



Legal Aid
Society of
Hawai`i

Paternity

Use this brochure if you are not married to the other parent of your child. This brochure provides information on the rights of both parents when they are not married.

IMPORTANT:

Paternity laws differ in every state. Hawai`i has jurisdiction if either the mother, father or child live here, or if the child was born or conceived here. If you want to file a paternity action in another state, or have received papers from another state, call Legal Aid for the phone numbers of mainland legal service providers. Please visit us on the Web: <http://www.legalaidhawaii.org>.

provide general information and should not be utilized as a substitute for professional legal service.
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I. What Is Paternity?

Paternity is a court order that legally establishes who is the father of a child. If the parents of a child are not married when the child is born, paternity needs to be established before the father has any legal rights to the child.

A. Paternity is an issue if:

- You and the other parent were not married when the child was born;
- The mother of the child was married when the child was born, but the mother's husband was not the father of the child;
- You were divorced 300 days or less when the child was born, and the ex-husband is not the father of the child.

A husband is the "presumed father" unless the court sees "clear and convincing evidence" proving otherwise.

Evidence includes:

- Separation: proof the husband and wife were geographically separated during conception (e.g. military or employment records showing residence in different states);
- Sterility: proof that the husband was sterile or impotent at the time of conception;
- Impossibility: proof by genetic testing that the husband could not be the father.

How Will I Know If Paternity Was Established?

If the child was born before July 1, 1999, you would have received notice that paternity was being established in Family Court.

If the child was born after July 1, 1999, paternity can be established either in Family Court OR at the hospital or the Department of Health if both parents sign a form called the *Voluntary Establishment of Paternity by Parents* form .

B. What does paternity do?

Establishing paternity establishes who the legal father of the child is.

If you establish paternity in Family Court, they will also decide the following issues:

- Child support: how much child support must be paid by the non-custodial parent (a child support order must be issued within 90 days of paternity decision);
- Past child support: how much the father may owe for past child support.;
- Custody: who gets legal and physical custody of the child;
- Visitation: what kind of visitation the non-custodial parent gets;
- Child-related bills: how much the father must pay for doctor/hospital bills for birth.

C. Who can file for paternity?

In Family Court, the following people have a right to request that paternity be established:

- Natural mother: the natural mother of the child, or her personal representative;
- Father: any man who *believes* he is the natural father of the child, or his personal representative;
- Presumed father: the presumed father of the child, or his personal representative;
- Child Support Enforcement Agency (CSEA);
- Child: the child or the child's personal representative.

If you establish paternity through the *Voluntary Establishment of Paternity* form, both parents must sign the form.

D. When can paternity be established?

If the child is not the subject of an adoption proceeding, a paternity action can be filed anytime before the child reaches age 21. **If the child is the subject of adoption**, the paternity action must be brought within 30 days from the child's birth, or anytime before the mother consents in writing to the adoption, whichever is later.

Welfare and Paternity

If you receive AFDC or Medicaid public assistance, the CSEA office will start a paternity action whether you want them to or not.

Your benefits may be stopped if you do not cooperate. You must have "good cause" not to establish paternity if you are receiving AFDC. If you cannot show good cause, and you do not cooperate with the DHS to establish paternity, your AFDC benefits may be terminated. Cooperation means giving recent, complete and accurate information about the natural father to the AFDC caseworker.

Examples of "good cause" include:

- Rape or Incest: the child was conceived as a result of rape or incest;
- Physical or Mental harm: there is a possibility of physical or mental harm to the child or the mother because their location might be revealed;
- Adoption: the mother is contemplating adoption.

CSEA may ask the father to repay

- birth-related expenses if the mother was on welfare at the time of the child's birth and
- money the mother got from welfare at any time since the child's birth.

Being on welfare or being poor should not affect a custody decision.

II. How do I File for Paternity?

You can establish paternity in two ways:

1. Through Family Court by the Child Support Enforcement Agency (CSEA) or a private attorney, OR
2. By having both parents sign the *Voluntary Establishment of Paternity* form at the hospital or at the Department of Health. (NOTE: This will not work if the mother was married to another man when the child was born. You will need to get assistance from a private attorney.)

A. To get a Family Court paternity order

You can apply with the Child Support Enforcement Agency (CSEA) if you are the mother of if you think that you are the father of the child. If CSEA cannot assist you, you should consult with a private attorney.

To get assistance from CSEA, you can call, write, or fax your request.

Statewide Phone Number 1-888-317-9081

O`ahu: 601 Kamokila Blvd, Suite 251
Kapolei, HI 96707
FAX: 692-7060
email: csea-adm@pixi.com

Big Island: Waiakea Kai Shopping Plaza
88 Kanoelehua Avenue, Suite #202
Hilo, Hawai`i 96720

Maui: 35 Lunalilo Street, Suite 201
Wailuku, HI 96793
email: mauifsu@aloha.net

Kaua`i: 4180 Rice Street, Suite 104
Lihue, HI 96766

The Corporation Counsel will file a petition for paternity for the CSEA. They will serve the petition on all parties to appear in court for a combined pretrial and trial hearing. The CSEA is required to serve the alleged father within 90 days.

The Court must issue a paternity order within 12 months of service of the petition upon the defendant(s). The amount of time it takes to establish paternity after all persons have been served depends on whether the action is contested or uncontested.

Uncontested: The parties can settle the matter out of court if everyone agrees. This will make it easier and quicker to establish paternity. Follow CSEA procedures for settling out-of-court. The father must call the following telephone numbers no later than four weeks before the Court hearing date in order to set up an appointment for an out of court settlement with a Family Support division staff person: 527-6918 or 527-6911.

Contested: If the father doesn't agree that he's the father, the action will go to a hearing. If the father has any doubts as to whether he is the father he should request a genetic test. **He must make a written motion for one within 30 days after receiving the Petition for paternity.**

Genetic Test for Paternity

A Q-tip is rubbed inside the mouths of the mother, the possible father, and the child to get DNA samples from each. If the test shows that the man is the child's father, then the state will bill him for the cost of the test, about \$210. If the test shows that the man is not the father of the child he will be dismissed from the action and will have no legal

At the hearing: The CSEA is representing the child and is only interested in establishing paternity. It will not help you with other issues such as child custody or visitation, although those will be decided at the hearing. Either party may bring an attorney. The hearing will establish paternity, custody, and visitation. If the Defendant does not show up at this hearing, the judge may grant a default judgment in favor of the petitioner, as claimed in the Petition.

Custody / Visitation Issues: In deciding custody between parents, the court will look at what is in **the best interest of the child(ren)**. Being on welfare or being poor should not be held against a parent in a custody decision. The court will look at whether:

- Abuse: there has been abuse of the child or a parent in front of the child;
- Substance abuse: there has been drinking or drug use in front of the child or while driving;
- Primary caretaker: who has been the primary caretaker for the child.

Evidence: You will need to have "evidence" to bring to court to support your claims for custody, such as:

- Police reports on abuse or driving records;
- Persons who can testify that you have been the primary caretaker.

Social Studies

If the judge wants to investigate further, or if you want the court to be more involved, a social study can be ordered. Depending on the island that you live on, the social study can be a short meeting between the child's parents and the social worker, OR it can be a long involved social study that lasts several months. In either case, the social worker will make a recommendation to the court about the custody arrangement. The court may ask you to pay part or all of the cost of the social study.

OAHU: If you are living on Oahu, you can request a mini social study, which lasts about a half-hour. A Guardian Ad Litem may also be appointed by the court. The court may require you to pay some or all of the costs.

Child Support: Is decided by a non-negotiable, court formula which looks at the income of both parents. The non-custodial parent (NCP) will be required to pay a monthly minimum of \$50 per child if they have no income.

- A child support order must be issued within 90 days of a paternity decision.
- If the mother has been on welfare for the child before a paternity order was established, CSEA can seek repayment of that money from the father.

B. Establishing paternity with the *Voluntary Establishment of Paternity*

form. (NOTE: IT MAY NOT BE IN YOUR BEST INTERESTS TO SIGN THIS FORM. PLEASE CALL LEGAL AID FOR MORE INFORMATION.)

Beginning on July 1, 1999, a new state law allows you to establish paternity by filling out the *Voluntary Establishment of Paternity* form. This form can be filled out either at the hospital if the unmarried mother and father of the child are both present, OR the form can be filled out later at the Department of Health office.

Once signed, this form will legally establish paternity. The father will have legal rights and responsibilities to the child. However, there will be no custody, visitation order, or child support orders. If you want these orders after signing the form, you will have to go to Family Court and make a request. The Child Support Enforcement Agency will not assist you with this process.

If you have signed the *Voluntary Establishment of Paternity* form, you have 60 days to rescind (cancel) the form. To rescind the form, go to the Department of Health and fill out a form called the *Rescission of Voluntary Establishment of Paternity form*. This form must be notarized. After 60 days, it is unlikely that you can set aside the paternity order. You will need assistance from a private attorney if you are in this situation.

III. You've Been Served with a Family Court Summons and Petition for Paternity

A. Show up in court.

Read the papers carefully, and meet all deadlines. Make sure you show up in Family Court on the correct date and time, and in the correct place. If you are not sure when you need to be in Court, call the attorney listed on the first page and ask for confirmation of the date.

If you miss the hearing, the judge may enter a “default judgment” against you; this means that everything the Petitioner asked for in the Petition could be granted without your being present.

B. File an “Answer”

File your “answer” (response) with the court within 20 calendar days of receipt of the summons. If you disagree with anything in the Petition, it is especially important to turn in an Answer. An Answer should include the following:

- The names of the parties as written on the Petition;
- The Family Court Docket Number (“FC-P No___”). It is located in the upper right hand corner of the petition;
- An explanation which tells the Court exactly what you agree with and what you disagree with in the Petition, line by line.

C. “Serve” the Papers.

You should then “serve” (give) a copy of your answer on the Corporation Counsel and the Petitioner. To do this, make 6 copies of your Answer and take the original and the copies to Family Court to be filed. The Court Clerk will keep the original and some copies for the Court. Mail one copy to Corporation Counsel and one copy to the petitioner.



D. If you do not think you are the father:

If you do not believe you are the father or are unsure, you must still answer the complaint. In addition to your answer, file a written motion requesting a genetic test within 30 days of being served with the petition. If you are found *not* to be the father you will be dismissed from the action. However, if you *are* the father of the child, you will be charged for the genetic test.

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Honolulu, HI 96813