

THE “LEGAL” BABY’S DADDY

What Women Need to Know



“I told my boyfriend Derrick that he is the father of my baby. I was with Rodney, but I don’t really think he is my baby’s daddy. Derrick is a better father to his other kids anyway.”

“I’VE BEEN WITH JOE FOR FIVE MONTHS. I’M GOING TO HAVE A BABY SOON. JOE KNOWS HE’S NOT THE FATHER, BUT WE’RE GOING TO GET MARRIED AS SOON AS I LOSE WEIGHT AFTER THE BABY. THE REAL FATHER IS SOME JERK I MET DOWN THE SHORE. JOE SAID THAT HE’LL TAKE CARE OF US SO THAT I DON’T HAVE TO BE ANYWHERE NEAR THAT GUY. WE’RE JUST GOING TO TELL THE HOSPITAL THAT THE BABY IS JOE’S.”

“I had to leave my husband for a while and stay with my sister. I was so upset and my cuñado’s cousin was good to me, so I slept with him once and got pregnant. Soon after that, my husband came and got me back. I think Carlos has a right to know. My husband suspects, but said I’ll be sorry if I say anything.”

Each of these women is making a decision, or being forced into a decision, that could have devastating consequences in the future!

Paternity is a very serious matter and what you do today can forever change your life and a child’s life. Identifying the father of your child is called determining “paternity”. That man may then forever be the person who has legal rights and responsibilities towards your child, even if you are no longer with him. That man could sue you for custody later and win. It can also be devastating later for a child to learn that the man he or she calls Daddy or Papi, is not really his or her father. Everyone wants a good father for their child, someone to be there for the child emotionally and financially. However, not having the “right” man can be devastating for everyone. Hopefully, this flier will give you information to help you make good choices. If you need to begin or are already involved in a paternity case in Philadelphia, it will also review some of Court’s procedures.

General Things to Remember about Paternity

No Child is Illegitimate: Children are no longer declared to be illegitimate in Pennsylvania. The marital status of the mother can affect paternity, but it does not stigmatize the child legally.

Birth Certificates Don’t Mean Everything: An unmarried woman can no longer put a man’s name on the birth certificate without his signature. It is now common for no father’s name to appear on the birth certificate. That does not mean that a father cannot be determined later. If a man’s name is on the birth certificate, that man was either the woman’s husband, signed to acknowledge the child, or a Court found him to be the legal father.

Children Are More Important Than Adults: The law of Pennsylvania and the Courts are interested in protecting children, both financially and emotionally, even if the financial result seems unfair to the adults.

Domestic Violence & Sexual Assault: If you are afraid to identify the father of your baby because of violence or sexual assault, there is help for you...even if the man is your husband. Don’t be afraid to ask for help.

Counseling: Women Organized Against Rape (215.985.3333), Women in Transition (215.751.1111), Lutheran Settlement House (215.739.9999), Congreso Latina Domestic Violence Program (215.291.8742).
Legal Assistance: Philadelphia Legal Assistance (215.981.3800), Women Against Abuse (215.686.7082)

Children Born to a Married Woman

The Husband Is Usually The Daddy: The biology of a child may not matter if the child is born to a married woman. If the woman is married at the time she becomes pregnant, the law will consider her husband to be the child's father. However, this rule does not apply if it can be shown that the man had no opportunity to have sex with his wife at the time, or if he was unable to father a child. *(Note: You cannot be forced to give your husband's name at the hospital. See the section below about not being required to identify a father.)*

The Law Protects Marriages: While the mother, husband and child are all living together as a family and do not want to question paternity, no outside man can try to establish himself as the father, even if he is the biological father. The Court will not allow him to intrude into a marriage nor consider genetic testing.

Acting Like the Daddy Can Make the Husband the Legal Daddy: If the husband and wife are separated or divorced at the time that paternity becomes an issue, then the "husband rule" may not apply. But even if paternity can be questioned, if the husband has acted like the child's father, the Court could still decide that the husband is the legal father. The goal is to protect the child when the husband is the only father the child knows.

Children Born to an Unmarried Woman

Acting Like the Daddy Can Make An Unmarried Man the Legal Daddy: Just like with married people, a man can be held legally responsible for a child by the way he acts. If it can be clearly shown that a man has held the child out to be his biological child, and either received the child into his home or provided support for the child, then he can be held to be the child's legal father, where no other legal father has been established.

Acknowledgments of Paternity: The most common way to determine the father of the child when he is not the husband, is either to have DNA testing, or for he and the mother to both sign a document declaring that he is the father. This document is called an Acknowledgment of Paternity and can be signed at the birth or later.

Paternity at the Hospital and Later: When a child is born to an unmarried woman, hospitals are required to provide information to her and the man with her who is identified as the father about the benefits of establishing paternity and the opportunity to sign an Acknowledgment. Both mother and father must consent to the Acknowledgment. If signed, the hospital provides the Acknowledgment to the Department of Public Welfare. After the baby's birth, the parents can also submit the same Acknowledgment form to the Department of Public Welfare or it can be signed as part of a Court action, such as child support.

Mothers Do Not Have to Identify a Father: Although most women want to identify the father of their baby for cultural, social and financial reasons, there are times when a woman may not want to do so, such as in cases of domestic violence or sexual assault. A woman cannot be forced to name a father. Even to get welfare, if a woman is afraid, she can ask to be excused from this requirement by filing out a form. However, a man can still try to determine if he the father of a child. If a man believes that he is the father of a child, but the mother is unwilling to sign an Acknowledgment or give him information about the child, he can still file an Acknowledgment as a claim of paternity. This does not give a man any rights regarding the child, but entitles him to notice if the woman tries to put the child up for adoption. Men can also file a Petition To Determine Paternity with the Family Court.

Don't Sign If You Aren't Sure!: Once an Acknowledgment has been signed it is legally binding. However, it may be "rescinded" or undone by either person within 60 days. After 60 days, the Acknowledgment may only be challenged in Court by proving that someone was forced to sign or that one side only signed due to a mistake or fraud on the part of the other party. If a man, or the mother, wishes to make such a claim, he or she would file a Petition to Contest Paternity. While it is possible to do this, it is usually very difficult to question paternity, especially if a long time has passed.

The Court Case

Which Court?: While this can be complicated, generally speaking, any county in Pennsylvania can hear a paternity or support case if that county has a connection to the man.

Paternity First: Paternity is always the first issue in a new support case. Therefore, if a woman is positive about the identify of the father of her child, she can simply begin a child support action against the man. However, if either the mother or a man is unsure about paternity, that person should first file a motion to determine paternity before going ahead with either a child support or a child custody case. A woman should never file a petition for custody against a man if she is not sure that he is the child's father, even if his name is already on the birth certificate. Seek legal advice first!

Filing Your Petition: Petitions and motions can be filed in Philadelphia either by an attorney at 1133 Chestnut Street, or by a *pro se* party (someone representing him or herself) with the assistance of the Family Court Intake Unit at 34 S. 11th Street. Fees can vary depending on the type of petition filed. However, in all cases, this fee can be waived for low-income people. People wishing to receive help from the Intake Unit should arrive early.

Step One: In child support cases, once the complaint is filed, the first hearing will be a conference. The conference officer will start with paternity. If the man and woman are not married and no Acknowledgment is on file, they will be given the choice of signing an Acknowledgment or having a DNA test. If a woman wants to claim that the man is not entitled to a DNA test because he has already held the child out to be his own, she should do so right then! Motions to determine paternity will go directly to a motions judge.

Relying on the Test & Retesting: If there will be testing, the parties can also agree that they will accept the results without a special hearing. If they do agree, and the test shows that the man is not the father, the case is simply dismissed. If the test shows that the man is the father, then the parties go back to another conference and start talking about their finances and the amount of support. Retesting is permitted, but only by proving by a preponderance of the evidence that the first test was unreliable or scientifically flawed. As a practical matter, the tests are rarely challenged in most cases and it is extremely difficult to force someone to have a second test.

Consequences for Not Showing Up: If a woman sues a man for support and he fails to appear either at the support conference or for the DNA tests, and there is proof that he had notice of the hearing, the Court will declare that he is the legal father. After that, even if the man continues to refuse to come to Court, some amount of child support can be set. Generally, when testing is ordered and either side refuses to cooperate with the testing, paternity can be decided against that person. In other words, if the woman does not bring the child for testing then her claim for support or to establish paternity can be dismissed. If the man does not appear for the testing, then he can be found to be the legal father anyway.

The Buccal Swab Genetic Test: The lab at Philadelphia Family Court takes a picture of each man and child tested. In Philadelphia, a buccal swab test is performed, by rubbing a special cotton swab against the lining of the inner cheek. The cells obtained are used for a DNA test. Four swabs are taken; two for testing and two are stored indefinitely. This procedure is safe for infants. LabCorp provides the genetic testing services in Philadelphia at 34 S. 11th Street. The cost of a buccal swab is \$67.00 per person. If the man claims that he is not the father of a child, but testing proves that he is, he may be required to pay for the tests. On the other hand, if he is proven to not be the father, there is no cost to him.

Testing When The Man Doesn't Live in Philly: When the man lives outside of Philadelphia, the testing is done by the court where he lives. In those cases, the conference officer refers the case to the Paternity Testing Unit at Family Court who will coordinate the testing with the appropriate court. The type of test done will depend on the testing capabilities of the other court. Where the man is on active-duty in the military, the case will be referred by the conference officer to the District's Attorney's Child Support Enforcement Unit to coordinate the testing and other issues.

Paternity Hearings: If the parties did not agree to just accept the test results, a paternity hearing will be held in Family Court at 34 S. 11th Street. On the hearing day, an Assistant District Attorney (ADA) will be assigned to the courtroom. The ADA will call each case to review the results of the paternity testing, if they were ordered. If there is no agreement, then the case will be decided by a Judge.

Your Right to an Attorney: Unlike all other domestic relations matters (i.e. custody, support, divorce and protection from abuse), poor men in paternity cases do have a constitutional right to court-appointed counsel. This right is limited to the paternity hearing and does not apply to any other part of the support case. The District Attorney's Office assists the mother in a paternity action in Philadelphia in most cases. Jury trials are no longer available for paternity cases. In either case, if there is a hearing on paternity and paternity is ultimately decided against the man, the Court may enter a temporary order of support before returning the matter back to the regular support process.

Other Cases Involving Paternity

Custody Cases: For children born to unmarried women, paternity is a first issue in custody cases. In Philadelphia, before a man may file for any custodial rights to a child born to an unmarried woman, where the man is filing as the child's father, he must first file an Acknowledgment with the Court. The Acknowledgment should be reviewed at the first custody hearing to determine if the mother denies that the man is the father.

Testing Deceased Fathers: In any case where the potential father is deceased, the mother or child may wish to have the body exhumed (or removed from the grave) in order to perform paternity testing. A court may issue such an order if the person making the request can show that it is reasonable. However, that is an extraordinary remedy and would be very costly. Fortunately, today it may be easier to obtain a DNA sample from a deceased person as many hospitals retain samples for some time after treating a patient. Also, if the man had another child support case with the Domestic Relations Branch, the court laboratory may have retained a genetic sample.

Social Security, Veterans and Workers Compensation Benefits, and Estates Law: It is not uncommon to need to determine paternity in cases where mothers are seeking Social Security survivors' benefits, Veteran's benefits, or Worker's Compensation death benefits for a child who was born out of wedlock to a deceased worker or veteran. The same need can arise with estate cases if there is a question about the identity of the deceased man's children. In addition to the methods mentioned above for testing a deceased man, the Social Security Administration, Veteran's Administration, Worker's Compensation Board and the Probate Court can also hold their own hearings. Such cases often do not follow the same laws and rules as outlined above. However, these agencies and courts would honor a prior paternity determination in Family Court.

The Bottom Line

Think carefully before naming a father for your child! Once a father is determined, everyone will have to live with that decision. Although sometimes it is tempting to tell the nicer guy that he is the father, or you are embarrassed to name the real father, or you are afraid to identify him, there are consequences to those decisions that you cannot later change. Understand your rights and responsibilities before you take action!

This flier is intended to provide legal information only. For legal advice about your situation, you should contact a lawyer. This flier was prepared by Stephanie A. Gonzalez Ferrandez, Esq. an attorney at Philadelphia Legal Assistance (PLA). PLA is primarily funded by the Legal Services Corporation. Low income people may contact PLA with paternity questions. Information about accessing PLA services can be obtained by calling 215.981.3800, visiting www.PhilaLegal.org, or e-mailing AccessPLA@PhilaLegal.org. Please remember that due to a lack of resources, PLA can only provide attorneys to a very small number of people. We also cannot give legal advice via the internet. ©2004

