

## Parents and the Law

There are now many ways that people can become parents. Donor eggs and sperm can help a woman get pregnant. Or sometimes a woman is willing to have a child for another couple. The laws in Texas have changed to address these new ways. But, the basic role of the law has remained the same: to protect and promote what is best for the child.

This article explains these topics:

[Legal Parents](#)

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[Paternity or Parentage Cases](#)

If you have questions about your situation, talk to a lawyer with experience in paternity law.

### Legal Parents

#### Who are the legal parents of a child?

A **woman** is the legal mother if she:

- Gave birth to the child,
- Adopted the child, or
- Was named mother by a court.

A **man** is the legal father if he:

- Is married to the child's mother, and the child is born during their marriage, or within 301 days of the end of their marriage
- Adopted the child,
- Was named father by a court,
- Agreed to assisted reproduction (like sperm donation) and a child was born, or
- Signed an *Acknowledgment of Paternity*.

#### Does it matter who the legal parents are?

Yes. A legal parent has certain rights and duties, including caring for the child physically, emotionally, and financially. If the parents are not married, a legal parent may have to pay child support.

## Acknowledgement of Paternity

### **What is an *Acknowledgement of Paternity*?**

An *Acknowledgement of Paternity* is a legal document that a man uses to say he is a child's biological father. It is valid in any state.

### **When is an *Acknowledgment of Paternity* used?**

When a man is not married to the mother of his child, an *Acknowledgment of Paternity* lets the man say he is the legal father. Signing it means he will have all of the rights and responsibilities of a parent, even if he is not married to or living with the mother.

### **Does the child have to be a certain age before the parents sign an *Acknowledgment of Paternity*?**

No. In fact, a father can sign it when the mother is pregnant. Or he can sign it later.

### **If the father is under 18, can he sign the *Acknowledgment of Paternity*?**

Yes.

### **Is there a special form that fathers sign?**

Yes. You can get an *Acknowledgement of Paternity* form from a hospital. Or you can call the Attorney General's Office and ask how to get one.

Call: **1-866-255-2006**

### **Does the form have to be notarized?**

No, but both parents must sign it and swear they are telling the truth. If they say something that is not true, they could be fined or go to jail.

### **What if the father refuses to sign an *Acknowledgment of Paternity*?**

Then a court can decide who the father is.

### **What do the parents do after they sign an *Acknowledgment of Paternity*?**

They must file the *Acknowledgement of Paternity* with the Bureau of Vital Statistics. It is not valid unless it is filed.

### **Are there any other legal forms that need to be filled out?**

Yes. If the mother is married to a man who is **not** the father of the child, her husband must fill out a *Denial of Paternity*. This form also must be filed with the Bureau of Vital Statistics. There is no cost to file the forms.

### **Can a court say that someone else is the father?**

Yes. In some cases, a court may say that another man is the father. When a court decides who the father is, he is called the *adjudicated father*.

### **Can a married woman put the name of the biological father on the child's birth certificate, if the father is not her husband?**

Yes, if:

- The biological father signs an *Acknowledgment of Paternity*, and
- The husband signs a *Denial of Paternity*.

## ***Denial of Paternity***

### **What is a *Denial of Paternity*?**

If a woman is married to a man who is not the father of her child, the law considers him the legal father, unless he “denies paternity.”

### **Is there a special form to deny paternity?**

Yes. You can get a *Denial of Paternity* form by calling the Attorney General’s Office. The form is free.

Call: **1-866-255-2006**

### **What does a *Denial of Paternity* do?**

A *Denial of Paternity* takes away parental rights and duties from the husband. It’s the same as if a judge signed a court order saying he is not the child’s legal father. It is valid in any state.

### **What if the husband is not the father, but does not sign a *Denial of Paternity*?**

The law says the husband is the “presumed” (legal) father if he is married to the child’s mother when the child is born, or the child is born within 301 days of the end of their marriage.

If the husband does not sign a *Denial of Paternity* – even if the biological father signs an *Acknowledgment of Paternity* – the law says the husband is the legal father. (If the husband does not want this, he must ask the court to make an order saying he is not the legal father.)

Both the *Denial of Paternity* and the *Acknowledgment of Paternity* forms must be filed with the Bureau of Vital Statistics. You do not have to pay to file the forms.

If the husband won’t sign the *Denial of Paternity*, he is the child’s legal father until a court names some one else the legal father.

### **Do the forms have to be notarized?**

No, but when the husband signs, he must swear he is telling the truth, or he could be fined or go to jail.

## **Canceling an *Acknowledgment of Paternity* or a *Denial of Paternity***

If you want to undo your *Acknowledgment* or *Denial of Paternity*, you must file a special form called a *Petition to Rescind* with the court.

### **Is there a deadline to file the *Petition*?**

Yes. You must file the *Petition* within 60 days of when the *Acknowledgment of Paternity* or *Denial of Paternity* was filed. If no *Acknowledgment of Paternity* or *Denial of Paternity* was filed, you must file your *Petition* before the first court hearing about the paternity of the child.

### **What if the deadline has passed?**

You may still be able to challenge the paternity. But, you must prove:

- There was fraud,
- You were put under great pressure to sign the *Acknowledgment of Paternity* or *Denial of Paternity*, or
- There was an important mistake made in your case.

### **Is there a deadline to file my challenge?**

Yes. You have 4 years from the date the *Acknowledgment* or *Denial* was signed. Or, if you were under 18 when you signed the *Acknowledgment* or *Denial*, you have 4 years from the time you turned 18, or from the date you are no longer a minor (because you married or a court emancipated you).

### **If a court agrees I am not the father, can the child's birth certificate be changed?**

Yes. The court will order the Bureau of Vital Statistics to remove your name as the father on the child's birth certificate.

## Paternity Registry

### **What if I believe I am the biological father, but I am not the husband, and I have not signed an *Acknowledgment of Paternity*?**

You still have certain rights, including:

- The right to know if anyone is trying to end your parental rights, and
- The right to know if the child is being placed for adoption.

To have these rights, you must sign up with the Paternity Registry.

### **Is there a deadline to sign up?**

Yes. You can register before the child is born or within 30 days after the child is born. If the child was conceived and born in different states, you should register in both states.

### **What if I miss the deadline?**

You cannot sign up if you miss the deadline. But you can start a paternity case in court to prove you are the father. You would have to file a *Petition to Establish Paternity*.

### **If I do not register and do not file a *Petition*, do I have any legal rights as the father of this child?**

No.

### **If I sign an *Acknowledgment of Paternity* do I still need to sign up?**

No.

### **If I am the Husband, do I need to sign up?**

No.

### **How do I sign up with the Paternity Registry?**

You must fill out and file a form called a *Notice of Intent to Claim Paternity*.

You can get it from:

Paternity Registry  
Bureau of Vital Statistics  
Texas Department of Health  
1100 W. 49th Street  
Austin, Texas 78756-3191  
(512) 458-7368

Or from: [www.dshs.state.tx.us/vs/patreg/default.shtm](http://www.dshs.state.tx.us/vs/patreg/default.shtm)

### **What if I registered with the Paternity Registry, but I found out later that I am not the father?**

You can cancel (rescind) your registration at any time. To do so, send a written statement to the Paternity Registry that says:

- Your name
- The child's name
- The mother's name
- That to the best of your knowledge and belief you are not the father (or that a court has decided that another man is the father)

Have the statement notarized. Make a copy to keep and mail the original to the Paternity

Registry:

Paternity Registry  
Bureau of Vital Statistics  
Texas Department of Health  
1100 W. 49th Street  
Austin, Texas 78756-3191

**Do I need to tell the Paternity Registry if I move?**

Yes. If any of your information changes, let the Registry know. Their address is:

Paternity Registry  
Bureau of Vital Statistics  
Texas Department of Health  
1100 W. 49th Street  
Austin, Texas 78756-3191

**Can someone adopt a child who does not have a legal father?**

Yes. But if there is a court case about this child, you must first get a certificate from the Paternity Registry.

If the child was born or conceived in another state, you must get a certificate from the other state's Paternity Registry, if they have one.

## Genetic Testing

Sometimes there is a question about who the child's biological father is. In these cases, the courts use genetic testing. Genetic tests are very accurate. The tests can say who the parent is (with up to 99% accuracy).

### **Do I need a court order for genetic testing?**

No. You can ask for genetic testing without a court order.

### **Will the court accept the results?**

Yes, but only if the test was done by an accredited lab.

### **If I am involved in a paternity case, what kind of report does the court need?**

The court will accept the lab's report if it has:

- The name and photo of each person tested,
- The names of all people who collected, handled, and tested the specimens,
- The date and place where the specimens were collected, and
- The dates the lab received the specimens.

A laboratory employee, under penalty of perjury, must also sign the report.

### **Who pays for the genetic testing?**

Usually, the person who asks for the testing pays for it. But sometimes, the parties agree otherwise, or the court orders someone else to pay.

### **Does the Attorney General's Office use genetic testing?**

Yes. The Attorney General's Office offers genetic testing when the parties do not agree about paternity. But the court may order the parties to pay for the testing.

### **What if the man thought to be the child's father cannot be found?**

A court may order the man's relatives to have genetic testing. But to do that, the court must decide that the need for testing outweighs the relative's right to privacy.

### **What if the man thought to be the child's father is dead?**

In Texas, a court can order genetic testing on a dead person's remains.

## Paternity or Parentage Cases

When people disagree about who a child's parents are, they can ask a court to decide. This is called a Paternity or Parentage case.

### How do I ask the court to decide who the parents are?

You must file a *Petition to Establish Paternity*.

### Can anyone ask a court to decide who the parents are?

No. The law says only these people can file a *Petition*:

- The child
- The mother (if she is dead, her parents, brother or sister, aunt or uncle, niece or nephew)
- A man who thinks he is the father
- A government agency
- An adoption agency, or
- An "intended parent" if there is a [gestational agreement](#).

### Do I have to tell anyone if I file a Petition?

Yes. You must tell the child's mother and the person you think is the father.

### What if the child's father lives in another state?

The laws in Texas cannot make him participate in the case, unless:

- He agrees.
- He was served personal notice in Texas.
- He lived in Texas with the child.
- He lived in Texas and provided prenatal expenses for the child.
- The child lives in Texas because of something the father did. Or,
- The child was conceived from intercourse he had in Texas.

### Where do I file the paternity case?

If the child lives in Texas, you can file in the county where the child lives (or is found).

If the child does not live in Texas, file in the county where the alleged father lives (or is found). If the alleged father is dead, file in the county where the probate case for the father's estate was filed.

### Is there a time limit on when I can file a Paternity case?

No. If the child does not have a legal father, there's no time limit.

But once the child becomes an adult, only the adult child may file a paternity case.

### What if the mother's husband is not the father?

If the mother is married to a man who is not the child's father, you cannot file a paternity case after the child turns 4, unless:

- A court finds that the mother and her husband did not have sex with each other when the child was conceived, and
- The husband never said the child was his.

**Exception:** If an *Acknowledgement of Paternity* or *Denial of Paternity* was filed, the deadline is 60 days after the date it was filed (unless the man can prove there was fraud,

tremendous pressure, or an important mistake).

**Can I file a paternity case before the child is born?**

Yes. But you cannot complete it until the child is born.

**Can I get child support for my child during my case?**

A court can order temporary child support from:

- The mother's husband
- An alleged father (who refuses genetic testing)
- The mother
- An alleged parent who has asked the court to be named parent
- An alleged father who was proved to be the father.

**If I am trying to prove I am the father, will the court let me visit with the child?**

Yes. A court can make temporary visitation orders during a paternity case.

**How can I prove that my husband or someone who signed an *Acknowledgment of Paternity* is not the father?**

You must provide genetic testing results that:

- Show the husband or the man who signed the Acknowledgment are genetically "excluded," and
- Show another man is the father.

**Will a jury decide my paternity case?**

No. In Texas, paternity cases are decided by a judge – not a jury.

**Will my paternity case be open to the public?**

Yes. It's open to the public, like all civil cases.

**What if someone is trying to prove I am the father?**

If you were served, but do not do anything, the court will find you "in default." The court can decide you are the father and order you to pay child support.

**What kind of orders could the court make?**

The court can make orders that:

- Say who is and who is not the child's parent,
- Say the father must pay child support and prenatal medical expenses. (The court may make the child support orders retroactive.)
- Change the child's name on the child's birth certificate.
- Say one or both people involved must pay for the court costs, genetic testing, attorneys, and travel expenses.

**Can anyone help me with my paternity order?**

Yes. The Texas Attorney General's Office can help with paternity and child support cases, for free. Call: **800-252-8014**.