

# 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 the following topics:

- [Legal Parents](#)
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If you have questions about your situation, talk to a lawyer with experience in family law and paternity cases.

**Information Not Legal Advice:** This publication is for information only and is not a substitute for the advice of an attorney.

## 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:

- There is a **presumption** that he is the father, and it **hasn't** been proven false.
- He signed an **Acknowledgment of Paternity**, which has not been successfully challenged or canceled.
- He was named father by a court,
- He adopted the child or
- He agreed to assisted reproduction, **by his wife**, which resulted in the birth of the child.

### When is there a presumption of paternity?

A **man** is **presumed** to be the father of a child when:

- He continuously lived with the child, and told others that the child was his own, for the first

- two years of the child's life; **OR**
- He is married to the child's mother and the child is born during the marriage or before the 301<sup>st</sup> day after the marriage ended (even if the marriage is or could be declared invalid) **OR**
- He married the child's mother after the child's birth (even if the marriage is or could be declared invalid) he voluntarily asserted his paternity of the child **and**
  - He filed this assertion in a bureau of vital statistics record; **or**
  - He is voluntarily named the father on the child's birth certificate, **or**
  - He promised, in a record, to support the child, as his own,



There are only two ways to disprove a presumption of paternity:

1. By court order, or
2. By filing a valid *Denial of Paternity* (signed by the presumed father) when the biological father has also signed and filed a valid *Acknowledgment of Paternity*.

For more information on paternity presumptions please see section 160.204 of the Texas Family Code.

## ***Acknowledgment 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 legal father. It is valid in any state.

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

When a man is **not** presumed to be the father of the child, an *Acknowledgment of Paternity*, subject to certain legal requirements, lets the man say he is the child's legal father.

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

No. In fact, the man 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 to acknowledge paternity?**

Yes. The form is called an *Acknowledgment of Paternity*. You can call the Paternity Opportunity Program, at **1-866-255-2006**, to find an entity that can provide and explain the form to you.

Please click the following link for more information on this.

<http://www.dshs.state.tx.us/vs/reqproc/faq/paternity.shtm#a19>

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

No, but both the mother and the man who wants to establish paternity, 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 biological 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 should file the *Acknowledgement of Paternity* with the Bureau of Vital Statistics.

An acknowledgment of paternity takes effect on the day the child is born, or the day the document is filed with the bureau of vital statistics, whichever occurs later.

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

Yes. If the child has a presumed father, that man must fill out a *Denial of Paternity*. This form must also be filed with the Bureau of Vital Statistics. There is no cost to file the forms.



For more information, please see section 160.303 of the Texas Family Code

**Can a court say 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 change a child's birth certificate to put the name of the biological father on the child's birth certificate, if the father is not her husband?**

Yes, but two documents are needed. The biological mother and father must complete, sign, and notarize an *Application for a New Birth Certificate Based on Parentage*. (If a court has established paternity, only one parent needs to sign the form in front of a notary.)

You will also need to submit a completed *Acknowledgment of Paternity*, and the man who was married to the mother at the time of the child's birth will have to complete a *Denial of Paternity*.

If the court established paternity by a *court order*, you won't need to complete the Acknowledgment and Denial of Paternity, *but you will need a certified copy* of the court order that names the adjudicated father, and finds that the presumption of paternity for the wife's husband has been overturned.

There is a small fee to file the new birth certificate application.

- Please see the following link for more information.

<http://www.dshs.state.tx.us/vs/reqproc/faq/paternity.shtm#a2>

For more information on *Acknowledgments of Paternity*, please see the following link from the office of the Texas Attorney General.

<https://www.oag.state.tx.us/cs/forms/form1608.pdf>

## ***Denial of Paternity***

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

If a woman gives birth to a child while she is married to a man, he is legally presumed to be the child's father.

If he is not the child's biological father, and he doesn't want to be known as the child's legal father, he must "deny paternity."

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

A *Denial of Paternity* takes away parental rights and duties from the presumed father. 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.

Please note that a valid *Denial of Paternity* **must** be filed in conjunction with a valid *Acknowledgement of Paternity*

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

Yes. It is called a ***Denial of Paternity***.

The Paternity Opportunity Program has an Acknowledgment of Paternity **with** a Denial of Paternity Section.

You can call the Paternity Opportunity Program, at **1-866-255-2006** to find an entity that can provide and explain the form to you.

Please click the following link for more information on this.

<http://www.dshs.state.tx.us/vs/reqproc/faq/paternity.shtm#a19>

### **What if the husband is not the father, but will 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. Please see the corresponding section on page 1 for more information on this.

If the husband will not sign a *Denial of Paternity* – even if the biological father signs an *Acknowledgment of Paternity* – the law says the husband is still 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 someone 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 sent to jail.

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

If you want to cancel an *Acknowledgment or Denial of Paternity*, a completed *rescission form* must be filed with the bureau of vital statistics, among other requirements, as found in section 160.307 of the Texas Family Code.

### **Is there a deadline to file the *rescission form*?**

Yes, you must file the completed *rescission form* within **60 days** of the effective date of the *Acknowledgment or Denial of Paternity*, or before the first proceeding to decide an issue relating to the child( including a proceeding that establishes child support) whichever is **earlier**.

### **Where do I file the *rescission form*?**

File it with the Bureau of Vital Statistics.

### **Do I have to tell anyone else that I have filed the *rescission*?**

Yes. You must send a complete copy of your *rescission*, by certified mail or registered mail to the following:

- The other people who signed the *Acknowledgment or Denial of Paternity*, **and**
- If any of the other people, who signed your *Acknowledgment or Denial of Paternity*, are receiving services from a Title IV-D Agency, that agency must be notified as well.
  - **NOTE:** The Office of the Texas Attorney General's Child Support Division is Texas's Title IV-D Agency.
    - The Office of the Attorney General provides the following services:
      - Parent locator services
      - Paternity determination
      - Child Support and Medical Support Establishment
      - Review and adjustment of child support orders

- Enforcement of child support and medical support orders
- Collection and distribution of child support payments.
- Please see the following link for more information on the Office of the Texas Attorney General.
  - [https://www.oag.state.tx.us/cs/attorneys/crimnonsup/crimnonsuphb\\_ch2.shtml](https://www.oag.state.tx.us/cs/attorneys/crimnonsup/crimnonsuphb_ch2.shtml)
- **NOTE:** If the child in your case lives outside of Texas, you may need to research which organizations are IV-D agencies , in that state, and inform them, if appropriate.
- **Example:**
  - If the mother, who signed the *Acknowledgment of Paternity*, also receives child support from the other parent through the Office of the Attorney General, to resend the *Acknowledgment of Paternity*, you would need to send a complete copy of the rescission by certified or registered mail to the mother **and** the Office of the Texas Attorney General Child Support Division.

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

After the deadline has passed, you may start a proceeding to challenge the *Acknowledgement of Paternity* or *Denial of Paternity* only if:

- 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 of fact made

**Note:** The proceeding **may** be started at **any time** before an order is issued, which affects the child, including a child support order.

### **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.

You can preserve these rights by signing up with the Paternity Registry.

**Note:** If you already have an **existing** legal parent-child relationship with the child or have filed an action in court to determine your paternity, before the court has ended your parental rights, you do not have to sign up with the Paternity Registry to have the right to notice.

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

Yes. You can register before the child is born, but not later than 31 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, if your parental rights have not already been terminated.

### **If I do not register, have an existing father-child relationship, or file a paternity case, do I have any legal rights as the father of this child?**

No, not even if you are the child's biological father.

### **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 this form by mailing a request to:

Paternity Registry  
Bureau of Vital Statistics MC 1966  
Texas Department of Health  
PO Box 12040  
Austin, Texas 78711-2040  
(512) 776-7782

You can also mail a request to the following address.

Paternity Registry

Bureau of Vital Statistics  
Texas Department of Health  
1100 W. 49<sup>th</sup> Street  
Austin, Texas 78756-3191

The form can also be found at the following website

[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 by certified or registered mail:

Paternity Registry  
Bureau of Vital Statistics MC 1966  
Texas Department of Health  
PO Box 12040  
Austin, Texas 78711-2040  
(512) 776-7782

You can also mail it to:

Paternity Registry  
Bureau of Vital Statistics  
Texas Department of Health  
1100 W. 49<sup>th</sup> 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 Paternity Registry know. Their address is

Paternity Registry  
Bureau of Vital Statistics MC 1966  
Texas Department of Health  
PO Box 12040

Austin, Texas 78711-2040  
(512) 776-7782

You can also mail it to:

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

**Can a child without a legal father be adopted?**

Yes, but if a father-child relationship has not been established for the child, you must obtain a certificate showing the search results of the registry, before the child can be adopted.

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 to determine the child's biological father. Genetic tests are very accurate. The tests can say who the parent is with up to 99.99% accuracy.

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

No. A person can voluntarily submit to genetic testing.

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

*Maybe, if*

- The testing is of a type reasonably relied on by experts in the field of genetic testing and
- The testing is performed in a laboratory accredited by:
  - The America Association of Blood Banks, or a successor to its functions;
  - The American Society for Histocompatibility and Immunogenetics, or a successor to its functions or
  - An Accrediting body designated by the federal secretary of health and human services.
- **Note:** Please see section 160.503 of the Texas Family Code for more information on the requirements of genetic testing.

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

The report must be in a written record and signed by a laboratory employee, under penalty of perjury. The report can also be signed by any other "designee" of the laboratory.

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

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

### **Why is that kind of report needed?**

It is needed to establish a reliable chain of custody, which helps the court to believe that the testing results are accurate.

This is important to ensure that the results have not been tampered with.

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

Usually, the party 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 uses genetic testing, but the agency can seek reimbursement in certain circumstances.

### **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 done. But to do that, the court must decide that the need for testing outweighs the relatives' wishes not to be tested.

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

In Texas, when good cause is shown, a court *may* 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. The proceeding to adjudicate parentage 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 Adjudicate Parentage*.

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

No. The law says that, generally, only the following people can file a *Petition*:

- The child
- The mother of the child
  - If she is deceased, her parents, brother or sister, niece or nephew.
  - Please see Section 160.602 of the Texas Family Code for more information.
- A man who thinks he is the father.
- A government agency authorized by law.
  - This agency is usually the child support enforcement agency.
    - In Texas this is the Child Support Division of the Office of the Attorney General
- An authorized adoption agency, or licensed child-placing agency.
- An "intended parent" if there is a gestational agreement.
  - An intended parent is named in a gestational agreement as the person who will be the child's legal parent after the child is born.
- A representative, authorized by law, to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, is incapacitated, or is a minor.

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

Yes. You must tell the child's mother and the man whose paternity of the child is to be determined by the court. They must be part of the proceeding.

### **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 personally served with notice of the case, while he was in Texas.
- He lived in Texas with the child
- He lived in Texas and provided prenatal expenses or support for the child.
- The child lives in Texas because of something the father did
- The child may have been conceived from intercourse he had in Texas
- The individual asserted parentage in the paternity registry. OR
- There is another basis consistent with the constitution of the state and the United States to make him participate.

### **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 presumed or alleged father is deceased, file in the county where the probate or administration case for the father's estate was filed.

### **If there is no presumed, acknowledged, or adjudicated father (meaning the court has not named a father), is there a time limit on when I can file a Paternity case?**

No, 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 determines that the mother and her husband did not live together or engage in sexual intercourse with each other during the probable time of conception. OR
- The presumed father was prevented from filing a suit, before the child's fourth birthday, because of the mistaken belief that he was the child's biological father based on misrepresentations that led him to that conclusion.

### **What if the child has an Acknowledged or Adjudicated Father?**

If the child has an acknowledged father, and you signed an *Acknowledgment of Paternity or Denial Paternity*, you can file a case to challenge the paternity of the child only within the time

allowed under Section 160.308 of the Texas Family Code.

If the child has an acknowledged or an adjudicated father, and you are not the child in question, you can still file a case asking the court to determine parentage *if* you did not sign the *Acknowledgment of Paternity* (and weren't involved in a prior court case that adjudicated parentage), **and** you bring the case to adjudicate parentage before the fourth anniversary of the effective date of acknowledgment or the court's prior decision.

For more information please see section 160.609 of the Texas Family Code.

### **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?**

The court will make temporary orders for child support, if the order is appropriate and the individual, ordered to pay child support:

- Is the presumed father of the child
- Is petitioning to have his paternity declared by the court
- Is identified as the father through genetic testing
- Is an alleged father who declined to submit to genetic testing
- Is shown by clear and convincing evidence to be the father of the child or
- Is the mother of the child

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

Maybe. A court can make temporary visitation orders during a paternity case, as well.

### **How can I prove that my husband, a man who signed an Acknowledgment of Paternity, or a man who has been adjudicated to be the father, is not the father?**

You must provide **genetic testing results** that:

- Show that the man is not the father of the child OR
- Identify another man as the father of the child.

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

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

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

Yes, the paternity case will be open to the public.

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

If you were served, but do not do anything, the court can find you “in default”.

If the court finds you to be the father of the child the court can declare you to be the father of the child.

### **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
- Order a parent to pay child support and prenatal and postnatal health care expenses.
  - **NOTE:** The court can make orders for prenatal expenses that date back to when the mother was pregnant, and orders for retroactive child support. (Child support for the past).

For more information please see section 160.636 of the Texas Family Code.

### **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 1-800-252-8014.

Please click the following link for more information.

<https://www.oag.state.tx.us/cs/about/index.shtml>