



Paternity

Legal Concerns and Issues

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Introduction

The birth of a child can be a happy time for a couple ready and committed to raising a child, but for single parents it can be a time of stress and uncertainty. An unplanned child or a child born in the midst of chaotic life changes creates significant challenges for a single mother or father. The out of wedlock birthrate in the United States is 41% putting many children at risk for long term poverty and unemployment due to the lack of a father's presence. There are obvious reasons for a woman to acknowledge the father of her child. However, for a man the benefits may be less obvious if the child's arrival is unexpected or unwanted. Benefits exist for the good of the child regardless of their feelings or ambivalence towards the woman with whom they have been involved and the moral responsibility to support the child they have helped to create is clear.

In 1980 the out-of-wedlock birthrate was 18.4% and by 2002 it had risen to 34%. Some experts are predicting that by the year 2020 it will be 50%. Half of all births will be to unwed mothers! Nonmarital birth rates vary considerably by age. Rates are typically lowest for young teenagers and women aged 35–39 years and over, and are highest for women in their early twenties.

From 1995 to 2002, birth rates for unmarried teenagers declined: The rate for younger teens dropped 30% for ages 15–17 years, and 12% for older teens. Between 2002 and 2006, the rates declined slightly for young teenagers and increased 5% for older teenagers. The largest increase in nonmarital births in recent years has been among women aged 20-24.



Although many people would not care about the emotional or moral facet of an unmarried woman giving birth to her child, the fact is that children born to single women create a huge financial burden on American taxpayers.

The cost for these children is estimated to be \$2.2 billion annually in welfare and food stamps. The majority of fathers of out-of-wedlock children have the means to support their children financially but many don't, especially fathers of children born to adolescent girls. Only 15% of these single mothers are ever awarded child support. The rest of us bear the burden of supporting these children but it's not enough to keep the children in school, away from crime or from repeating the cycle and bearing more children out-of-wedlock.

Some of the reasons that people may want to pursue paternity testing include:

- To alleviate rumors or allegations,
- To discover information about the paternity of a child prior to adoption,
- To identify a child that an individual believes was placed for adoption and to determine if they are the biological parent,
- To sponsor a relative for immigration into the United States,
- To prove sexual assault which resulted in a pregnancy,
- To seek child support or child custody,
- To apply for and be granted social security or military benefits,
- To place an alleged father's name on a birth certificate, or
- To remove an alleged father's name from a birth certificate.

An unexpected baby often stirs up a variety of feelings such as confusion, fear, anxiety, a feeling of being judged, insecurity, embarrassment, frustration and uncertainty. It is expected that it would take time to adjust to the news of a new baby. The question is how will the biological father feel in a month, or in a year, or in 10 years? As time goes by the urge to know the child and participate to some degree may surface. Taking action early in the child's life to establish proof of paternity allows for paternal involvement in the future. Even if the desire for a relationship with the child doesn't develop, the responsibility of the father to contribute to the child's financial security still exists. A report on [Responsible Fathering](#) was conducted by William J. Doherty, Ph.D., Edward F. Kouneski, M.A., and Martha Farrell Erickson, Ph.D. of the University of Minnesota. September, 1996.

The report, prepared for the Administration for Children and Families and the Office of the Assistant Secretary for Planning and Evaluation of the U.S. Department of Health & Human Services under contract HHS-100-93-0012 to The Lewin Group describes "a consensus that is emerging that responsible fathering means establishing paternity, being present in a child's life (even if divorced or unmarried), sharing economic support, and being personally involved in the child's life in collaboration with the mother".

If the paternity of the child is in question the primary concern may be one of alleviating rumors and allegations. Obtaining a paternity test can eliminate questions that a specific man is the father and take him out of the picture. The test provides solid evidence that will give peace of mind to the man who may be an "alleged" father being

pressured to offer financial support for a child that he firmly believes is not his. The proof will eliminate any court proceedings attempting to elicit money for the child or mother and allow the person who is not the father to be taken out of the picture by both the woman and the court system. Rumors that someone is the father of a child can cause emotional strain for the man within his work or social circles or within his family. Putting these rumors to rest allows everyone to move on and allows the mother to determine who the father is. Once a person has been eliminated the focus can then be on the correct man who should provide financial support and emotional stability for the child.

Types of Paternity Tests

There are many types of paternity tests, depending on the information available, the willingness of the alleged father to be tested, and the purpose of the test. The type of test will determine its eligibility for use in a court of law that will stand the test of time and be valid for any legal issue that may arise in the child's life, from the biological father's participation and any of the paternal family's involvement to the financial support that the child will be able to obtain.

Informational Paternity Test

The Informational Paternity Test should be used solely to get an answer to the question of paternity. It is important to understand that the test results, though accurate, are not admissible in court, nor can they be used for other legal purposes such as removing a father's name from a birth certificate or as evidence to file for child support. The test consists of taking cells from the inside cheek of the mouth of the tested parties. These



skin cells contain the tested parties' unique DNA. Commonly, the child and alleged father participate in the test; however, mother's participation is encouraged. A few swabs, similar to Q-tips, are rubbed on the inside cheek of the mouth from the child, alleged father and mother if she is participating in the test. The probability of paternity is generally 99% or more if he is the father, and 0% if he is not the father.

Although the actual test itself follows similar laboratory procedures as the Legally-Admissible Paternity Test, the paperwork is simpler and does not provide legal documentation that could support use of the results as legal evidence. For results to be legally-admissible, a Legally-Admissible Paternity Test is required.

Legally-Admissible Paternity Test

The DNA from the mother, child and alleged father is collected in the same manner as an Informational Paternity Test. A disinterested third-party is required to collect the DNA samples. Very specific protocols are followed during the sample collection process to verify the identity of the tested parties and to protect the evidence from tampering. The results of this test, combined with the chain-of-custody paperwork, provide clear documentation that is legally-admissible.

Family Relationship Test

If the alleged father is deceased or missing, other testing options are available to determine the probability of relationship of a child to a family member. Some of these testing options include:

1. **Grandpaternity Test:** This test compares genetic information collected from samples obtained from the mother, child, and paternal grandmother and grandfather.
2. **Paternity Test Using an Alternative Specimen for the Alleged Father:** The alternative specimen may be a blood sample or blood stain card from the medical examiner, or a specimen collected immediately after the time of death. The ability to maintain chain-of-custody for the alleged father's sample is critical, since many times the test results will be used to seek social security benefits.
3. **Y Chromosome Test:** This test can be used if the child is male, and if there is another immediate, male family member related to the alleged father. The biological, paternal family member may be a brother, grandfather or another male that shares the same paternal lineage. A Y Chromosome Test is more robust and better accepted if combined with another type of DNA family relationship test.

These tests are used in cases where the biological father is not available to be tested. They are also frequently used for immigration purposes to prove a relationship with a legal resident who would like to sponsor close family members to immigrate to the United States. If documentation is missing, or possible fraudulent documentation is suspected, this type of test may be necessary to prove the biological relationship between the Petitioner (Sponsor) and the potential Beneficiary or immigrant. A Family Relationship Test that will be used for immigration purposes will also follow legally prescribed chain of custody protocols during the testing to ensure the identity of the people being tested and to prevent tampering with the test samples or results.



Family relationship testing may also be done solely for informational purposes to identify siblings, aunts, uncles or grandparents.

The Voluntary Acknowledgement of Paternity

The Voluntary Acknowledgement of Paternity, established through the 1996 Personal Responsibility and Work Opportunity Act, provides an avenue for encouraging alleged fathers to recognize and provide financially for their out-of-wedlock children. The law "streamlines the legal process for paternity establishment, making it easier and faster to establish paternities. It also expands the voluntary in-hospital paternity establishment program, started by the Clinton Administration in 1993, and requires a state form for voluntary paternity acknowledgment. In addition, the law mandates that states publicize the availability and encourage the use of voluntary paternity establishment processes. Individuals who fail to cooperate with paternity establishment will have their monthly cash assistance reduced by at least 25 percent." States that reduce the percentage of unwed, unacknowledged births by the largest amount without increasing abortions are awarded annual bonuses.

A signed Voluntary Acknowledgement of Paternity can reduce legal issues later when unexpected situations arise that require proof of paternity including child support and medical benefits, military benefits, social security benefits if the father is deceased, and child custody and paternity rights for the father or his family. Evidence has shown that children benefit from having two parents financially and emotionally even if the parents are not living together. The stability that two parents provides can mean the difference between living in poverty and having the financial means for children to get



the education, healthcare and support necessary for a solid foundation to a healthy, positive life.

Financial and Behavioral Concerns for Fatherless Children

Although children of divorce have been studied more often than children born outside marriage, some studies have been conducted that show the long-term effects upon these children. Nevertheless, like children with divorced parents, children who grow up with a single parent because they were born out of wedlock are more likely than children living with continuously married parents to experience a variety of cognitive, emotional, and behavioral problems. Children born outside marriage reach adulthood with less education, earn less income, have lower occupational status, are more likely to be idle (that is, not employed and not in school), are more likely to have a nonmarital birth (among daughters), have more troubled marriages, experience higher rates of divorce, and report more symptoms of depression.¹

Research showing that children do better at school and exhibit fewer behavioral problems when nonresident fathers pay child support suggests that income facilitates children's well-being in single-parent households.²

Although the role of the resident parent (usually the mother) in promoting children's well-being is clear, the nonresident parent (usually the father) can also play an important role. A meta-analysis of sixty-three studies of nonresident fathers and their children conducted by Paul R. Amato and Joan Gilbreth found that children had higher academic achievement and fewer emotional and conduct problems when nonresident fathers were closely involved in their lives.³ They also found that studies of nonresident

fathers in the 1990s were more likely than earlier studies to report positive effects of father involvement. Nonresident fathers may thus be enacting the parent role more successfully now than in the past, with beneficial consequences for children. Nevertheless, analysts consistently find that many nonresident fathers are minimally engaged with their children. Between one-fourth and one-third of nonresident fathers maintain frequent contact with their children, and a roughly equal share of fathers maintains little or no contact.⁴

Hospital Involvement in the Voluntary Acknowledgement of Paternity

The first opportunity an unmarried couple will have to voluntarily acknowledge a child will be in the hospital. Hospital personnel will offer the option to sign the Voluntary Acknowledgement of Paternity (VAP) at the hospital immediately after the birth. Birth Certificate or other trained personnel in the hospital are required to counsel the couple on the responsibilities that arise from signing the document and due to the financial awards that are available to the state, they are encouraged to have unwed fathers sign the form. Also called the Affidavit of Parentage, a Declaration of Paternity, or an Affidavit Acknowledging Paternity provides enormous benefits to the mother and child if the biological father is present and willing to sign it to prevent later financial support issues. If there is a question of paternity at the time of the birth, hospital personnel should recommend that the possible father be tested with the child to provide legally admissible proof of paternity prior to signing the form. This ensures that the right person is held legally responsible for the financial well-being of the child.

In most states, the parents who sign the form only have 60 to 90 days in which to rescind the VAP. After that time any request to the rescind the VAP must be submitted to a court and may be denied if the alleged father did not have a paternity test before signing the form.

A new law on the books in several states, including Texas and Ohio, among others, allows a presumed father to be released from paying child support if DNA testing proves he did not father the child. Presumed fathers in the past have been financially responsible for a child until they reach 18, but now men who discover a reason that they may not be a child's father now have one year from that time to file for relief in court. Some of these men were presumed to be the father even though DNA testing had excluded them from being the father. Presumed fathers are those who are married to the mother of the child and she let him believe that he was the father or the man signed a Voluntary Acknowledgement of Paternity in the hospital. This opens up options for men who knew that they weren't the child's biological father or found out, often during an argument, that they aren't the father and have signed the VAP or let the four year window for contesting paternity slip by.

Because states receive federal funds on child-support orders they must name the fathers of children on public assistance. It could be argued that this encourages paternity fraud by encouraging mothers to name someone as the father but does not encourage the expenditures needed for the testing to ensure that the right man is named.

Paternity Fraud

Numerous articles cite that more than one million men in the US are paying child support for children that they did not father, but the real number is unknown as many men haven't been tested. None of the state laws require that mothers inform alleged or presumed fathers that there are other potential fathers. An Office of Child Support Enforcement report states that 12% of alleged fathers claim that the child for whom they are required to pay support is not theirs. Although not all of these men are necessarily correct in their allegation, this demonstrates that at least this number of men have reason to doubt the paternity of a child which the mother has claimed he fathered. The legal presumption that the married man is the father even when the couple is separated, they live thousands of miles apart or the husband is overseas serving in the military allows the mothers to continue letting their husbands and the courts believe that he is the father when his participation wasn't possible or likely.

In fact, fathers' right advocates claim that it is in the states' best interest to skip expensive paternity tests to ensure that they receive the federal funding. The Supreme Court stated in *Rivera vs. Minnich* in 1987 that "in the field of contested paternity...the truth is so often obscured because social pressures create a conspiracy of silence or, worse, induce deliberate falsity. The person alleged to be the father has a legitimate interest in not being declared the father of a child he had no hand bringing into the world. It is important to him that he not be required to provide support and direct financial support to one not his child."



For men who are paying huge sums in child support for children that they have not fathered, the consequences can be disastrous. Many men who have doubts from the beginning do not pursue paternity testing which is much more easily accessible and less expensive than in the past. Whether they feel pressured to accept the responsibility from the birth mother or family members, or are married to her and do not want to acknowledge their doubts or break up the family, getting a paternity test can prevent numerous serious consequences of being financially responsible for a child that they may one day find out is not their child. According to a recent study by the US Department of Health and Human Services noted that the amount of child support in arrears (past due) has reached unprecedented levels in recent years. Approximately 70% of those fathers who were behind on payments made \$10,000 or less per year.⁶

Non-payment of child support can result in Driver's License suspensions, revocation of professional licenses for attorneys, doctors and other professionals, the garnishment of wages, seizure of paychecks, tax refunds and cars and other serious financial and social burdens and punishments, including arrest and incarceration. Taking away the ability to drive to a job or maintain a professional license to continue working while expecting the payment of large sums of money puts these men in a very difficult position. This position is even more onerous if the child isn't theirs.

The decision by some states, including Georgia and Maryland, among others, to reverse court orders for child support based on later paternity tests could affect a large number of men. A [study](#) by the American Association of Blood Banks⁵ found that "the overall exclusion rate [of paternity on tested men] for 1999 was 28.2 percent for



accredited labs." This doesn't mean that 28% of all men are not the biological fathers of their children, rather these were men who had some reason to question the paternity of the child and were tested.

Specific Circumstances for the VAP and Paternity without the VAP

There are some specific circumstances that will come into play when the time comes to sign a Voluntary Acknowledgement of Paternity:

- If a woman is married, her husband will automatically be listed on the birth certificate as the legal father.
- If a woman was divorced or widowed less than 10 months prior to the birth of the child, the ex-husband or deceased husband is presumed to be the legal father and will automatically be listed on the birth certificate.
- The mother and husband or ex-husband can complete a Denial of Paternity and the biological father can sign the Voluntary Acknowledgement of Paternity to allow the biological father to be listed on the birth certificate.
- The VAP is a **legal document** and confers specific legal rights and responsibilities for the child and parents.
- A signed VAP must be recognized in every state regardless of where the birth occurred and the VAP signed.

If the mother refuses to name the father and is unmarried, her and her child's welfare benefits may be reduced by as much as 25%. A man may also be assumed to be the father of a child without paternity testing in approximately 22 states under specific circumstances including:



- He and the child's mother are, or were married to each other and the child is born during the marriage or within 300 days after the marriage ended.
- Before the birth of the child, he and the child's mother attempted to marry and the marriage is or could be declared invalid for some reason, and the child was conceived or born during the invalid "marriage" or within 300 days after the marriage is terminated.
- The man married the mother after the birth and agreed to have his name on the birth certificate.
- The man is not married to the mother but with his consent, he is listed as the father on the child's birth certificate.
- The man acknowledged his paternity in writing and/or signed a document for "Acknowledgement of Paternity."
- He is obligated to support the child, either by voluntary agreement or court order.
- While the child is a minor, he has resided with the child and openly claimed the child as his biological child.

An alleged father may want to acknowledge his child for many reasons, and one is the possibility of losing the child. Some single mothers, especially those who are adolescents may want to put the child up for adoption. Without acknowledgement of paternity by the father, he has no legal right to object to the adoption if he has a desire to do so. Unless the alleged father files a suit in court and obtains a court order for a paternity test, the mother can refuse to allow her child to be tested. A child's mother

may not want to acknowledge the child's father for many reasons, some of which are similar to the alleged father's reasons:

- Embarrassment – The child's mother may be concealing her pregnancy from her employer, friends and/or family and acknowledging the father would expose the information.
- Adoption – Desire to place the child for adoption without interference from the child's father.
- Fear – Fear that the father's involvement with the child would be detrimental to the child or herself, either through alcohol or drug abuse or physical abuse.
- Infidelity – The child's mother is married to someone other than the father of the child and doesn't want to endanger her marriage.

Financial Issues Relating to Paternity

Issues may arise down the road which will make clear documentation of paternity necessary for the mother to obtain certain benefits for her child. The ability of the child to have medical benefits that the father has through work is critical to their health both short and long-term as are social security and military benefits. Even if the biological father is not interested in being involved in the child's life, it is important to provide for the child financially. Proof of paternity when a child is born outside of wedlock is required for insurance companies to add a child onto health insurance or for a court to require that financial support be paid to the mother.

As many of these alleged fathers have the means to support their children and reduce the cost to taxpayers it is in everyone's best interest for them to acknowledge these children.

Financial Support including Child Support and Medical Benefits

Once a man is legally determined to be the father of a child, either through signing the Voluntary Acknowledgement of Paternity, having a paternity test done, or circumstantial evidence that he is the father, he must pay child support for that child. He must also pay for medical coverage if it is available at a reasonable cost, and in some cases, he must help pay for the cost of child care. The child also benefits from knowing who his relatives are. Not only is there a psychological benefit, but it could prove very useful to have access to medical histories of relatives.

Military Benefits

Proof of paternity is required to add a child to military benefits providing valuable medical and financial support. Although it is painful to contemplate, military death benefits can only be bestowed on a child when there is legal proof of paternity, either through a valid Voluntary Acknowledgement of Paternity or legally admissible document of DNA tests proving paternity.

Social Security Benefits

Proof of paternity is also required to seek social security benefits if the alleged father is deceased. The method for obtaining this proof is generally performed through other family relationship tests because the father is not available for testing. Once

paternity is established, the child can inherit from the father after he dies and the child would be entitled to receive Social Security dependent's benefits if he dies or becomes disabled.

Child Custody and Parental Rights

Finally, child custody and parental rights establishment needs to be accomplished through proof of paternity. To ensure any visitation or access to the child proof of paternity may be required if there are concerns or custody issues with the mother. There may be reluctance on the part of the biological father initially if the existence of the child is a surprise, but in the long run the father may want to develop a relationship with their child and become a part of the child's life and future. Obtaining proof of custody removes legal barriers to getting to know the child and providing guidance and emotional support. This may be the only way that paternal grandparents will be entitled to spend time with their grandchild.

Often, if something happens to the mother and the father is deceased, the paternal grandparents are likely candidates to become the primary caregivers of the child. This is much preferable to placing the children in foster homes away from family. Allowing an avenue for the grandparents to maintain long term care of a child in case the father or mother isn't able to will provide for the children's welfare in the long run.

There is a possible downside to establishing the paternity of the father: He may want partial or full custody of the child. As the father of the child, he will have equal rights to custody and while this may be in the best interest of the child financially, it may not be the ideal situation for the mother if there is conflict with the father. In the majority

of cases, the financial support that a father can provide, whether he has custody of the child or not, is extremely valuable but must be balanced with potential negatives to his involvement with the child.

Conclusion

Changes in the morals of American society over the past 50 years have created an unfortunate set of circumstances for many children. In previous generations most women who became pregnant out-of-wedlock married the father of the child usually based on societal pressure to be married when having children. Although this may not have been the ideal marriage for either partner it allowed the children to be raised by both parents and to have solid financial and emotional support. Children without fathers are twice as likely to drop out of school, boys born to teen mothers are 2.7 times more likely to end up behind bars, and girls born to unwed adolescent mothers have an 83% chance of having a child in her teen years.

According to the [CDC](#) the trend of increased nonmarital births has been driven by four specific factors:

1. A larger number and proportion of unmarried women in the baby boomer generation postponed marriage.
2. There has been an increase in unmarried births among all women.
3. There has been a decrease in births among married women.
4. There has been a decrease in the number of married women aged 18-29.

These four factors mean that a combination of a lower number of married women and married women having children and a larger number of unmarried women bearing children show dramatic statistical changes.

Research has shown that women raising children on their own are not able to provide for their children as well financially as they would with the additional income that the father can bring to a family. Additionally, women on their own do not usually provide the emotional support to their children that women in a marriage can, not because they don't love and care for their children, but because of financial pressures to provide for their children. Single mothers are less able to provide assistance with homework, play with their children and spend time on grooming and clothing their children. Raising children alone is a huge challenge for all single parents, fathers or mothers. The unfortunate fact is that most women do not make as much money as men in the workplace and have to spend more hours at work, leaving less time to spend with their children. This situation means that children of single mothers are left alone more often and spend more time in daycare.

Researchers conclude that without the partnership of the father to assist in making money and providing day-to-day support for the children, single women must struggle to do and be everything for the children. Although the optimal solution is for fathers to acknowledge and support their children, this is not always the reality. Unfortunately, nearly one third of all single parents live in conditions of poverty. One third of single parents also receive public assistance. The burdens of single parents and the children they raise falls upon both the parent and the society they live in. Paternity

testing and the Voluntary Acknowledgement of Paternity provide paths for more paternal involvement, supporting more children and providing them with a more positive outcome for healthy, productive lives.

ANY LAB TEST NOW[®] is available to answer any questions you have regarding paternity testing, its benefits and the legal issues involved. Our experienced Medical Assistants are thoroughly trained in DNA collection. Whether you only want to know for your peace of mind or you anticipate the need for legal documentation, we are here when you are ready.

Footnotes:

¹McLanahan and Sandefur, *Growing Up with a Single Parent* (see note 7); Paul R. Amato, "Parental Absence during Childhood and Adult Depression," *Sociological Quarterly* 32 (1991): 543–56; Paul R. Amato and Bruce Keith, "Separation from a Parent during Childhood and Adult Socioeconomic Attainment," *Social Forces* 70 (1991): 187–206; William Aquilino, "The Life Course of Children Born to Unmarried Mothers: Childhood Living Arrangements and Young Adult Outcomes," *Journal of Marriage and the Family* 58 (1996): 293–310; Robert Haveman, Barbara Wolf, and Karen Pence, "Intergenerational Effects of Nonmarital and Early Childbearing," in *Out of Wedlock: Causes and Consequences of Nonmarital Fertility*, edited by Lawrence L. Wu and Barbara Wolfe (New York: Russell Sage Foundation, 2001), pp. 287–316; Jay D. Teachman, "Childhood Living Arrangements and the Intergenerational Transmission of Divorce," *Journal of Marriage and Family* 64 (2002): 717–29; Jay D. Teachman, "The Childhood Living Arrangements of Children and the Characteristics of Their Marriages," *Journal of Family Issues* 25 (2004): 86–96.

²Valarie King, "Nonresident Father Involvement and Child Well-Being: Can Dads Make a Difference?" *Journal of Family Issues* 15 (1994): 78–96; Sara McLanahan and others, "Child Support Enforcement and Child Well-Being: Greater Security or Greater Conflict?" in *Child Support and Child Well-Being*, edited by Irwin Garfinkel, Sara McLanahan, and Philip K. Robins (Washington: Urban Institute Press, 1996), pp. 239–56.



³Paul R. Amato and Joan Gilbreth, “Nonresident Fathers and Children's Well-Being: A Meta-Analysis,” *Journal of Marriage and the Family* 61 (1999): 557–73.

⁴Paul R. Amato and Juliana Sobolewski, “The Effects of Divorce on Fathers and Children: Nonresidential Fathers and Stepfathers,” in *The Role of the Father in Child Development*, edited by Michael Lamb, 4th ed. (Hillsdale, N.J.: Erlbaum, 2003), pp. 341–67.

⁵[American Association of Blood Banks](#). This also accredits some European, including UK, paternity testing services. It publishes [reports annually](#) about paternity testing statistics for accredited testing services, although some services don't respond.

⁶<http://aspe.hhs.gov/hsp/07/assessing-CS-debt/execsum.htm>