

HARRIS LAW & CO.

Protecting Families & Businesses Through All of Life's Journeys

PATERNITY 101

Families are becoming less and less defined by tradition, which means the number of children born outside of a marriage are increasing.

When a child is born outside of a marriage, there are different legal rights and presumptions that apply. How paternity is established is one of these differences between children born to a married couple and children born to an unmarried couple.

Paternity can be established three different ways:

1. Presumption of Paternity.

Presumption of Paternity is a fancy way of saying the parties have signed a sworn affidavit that they believe the man to be the biological father of the child and the father is attesting to the same.

This paternity affidavit can be signed at the hospital or any time before the child turns 18.

Once this is signed, the affidavit is submitted to the state and the father's name is reflected on the birth certificate.



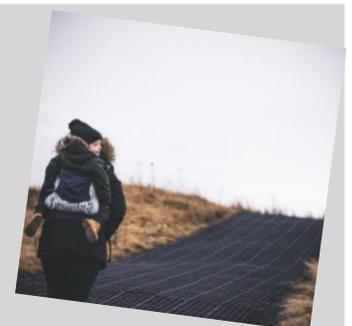
2. Presumption of Legitimacy.

Presumption of Legitimacy is similar to the presumption of paternity. It is a fancy way of saying that the state assumes that any child born during or immediately after a marriage is the biological child of the spouse in the marriage.

The spouse's name automatically goes on the birth certificate and child support may be collected if the parties are not in the same household.

DID YOU KNOW?

According to the CDC, 39.8% of all births in the United States are to unmarried women. Research suggests that percentage will increase in the next few years.



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3. Paternity Contest.

In 2013, South Dakota passed legislation that allowed either parent or a third party believing to be the biological father of a minor child to contest paternity.

Prior to 2013, a biological parent only had 90 days from paternity establishment to contest the paternity of a minor child. After that 90 days had passed, the child was stuck with whatever biological parent was on his or her birth certificate.

Now, parties can challenge paternity until the child turns 18 by showing (among other factors) what is in the best interest of the child and the child’s connection to both the biological parent and presumed father.

Why is establishing paternity important?

If mom is getting benefits from the Department of Social Services and has not established paternity and does not want to establish paternity for purposes of child support, the Department terminates benefits, including medical and SNAP. This often forces unmarried mother’s to establish paternity.

Further, it is necessary to establish paternity in order to receive child support. Although some arrangements are less formal, they often lead to expensive litigation if not documented properly or if the agreement does not comply with state law. At the end of the day, the state’s job is to protect the child. Therefore, they will reinforce parental obligations when possible to ensure the child is well cared for, both financially and physically.

The definition of family is evolving, are you prepared? If you have any questions about paternity or how to establish child support, call our family law team at 605-777-1772.

**This article is only intended to give general information and not specific legal advice. Consult with an attorney on your situation before taking any legal action.*