



## Questions and Answers About Paternity

### Who can ask the court to establish paternity?

The child's mother, the child's guardian, someone acting as the child's father, the next of kin of the child or the Idaho Department of Health and Welfare may begin proceedings to establish paternity and child support.

### When can paternity be established?

Proceedings to establish paternity of the child may be started only after the child is born and must be begun before the child reaches the age of majority, regardless of whether or not the child's parents are or were married.

### Does it matter if the child was born in another state?

Proceedings to establish paternity may be started in the county where the mother or child resides or in the county where the putative father resides, regardless of what state the child was born in. (Putative father means the person believed to be the father.) The fact that the child was born outside of Idaho does not prevent someone from bringing paternity proceedings in Idaho.

### What is the process to establish paternity?

The process is started by either filing a voluntary acknowledgment of paternity signed by both parents in front of a

notary, whether or not they are married, or by going to court and asking that paternity be established. Child Support Services of the Department of Health and Welfare can assist in either situation.

### How does a father acknowledge paternity?

For an Idaho birth, a person believed to be the father of a child may acknowledge that he is the father by signing a voluntary acknowledgment of paternity in front of a notary. This acknowledgment is evidence of paternity and constitutes a legal finding of paternity upon its being filed with the Vital Statistics unit of the Idaho Department of Health and Welfare. The court may then order child support without further proceedings. Within sixty days of signing the acknowledgment, either party may rescind (take back) the acknowledgment by signing and filing a form with Vital Statistics.

### What if the husband is not the father?

There is a presumption that a child born or conceived during a marriage is legitimate. This presumption of legitimacy of a child born during wedlock is overcome by:

(1) Genetic tests which show that the husband is not the father of the child;  
or

(2) An affidavit of nonpaternity signed by the natural mother and her husband and an acknowledgment of paternity signed by the natural mother and natural father.

What evidence is needed to prove paternity?

Evidence of paternity includes:

- (1) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
- (2) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
- (3) The statistical probability of the alleged father's paternity based upon the genetic tests; or
- (4) Medical, scientific or genetic evidence relating to the alleged father's paternity of the child based on tests performed by experts; or
- (5) A voluntary acknowledgment of paternity.

What about genetic testing?

The court may require the child, mother, alleged father, or others who had sexual relations with the mother to submit to genetic tests. The Department of Health and Welfare may order such tests or the individuals may voluntarily agree to them.

The person requesting the test shall pay the expense of genetic testing, but these costs may be recovered if that person prevails in the case.

What if someone refuses to take a genetic test?

The refusal of any party to submit to the genetic tests may be subject to court sanctions. If the child's mother brought the action but she refuses to submit herself or the child to genetic tests, the action shall be dismissed.

What do the results of a genetic test mean to the court?

A genetic test result with a probability of paternity of at least ninety-eight percent (98%) creates a presumption of paternity. Whenever the results of the tests exclude anyone from possible paternity, the tests shall be conclusive evidence of nonpaternity.

What is the effect of an order establishing paternity?

After an order of filiation has been made, the father has the same legal rights and obligations, including child support and custody, towards the child as if he were married to the mother.

Custody and visitation may have to be established through the court system after paternity has been established.

Does paternity create an obligation for support?

In a proceeding in which the court has made an order of filiation, the court may

direct a father to pay a fair and reasonable sum for the support and education of the child until the child is eighteen years of age or finishes high school, up to nineteen years of age. Child support is figured under the Idaho Child Support Guidelines.

The order of filiation may also direct the father to pay or reimburse amounts paid for the support of the child prior to the date of the order of filiation and may also direct him to pay or reimburse amounts paid for (a) the funeral expenses if the child has died; (b) the necessary expenses incurred by or for the mother in connection with her confinement and recovery; and (c) such expenses in connection with the pregnancy of the mother as the court may deem proper.

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The Ada County Court Assistance Office provides this information as a public service. It is not a substitute for legal advice. The laws and court rules are complex. It is always advisable to talk to a lawyer about your situation before filing your action.