

PATERNITY

Methods of Establishing Paternity- Child born Out-of-Wedlock

Acknowledgment of paternity

The father of a child born out of wedlock may formally acknowledge paternity of the child by filing such acknowledgment with the Department of Health. **An acknowledgment of paternity may be considered voluntary and intelligent despite the father's failure to have a blood test performed prior to rendering such acknowledgment.** The hospital or other person accepting an acknowledgment of paternity must provide written and oral notice, which may be through the use of video or audio equipment, to the birth mother and birth father of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from, signing the acknowledgment. The Department may impose a civil penalty not to exceed \$500 per day upon a hospital or birthing center that is not in compliance with the law. **If the mother consents to the acknowledgment,** the father and child will have all the rights and duties as to one another that they would have had if the father had been married to the mother at the time of the child's birth. The name of the father must be included on the record of birth of the child of unmarried parents only if the father and mother have signed a voluntary acknowledgment of paternity or if a court or administrative agency of competent jurisdiction has issued an adjudication of paternity. **If the mother does not consent, the acknowledgment is considered merely a claim of paternity** and confers upon the putative father no rights except the right to receive notice of any proceeding to terminate parental rights as to the child. Notwithstanding any other provision of law, **a signed acknowledgment of paternity that is voluntary and witnessed will be considered a legal finding of paternity,** subject to the right of any signatory to rescind the acknowledgment **within the earlier of 60 days** or the date of an administrative or judicial proceeding relating to the child. After the expiration of 60 days, an acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, which must be established by the challenger through clear and convincing evidence; and an order for support will not be suspended during the period of challenge except for good cause shown.

By Estoppel- Acting as the Father without contrary evidence from the mother

Parental relationships can be established constructively, and such relationships and their concomitant duties merit judicial recognition and enforcement. Paternity by estoppel is based on public policy that children should be secure in knowing who their parents are; if a certain man has acted as a father and bonded with a child, that child should not be required to suffer potentially damaging trauma that may come from being told that the father the child has known all of his life is not in fact his father. Thus, if an alleged father has indicated by his conduct that a child is his own, he is estopped from denying paternity. However, the doctrine of estoppel will not apply when clear, direct, convincing, and unanswerable evidence establishes that the father failed to accept the child as his own by holding it out and/or supporting the child.

Entry of support order

An order for the support of a child born out of wedlock necessarily determines the issue of paternity, and absent an appeal taken directly from that order, or the showing of fraud, a person who would deny paternity is foreclosed from challenging this determination. Thus, once paternity has been determined by the entry of an order of

support, blood tests disproving paternity are not relevant. Although entry of a support order against the father will collaterally estop the mother from challenging his paternity, the fact that she sought and obtained the order and accepted payments under it is also relevant to equitable estoppel analysis. A support order also collaterally estops the mother from attempting to establish paternity in a different man.

Blood Tests or Genetic Tests- DNA Testing, generally

Blood tests may be ordered in any civil matter in which paternity is a relevant issue. The blood test results may exclude a man as the possible father of a child. A court may order blood tests upon its own initiative or upon the suggestion of any person whose blood is involved, and it must order such tests upon the timely motion of a party to the action. **Human leukocyte antigen (HLA) tests**, which involve the tissue typing of white cell blood groups, can be used to calculate the probability that the alleged father of a child is the actual father. The tests ordered may also include **red blood cell tests**. The tests must be made by court-appointed experts qualified as examiners of blood types. If an alleged father denies paternity and challenges the admission of blood tests, the court-appointed experts who performed the tests will be called to testify and will be subject to cross-examination. If the conclusions of all the experts, as disclosed by the evidence based upon the tests, are that the alleged father is not the father of the child, the question of paternity is resolved accordingly. If the experts disagree in their findings or conclusions, the question is submitted upon all the evidence. If any party refuses to submit to the tests, the court may resolve the question of paternity against the party or enforce its order.

The best interests of the child is not the proper standard to apply when determining whether to allow the putative father to obtain **deoxyribonucleic acid (DNA) blood tests** to establish paternity; although the interests of the child are certainly relevant, the ultimate determination of the issue does not depend on such a singular inquiry. Rather, whether to allow paternity testing raises issues of presumptive paternity, estoppel, and both societal and familial interests.
