

Texas Paternity Law: Frequently Asked Questions

This brochure answers **basic** questions about Texas paternity law. It is not a substitute for the help and advice of a lawyer. Talk to a lawyer if you have questions. **Your rights as a parent may be at stake.**

There are lawyers who will help you help yourself. This means that you can hire the lawyer just to give you advice, review forms, draft documents or help you prepare for a hearing. This is called **limited scope representation**.

For help finding a lawyer, contact your local lawyer referral service or the Lawyer Referral Information Service at www.TexasBar.com or 1(800) 252-9690. To find the Legal Aid office nearest you, go to www.TexasLawHelp.org and click on "Find Legal Assistance."

What is paternity?

Paternity is the legal identification of a child's father. When paternity is established the child's genetic father becomes the child's legal father with all of the rights and duties of a parent.

How is paternity of a child established?

There are 3 ways to establish paternity of a child:

1. by Presumption, - **or** -
2. by Voluntary Acknowledgment, - **or** -
3. by Court Order.

Did you know?

The Office of the Attorney General (OAG) may be able to help you get a court order establishing paternity of your child. The order can include provisions for custody, visitation, current and retroactive child support and medical support.

For information about opening a case with the OAG call 1-800-255-8014 or visit their website: www.oag.state.tx.us/cs/index.shtml.

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Why is establishing paternity important?

Establishing paternity secures a father's rights as a parent.

Also, children need and are entitled to:

- ✓ **financial support** from both parents. A court cannot order an alleged father to pay child support until paternity has been established.
- ✓ **benefits**, such as social security, insurance, inheritance and veteran's benefits, from both parents if they are available. A child might not be able to claim benefits from the father, if paternity has not been established.
- ✓ **medical history**. Children have the right to know if they have inherited any special health problems.

What forms are available if I decide to represent myself?

The following paternity related form and instruction packets are available at www.TexasLawHelp.org:

- [Establishing Paternity by Court Order](#)
- [Challenging an Acknowledgment or Denial of Paternity](#)
- [Terminating your Parental Rights after Finding Out You're Not the Genetic Father](#)

Words to Know

Alleged Father - a man who claims, or is claimed to be, the genetic father or possible genetic father of the child.

Presumed Father - a man who:

- ✓ was married to the child's mother when the child was born;
- ✓ was married to the child's mother any time during the 300 days before the child was born;
- ✓ married the mother after the child was born and voluntarily claimed paternity of the child with the bureau of vital statistics, on the child's birth certificate, or in a record in which he promised to support the child as his own; **or**
- ✓ during the first two years of the child's life, continuously lived with the child and represented to others that the child was his own.

Acknowledged Father - a man who signed a valid *Acknowledgment of Paternity* claiming to be the father of a child. To be valid, the *Acknowledgment* must also have been signed by the child's mother (and presumed father, if applicable) and filed with the Vital Statistics Unit.

Adjudicated Father - a man named as the father of a child in a court order.

Acknowledgment of Paternity - a legal form signed by a child's mother and genetic father (and presumed father, if applicable) to establish paternity of the child. When the form is filed with the Vital Statistics Unit, the genetic father becomes the child's legal father.

Denial of Paternity - a legal form signed by a presumed father to swear that he is not the child's genetic father. To be valid, the child's genetic father and mother must also sign an *Acknowledgment of Paternity*.

Vital Statistics Unit – State office responsible for birth certificates. For more information visit their website at <http://www.dshs.state.tx.us/vs/default.shtm> or call them at 1 (888) 963-7111.

Presumption of Paternity

When parents are married the law presumes that the husband is the father of the child. If the husband **is** the father, nothing else needs to be done. Paternity is established by presumption. Paternity is also presumed in several other circumstances.

When is a man presumed to be the father of a child?

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

- he was married to the child's mother when the child was born, - **or** -
- he was married to the child's mother any time during the 300 days before the child was born, - **or** -
- he married the mother after the child was born and voluntarily claimed paternity of the child with the Vital Statistics Unit, on the child's birth certificate, or in a record in which he promised to support the child as his own; - **or** -
- during the first two years of the child's life, he continuously lived with the child and represented to others that the child was his own.

What if the presumed father is not the child's genetic father?

A presumed father is recognized by law as the child's legal father **unless**:

- he signs a *Denial of Paternity* **and** the true genetic father (and mother) sign an *Acknowledgment of Paternity* - **or** -
- a court orders that he is not the legal father.

If the presumed father is willing to sign a *Denial of Paternity* and the child's genetic father and mother are willing to sign an *Acknowledgment of Paternity*, call the Office of the Attorney General at 1-866-255-2006 to find out where to go for help completing the appropriate forms.

For information about how to ask for a court order that says the presumed father is not the legal father read [How to Get an Order Establishing Paternity of a Child in Texas](#).

Acknowledgment of Paternity

When parents aren't married, but everyone agrees on the identity of the child's father, paternity can be established by filing a signed *Acknowledgment of Paternity* with the Texas Vital Statistics Unit.

What is an *Acknowledgment of Paternity*?

A legal form signed by a man to swear that he is the genetic father of a child. The child's mother also signs the *Acknowledgment*.

** If the child has a **presumed father** who is not the child's genetic father, the presumed father must sign the **Denial of Paternity** portion of the *Acknowledgment*. (See definition of *presumed father* on page 2.)

When the completed *Acknowledgment* is filed with the Vital Statistics Unit, the genetic father becomes the child's legal father with all the rights and duties of a parent. If a *Denial of Paternity* is included, the presumed father's rights and duties as a parent are ended.

Note: If the presumed father is not willing to sign the *Denial of Paternity*, you cannot use the *Acknowledgment of Paternity* form to establish paternity. However, you can file a court case to establish paternity of the child. Read [How to Get an Order Establishing Paternity of a Child in Texas](#).

How much does an *Acknowledgment of Paternity* cost?

Nothing. Filing an *Acknowledgment of Paternity* with the Texas Vital Statistics Unit is free.

When can an *Acknowledgment of Paternity* be signed?

An *Acknowledgment of Paternity* (and *Denial of Paternity*, if needed) can be signed before or after the child is born.

Can an *Acknowledgment of Paternity* be signed by someone who is under 18?

Yes.

Are there any special requirements for an *Acknowledgment of Paternity*?

Yes. For an *Acknowledgment* to be valid, it must be filed with the Vital Statistics Unit and:

- be signed under penalty of perjury, (*This means you could be charged with a crime if you lie.*) - **and**
- state whether or not the child has a presumed father, and if so, state the presumed father's name, - **and** -
- state that the child does not already have an acknowledged father. (*This means no one else has signed an *Acknowledgment of Paternity* claiming to be the child's father.*) - **and** -
- state that the child does not have an adjudicated father. (*This means no one has been named as the child's father in a court order.*) - **and** -
- state whether or not genetic testing has been done, and if it has, that the test shows that the man signing the *Acknowledgment* is the father.

What voids an *Acknowledgment of Paternity*?

An *Acknowledgment of Paternity* is void if it falsely denies the existence of a presumed, acknowledged or adjudicated father.

Where can I get the *Acknowledgment of Paternity* form?

You can complete an *Acknowledgment of Paternity* at the **hospital** when the child is born. The hospital will then file the *Acknowledgment of Paternity* with the Texas Vital Statistics Unit.

You can also complete an *Acknowledgment of Paternity* before or after the child is born at the office of a **certified entity**. Call **1-866-255-2006** to find a certified entity near you. The certified entity will then file the *Acknowledgment* with the Texas Vital Statistics Unit.

Where can I get more information?

Contact the Office of the Attorney General at 1-866-255-2006 for more information about *Acknowledgments of Paternity*.

Denial of Paternity

What is a Denial of Paternity?

A *Denial of Paternity* is a legal form signed by a presumed father to swear that he is not the child's genetic father. To be valid, the child's genetic father and mother must also sign an *Acknowledgment of Paternity* and the *Acknowledgment and Denial of Paternity* must be filed with the Vital Statistics Unit.

Are there any special requirements for a Denial of Paternity?

Yes. For a *Denial of Paternity* to be valid, it must be filed with the Texas Vital Statistics Unit **and**:

- be signed under penalty of perjury (*This means you could be charged with a crime if you lie on the form.*), - **and** -
- the man signing must not have previously signed an *Acknowledgment of Paternity* (unless the *Acknowledgment* was successfully rescinded or challenged), - **and** -
- the man signing must not have been named as the child's father in a court order.

Where can I get the Denial of Paternity form?

You can complete a *Denial of Paternity* at the **hospital** when the child is born. The hospital will then file the *Denial of Paternity* with the Texas Vital Statistics Unit.

You can also complete a *Denial of Paternity* before or after the child is born at the office of a **certified entity**. Call **1-866-255-2006** to find a certified entity near you. The certified entity will then file the *Denial of Paternity* with the Texas Vital Statistics Unit.

How much does a Denial of Paternity cost?

Nothing. Filing a *Denial of Paternity* with the Texas Vital Statistics Unit is **free**.

Where can I get more information?

Contact the Office of the Attorney General at 1-866-255-2006 for more information about *Denials of Paternity*.

Taking Back an Acknowledgment or Denial of Paternity

Can I "take back" my Acknowledgment or Denial of Paternity?

You may **rescind** or "take back" an *Acknowledgment of Paternity* or *Denial of Paternity* by filing a *Rescission of Acknowledgment of Paternity* form with the Texas Vital Statistics Unit. However, this form must be filed:

- **before** the 60th day after the effective date of the *Acknowledgment or Denial of Paternity*, - **AND** -
- **before** a court case about the child is initiated

What if I miss the deadline to rescind my Acknowledgment or Denial of Paternity?

You may be able to **challenge** your *Acknowledgment of Paternity* or *Denial of Paternity* after the time period for rescission (described above) has expired. Read about challenging an *Acknowledgment or Denial of Paternity* on the next page.

Where can I get the form to rescind my Acknowledgment or Denial of Paternity?

Find out where to go to complete the *Rescission of Acknowledgment (of Denial) of Paternity* form by contacting:

- the hospital or office where you signed the *Acknowledgment or Denial of Paternity* **or**
- the Attorney General's Office at 1 (866) 255-2006.

How much does it cost to rescind my Acknowledgment or Denial of Paternity?

Nothing. Filing a *Rescission of Acknowledgment or Denial of Paternity* with the Texas Vital Statistics Unit is **free**.

Where can I get more information?

Contact the Office of the Attorney General at 1-866-255-2006 for more information about filing a *Rescission of Acknowledgment or Denial of Paternity*.

Challenging an Acknowledgment or Denial of Paternity

If it's too late to rescind, can I still try to challenge my *Acknowledgment* or *Denial of Paternity*?

You may be able to challenge your *Acknowledgment of Paternity* or *Denial of Paternity* after the time period for rescission (described on page 4) has expired, but only if:

- you signed the *Acknowledgment* or *Denial* based on fraud, duress or material mistake of fact - **and** -
- you file a *Petition to Challenge Acknowledgement of Paternity* before a court order about the child is made.

What forms can I use to challenge my *Acknowledgment* or *Denial of Paternity*?

The following form packet is available at www.TexasLawHelp.org:

- [Challenging an Acknowledgment or Denial of Paternity](#)

You may need additional forms depending on your case. Try to talk to a lawyer before you file anything.

Can I challenge an acknowledgment of paternity signed by someone else, if I think I'm the child's true genetic father?

You may ask a court to order that you are the child's legal father by filing a *Petition to Adjudicate Parentage* if you didn't sign the *Acknowledgment of Paternity* (or any accompanying *Denial of Paternity*) **and**:

- a. it has been less than 4 years since the effective date of the *Acknowledgment* – **or** –
- b. the *Acknowledgment* is void.

Read [How to Get a Court Order Establishing Paternity of a Child in Texas](#).

Court Ordered Paternity (Adjudication of Parentage)

Paternity of a child can also be established by a court. A parent, or other authorized person, may ask the court for an order establishing paternity of a child by filing a proceeding to adjudicate parentage of the child (also called a paternity case).

Who can file a paternity case?

A paternity case may only be filed by the following people:

- ✓ the child's mother, (if she's deceased, then her parent, grandparent, sibling, or child), **or**
- ✓ a man who thinks he's the father, **or**
- ✓ a man presumed to be the father, asking the court to order that he's not the father, **or**
- ✓ the child, **or**
- ✓ a person who is the intended parent in an approved gestational agreement.

A governmental agency (like the Attorney General's Office), an adoption agency, or an authorized representative may also file a court case to establish paternity of a child.

Note: If the child is an adult, a paternity case may only be filed by the adult child.

Are you afraid of the other parent?

Unfortunately, domestic violence can be a part of any relationship. Domestic violence can include physical violence such as hitting, slapping, pushing, or kicking. It can also include threats of violence. You do not need to have called the police or sought medical care to be the victim of domestic violence.

If you or your children have been the victim of domestic violence **call** the Family Violence Legal Line at 1-800-374-HOPE (4673) for help **before** filing a paternity case.

Can anyone help me get a paternity order?

Yes. You may hire a lawyer or contact the Attorney General's Office for help.

For help finding a lawyer, contact your local lawyer referral service or the Lawyer Referral Information Service at www.TexasBar.com or 1(800) 252-9690.

To apply for the services offered by the Attorney General's Office, call 1-800-252-8014 or visit their website: www.oag.state.tx.us/cs/index.shtml.

Are there forms I can use if I decide to represent myself in a paternity case?

Yes. The following form and instruction packet is available at www.TexasLawHelp.org:

- [Establishing Paternity by Court Order](#)

You may need additional forms depending on your case. Try to talk to a lawyer before you file anything.

Who must be included in a paternity case?

The following people must be included in a paternity case:

- ✓ the child's mother, **and**
- ✓ all alleged fathers, **and**
- ✓ any presumed, acknowledged or adjudicated fathers, **and**
- ✓ anyone with a court-ordered relationship with the child, **and**
- ✓ the Attorney General's Office **if** anyone receives or has received TANF and/or Medicaid, on behalf of the child.

Can a paternity case be filed before the child is born?

Yes, but you must wait until after the child is born to finish it.

Is there a time limit on when a paternity case can be filed?

- **If the child does not have a presumed, acknowledged or adjudicated father ***, there is no deadline. A paternity case may be filed at any time. (However, after the child turns 18, only the child may file.)
- **If the child has a presumed father,*** you must file a paternity case **before** the child turns 4, **unless**:
 - a. you are the presumed father and you didn't file the paternity case before the child turned 4 because you were misled into believing that you were the genetic father – **or** –
 - b. the presumed father and mother did not live together or engage in sexual intercourse with each other during the time the child was conceived.
- **If the child has an acknowledged father,*** you cannot file a paternity case **unless** you didn't sign the *Acknowledgment of Paternity (or any accompanying Denial of Paternity)* **and**:
 - a. it has been less than 4 years since the effective date of the *Acknowledgment* – **or** –
 - b. the *Acknowledgment* is void.
- **If the child has an adjudicated father,*** you cannot file a paternity case **unless**:
 - a. you are not the mother or the adjudicated father, – **and** –
 - b. you were not a party in the court case that named the father of the child, – **and** –
 - c. it has been less than 4 years since the effective date of the court order naming the father of the child.

* Read definition on page 2.

Note: If you signed an *Acknowledgment* or *Denial of Paternity* you may be able to rescind or challenge your *Acknowledgment* or *Denial*. See pages 4-5. If you are an acknowledged or adjudicated father you may be able to terminate your parental rights if you later find out you are not the child's genetic father. See page 8.

Where should a paternity case be filed?

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

If the child doesn't live in Texas, you can file in the county where the respondent lives (or is found). However, it's best to ask a lawyer or the Attorney General's Office for help if the child doesn't live in Texas.

If the presumed or alleged father has died, you can file the case in the county where a probate proceeding has been filed.

The man I believe to be the child's father lives in another state. Can I file a paternity case against him in Texas?

You can file a paternity case in Texas against an alleged father who lives in another state only if:

- ✓ he agrees and files written papers in the case; **or**
- ✓ he is personally served in Texas with legal notice of the paternity case; **or**
- ✓ he lived in Texas with the child at some time; **or**
- ✓ he lived in Texas and provided prenatal expenses for the child; **or**
- ✓ he had sexual intercourse in Texas which led to the child's conception. **or**
- ✓ the child lives in Texas because of something the alleged father did; **or**
- ✓ The child was born in Texas and the alleged father registered with the *paternity registry* maintained by the Texas Vital Statistics Unit or signed an *Acknowledgment of Paternity* filed with the Texas Vital Statistics Unit

I want the court to make orders about custody and visitation of our children. Do the children have to live in Texas?

Yes, to make orders about custody and visitation, the court must have jurisdiction over the children. Generally, a Texas court will only have jurisdiction over children if they have lived in Texas for at least the past 6 months or since birth for an infant.

What can the court order in a paternity case include?

The court order in a paternity case can:

- order that an alleged father **is** the legal father of the child,
- order that an alleged or presumed father **is not** the legal father of the child,
- order custody, visitation, child support and medical support for the child,
- order retroactive child support (*support that dates back to the child's birth*) and prenatal medical expenses,
- change the child's name,
- order the Texas Vital Statistics Unit to issue an amended birth certificate for child, **and/or**
- order one or both parties to pay court costs, genetic testing fees, attorney fees or travel expenses.

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

A court can temporarily order child support from:

- a presumed father;
- an alleged father (who refuses genetic testing);
- a mother;
- an alleged parent who's asking the court to be named a parent; **or**
- an alleged father who is shown by clear and convincing evidence to be the father.

Read [How to Ask for Temporary Orders](#) at www.TexasLawHelp.org.

I believe I'm the father. Can I get visitation during my case?

Yes. A court can temporarily order visitation during a paternity case. Read [How to Ask for Temporary Orders](#) at www.TexasLawHelp.org.

I have been sued in a paternity case. I don't think I'm the father. What should I do?

Talk to a lawyer **right away**. If you're found to be the father, the court can order you to pay current and retroactive child support (dating back to the child's birth). Lawyers are trained to protect your legal rights.

If you decide to represent yourself, you may ask the court to order genetic testing. Do this by filing an *Answer* and *Motion for Genetic Testing*. Find these forms with the *Establishing Paternity by Court Order* forms at www.TexasLawHelp.org.

(If you don't live in Texas, it's important to talk to a lawyer before filing anything. For more information read the answer to the question below.)

What happens if I've been served in a paternity case and don't do anything?

If you've been served, and you don't do anything, the court will find you in "default." Default means that the court can finish the case without any further notice to you. You will not get notice of any hearings and the court will not hear your side of the story or know what you want the court to order. The court may decide you are the child's legal father and order you to pay current and retroactive child support (dating back to the child's birth).

If you live in Texas, file an *Answer* to prevent the court from finding you in "default." Find an *Answer* form at www.TexasLawHelp.org with the *Establishing Paternity by Court Order* forms. From the day you are served you only have 20 days, plus the next Monday before 10 a.m., to file your *Answer*. File your *Answer* at the District Clerk's office in the county where the case was filed.

If you don't live in Texas, it's important to talk to a lawyer **right away** to help you determine whether or not Texas has authority to decide the paternity case. If Texas has authority, you must file an *Answer* by the deadline described above. If Texas does not have authority, you may need to file a *Special Appearance* to tell the court that it doesn't have authority over the case. A *Special Appearance* must

be filed before an *Answer* or any other document, or you will give up your right to argue that Texas doesn't have authority to decide the case.

Termination Based on Mistaken Paternity

In certain circumstances, Texas law allows a man mistakenly named as a child's legal father to ask a court to terminate his parental rights and end his obligation to pay future child support.

When can a man ask the court to terminate his parental rights based on mistaken paternity?

You can ask a court to terminate your parental rights based on mistaken paternity only if:

- ✓ You are not the child's genetic father.
- ✓ – **AND** – You were mistakenly named as the child's **legal** father because you either:
 - a. Signed an *Acknowledgement of Paternity* form saying you were the child's father without first getting genetic testing because at the time you signed you mistakenly believed you were the child's genetic father.
 - **OR** –
 - b. A Texas judge made a court order naming you as the child's legal father without getting genetic testing. You did not contest paternity (argue you were not the father) because at the time the judge made the order you mistakenly believed you were the child's genetic father.
- ✓ – **AND** – Misrepresentations led you to conclude that you were the child's genetic father;
- ✓ – **AND** – You did not adopt the child.
- ✓ – **AND** – You did not agree to the child being conceived through assisted reproduction.
- ✓ – **AND** – You are not the child's intended father based on a court-validated gestational agreement.
- ✓ – **AND** – You file before the deadline explained on the next page.

Is there a deadline to file a mistaken paternity case?

Yes. There is a 2 year deadline.

- You must file your Petition by the **second anniversary** of the date you discover you are not the child's genetic father. If you don't, you will not be able to use this statute to end your parental relationship or child support order.

If the court terminates my rights based on mistaken paternity will I still have to pay child support?

Your future child support obligation will end. However, you will still owe any unpaid child support and you won't be able to get back any child support that you have already paid.

Are there forms I can use if I decide to represent myself in a mistaken paternity case?

Yes. The following form and instruction packet is available at www.TexasLawHelp.org:

- [Terminating your Parental Rights after Finding Out You're Not the Genetic Father](#)

You may need additional forms depending on your case. Try to talk to a lawyer before you file anything.

Where can I get more information?

The Mistaken Paternity statute (sometimes called the Paternity Fraud statute) is in the Texas Family Code, Section 161.005. You can read it online at www.statutes.legis.state.tx.us/

Genetic Testing

If you have any doubt about paternity, genetic testing can determine who a child's genetic parents are. Genetic tests are very accurate. Courts rely on them in paternity cases. If the results show that there's at least a 99% chance that you are the parent, the court will likely name you a parent.

How do I ask the court to order genetic testing in a paternity case?

File a *Motion for Genetic Testing*. Find this form at www.TexasLawHelp.org.

Do I have to have a court order for genetic testing?

No. If the parties agree to submit to genetic testing, you don't need a court order. You can arrange for genetic testing to be done through an accredited lab.

Are there specific requirements for genetic testing to be admitted in court?

Yes. The genetic test must be performed by an accredited lab.

The testing lab should record the results in a record that's signed by a lab designee, under penalty of perjury. The report can be admitted as evidence in court if it includes the following:

- the name and photograph of each person tested,
- the name of each person who collected the specimens,
- the place where the specimens were collected, and the date the specimens collected,
- the name of each person receiving specimens in the lab, **and**
- the dates the specimens were received.

Who pays for the genetic testing?

Usually, the person who requests the testing will be expected to pay for it. However, there is often no charge for genetic testing ordered in a paternity case filed by the Office of the Attorney General.

Paternity Registry

If a man believes he's a child's father, and wants to be notified of a legal proceeding to end his parental rights or place the child for adoption, he can register with the Paternity Registry. He doesn't need to register if he has already signed an Acknowledgement or been named the father in a court order, or is presumed to be the child's father.

When should I register with the Paternity Registry?

You can register before the child is born or within 30 days after the child is born.

It has been more than 30 days since the child was born, is it too late for me to register with the Paternity Registry?

Yes. It's too late to register. But, if you want to make sure you receive legal notice of a proceeding to end your parental rights or place the child for adoption, you can still be guaranteed legal notice if you begin a proceeding to determine paternity before the court ends your parental rights.

Can my parental rights be terminated without my knowing it?

Yes. If you fail to register with the Paternity Registry before the child turns 30 days old, and you don't start a proceeding to determine parentage before your parental rights have been terminated.

Can I register with more than one paternity registry?

Yes. You should register in the state where the child was conceived and in the state where the child was born.

Where do I find the form I need to register with the Paternity Registry?

You can download the form from:

www.dshs.state.tx.us/vs/patreg/default.shtm

Does registering with the Paternity Registry make me the legal father of the child?

No.

How do I contact the Texas Paternity Registry?

Paternity Registry

Vital Statistics Unit - 1966

Texas Department of State Health Services

P.O. Box 149347

Austin, Texas 78714-9347

Toll Free #: (888) 963-7111 Ext. 7782

<http://www.dshs.state.tx.us/vs/patreg/default.shtm>

What if I registered with the Paternity Registry, but I have since found out that I'm not the father?

You can rescind your registration at any time by sending the Paternity Registry a written statement that you've signed in front of a notary that states to the best of your knowledge and belief, you are not the father or that a court has judged another man to be the child's father.

I have moved since I registered, do I need to update my address?

Yes. You must notify the registry in writing of any change in information, including your address.

Want to know more about Texas paternity law?

The Uniform Parentage Act is in the Texas Family Code, Chapter 160. You can read it online at www.statutes.legis.state.tx.us/.