a child. Or, the test may show that it is almost certain, 95% or more, that a man is the father of the child.

If we sign the Affidavit Acknowledging Paternity now, can we have the paternity test later?

Yes, subject to the following time limits. A person who has signed an acknowledgment may rescind within (60) days after signing.

After the sixty (60) day period, and up to three (3) years, a motion to set aside the acknowledgment may only be based on allegations that the acknowledgment was obtained by fraud, duress, or material mistake of fact. Then the court may direct the mother, the child and presumed father to submit to scientific testing for paternity as provided by ACA §9-10-108.

Will the father's name be on the baby's birth certificate? If unmarried parents sign the Affidavit Acknowledging Paternity form at the hospital when the baby is born, the father's name will be shown on the baby's birth certificate. The parents must tell the hospital staff what name they want for their child. If the mother agrees, the baby can have the father's last name.

If we did not sign the acknowledgement form at the hospital, what can we do? If paternity is not established prior to leaving the hospital, parents can take the form with them and sign it later. They can acknowledge paternity for any child under the age of 18 who was born in Arkansas. However, the father's name will not appear on the birth certificate.

If OCSE helps me establish paternity, will child support or other government benefits begin automatically? No. You apply for child support at the Office of Child Support Enforcement or through an attorney. You apply for TEA, ARKids or Medicaid at the Department of Human Services.

Do I have to cooperate to establish paternity? Some government assistance programs require the mother to cooperate in establishing paternity to qualify for benefits. The mother must cooperate with the Office of Child Support Enforcement to establish paternity in order to qualify for Transitional Employment Assistance or TEA (formerly AFDC). The mother must cooperate to qualify for some Medicaid benefits.

Until recently, the mother was required to cooperate in establishing paternity before her children could qualify for ARKids First. Cooperation is no longer a condition of eligibility for ARKids A or ARKids B.

If we sign the Affidavit Acknowledging Paternity, does the father have the right to visit or ask for custody?

Signing the Affidavit Acknowledging Paternity does not automatically give the father the right to visitation or custody. The father may use the form to ask the court to award custody or establish visitation rights.

If the parents are in agreement, either parent may ask the court for an order to establish their rights to visitation or custody. Parents should ask their attorney about the law. ACA §9-10-1113(b) and (c) states that before a man can be adjudicated (court ruled) that he is the father he must first establish paternity, prove that he has supported the child, petition the court, and prove that it is in the best interest of the child.

What does it cost to establish paternity?

There is no charge to parents who voluntarily acknowledge paternity. The Affidavit Acknowledging Paternity is available at the Arkansas Office of Child Support Enforcement, county Health Units, or the hospital where your child was born.

If both parents do not voluntarily sign the Affidavit Acknowledging Paternity, you may contact an attorney or ask the Office of Child Support Enforcement to petition the court to establish paternity. The Office of Child Support Enforcement will charge for services to establish paternity, including genetic tests, court costs, and attorney fees, unless the applicant is eligible for free services.

The ALSP Law Series is produced by the Arkansas Legal Services Partnership, a collaboration of the Center for Arkansas Legal Services and Legal Aid of Arkansas, Inc. These nonprofit organizations provide free legal services to eligible Arkansans who meet income, asset, and other guidelines. Legal services may include advice and counsel, brief services, or full representation depending on the situation. Additional information can be found at: www.arlegalservices.org. To apply for services, call 1-800-9LAW AID.

*The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. **Always do what the court tells you to do.***

www.arlegalservices.org