



FROM COUNSEL

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

Establishing Paternity

Paternity establishment is ordinarily a procedure to determine the legal father of a child born outside of marriage. Otherwise, the husband is considered to be the legal father if married to the mother when the child was born, or if the child is born within a certain time after the marriage is dissolved by divorce. Paternity is established by law due to the marriage.

Either parent may contest the husband's paternity in a divorce action. Identification of the biological father, notice of the contested paternity to the biological father and genetic testing will be required to show the husband is not the only presumed father. When a competing presumption of paternity arises, a court order may be obtained, declaring the legal father. Generally, this must be done sooner in the child's life rather than later.

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, and there is no husband or other presumed father, the parents do not have to go to court to establish paternity for their child. By signing the affidavit acknowledging paternity, the father is generally waiving any rights he may have to obtain a court-ordered genetic test.

Q: 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 that 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. Paternity can also be established at a court or administrative hearing or by default if the man was served notice of a paternity hearing but did not appear.

Q: WHO CAN REQUEST GENETIC TESTING AND WHO PAYS FOR THEM?

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 tests, some states will charge him for their costs.

Q: 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. While DNA evidence is very strong, it alone is not conclusive on the issue of paternity. The paternity statute provides for other evidentiary items which must be considered.

Q: WHO CAN BRING LEGAL ACTION IN A PATERNITY CASE?

Any of the following may bring legal action:

- a. The child.
- b. Either parent.
- c. The state or Social Rehabilitative Services.

Q: WHY IS IT IMPORTANT TO ESTABLISH PATERNITY?

Establishing paternity will give your child the same rights and benefits as children born to married parents. These rights and benefits include:

- Legal proof of each parent's identity
- Information on family medical history in case of inherited health problems
- The child knowing the identity of both parents
- The father's name on the birth certificate
- Medical or life insurance from either parent (if available)
- Financial support from both parents, including child support, Social Security, veteran benefits and military allowances (if applicable), and inheritance.

Establishing paternity gives the father or mother the right to:

- Seek a court order for child support
- Seek a court order for custody or visitation
- Have a say in certain legal decisions about the child

Q: CAN A CHILD GET MILITARY MEDICAL CARE WITHOUT A COURT ORDER?

Yes. The requirements are:

- a. The Soldier must acknowledge paternity either by sworn affidavit or court order. If possible, he should be listed as the father on the birth certificate.
- b. The Soldier must apply for dependency status and issuance of a military ID card for the child. Contact your servicing personnel office for forms and details.
- c. The Soldier must register the child with DEERS. The child will then be eligible for treatment in a military treatment facility or through TRICARE at a civilian hospital.

Q: MY COMMANDER HAS RECEIVED A PATERNITY INQUIRY FROM SOMEONE CLAIMING THAT I AM THE FATHER OF A CHILD, BUT PATERNITY HAS NEVER BEEN ESTABLISHED. WHAT ARE MY OBLIGATIONS?

First of all, you must comply with any valid court order for child support. If there is no valid court order, the following guidelines apply:

- a. If you admit paternity you must comply with the support provisions of AR 608-99.
- b. If you deny paternity you must comply with any court order properly issued in the future.

Paternity disputes are not resolved by the military chain-of-command. Seek resolution in a civilian court of law if necessary.

Q: WHAT SHOULD I DO IF I HAVE FURTHER QUESTIONS ABOUT PATERNITY MATTERS?

Contact the Fort Riley Legal Assistance Office for an appointment, 239-3117.

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