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Paternity

What is paternity?

Paternity means fatherhood. Establishing paternity means legally determining the father of a child. Establishing paternity means that the father's name can be placed on the child's birth certificate and that he has legal responsibility for the child.

How is paternity established?

Paternity, unless acknowledged by the father, is established by the court. A mother will need to prove paternity if she wants the father to pay child support or if she expects the child to inherit property from the father's estate.

To establish paternity in Virginia, a child, a parent, a person claiming parentage, the person with legal custody of the child, or an appropriate state representative files a sworn petition with the Juvenile and Domestic Relations Court where the child lives. The petition may be filed in Circuit Court for determination of paternity if paternity is at stake in a matter otherwise before the Circuit Court. (An example might be a probate or wills and estate case, which are heard in Circuit Court, where there's a question of inheritance rights.) After the petition is filed, the court will appoint a guardian ad litem (attorney appointed by the court) to represent a child under 18 years of age. The mother and the alleged father may hire attorneys but none are appointed for them.

The following are presumed to establish paternity, if there is no evidence to the contrary:

- A written statement of parenthood acknowledged by the father under oath in front of a notary public –
 - Both parents can sign an Acknowledgement of Paternity (AOP) form under oath. The most convenient place to sign the AOP is at the hospital before the mother and child are discharged. This is a free service offered by all birthing hospitals

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and requires that the father present a photo ID to the birth registrar before he signs the form.

- Establishing paternity at the hospital gives a child a legal father immediately and ensures that the child's original birth certificate includes the father's name. If parents are unable to establish paternity at the hospital, the AOP form is available by visiting or calling the Office of Vital Records in Richmond, local health department clinics, local departments of social services, and local child support offices.
- Genetic blood testing (usually DNA testing) that shows at least a 98% probability that a man is the child's father (the court can order that the alleged father and child submit to a blood test);
- Proof of a lawful adoption; or
- The child was born to a man and woman married to each other.

Other actions by the alleged father may also be factors a court will use to determine paternity. These actions include:

- Openly living with the mother at the time of conception;
- The father's public statement to others that he is the father of the child;
- Allowing the child to use his last name;
- Financially supporting the child, or
- Claiming the child as a dependent for public assistance or tax purposes.

How are genetic tests done?

The court or Division of Child Support Enforcement (DCSE), if you have a case with the division, will schedule the child, mother and alleged father for testing. If the parties reside in different localities or in different states, they may be scheduled separately in the areas in which they reside. If DCSE has arranged the testing, the genetic samples will be collected by a representative of DCSE's contracted laboratory and are generally obtained by swabbing the inner facial cheek. The samples are then sent to the laboratory for testing. The actual sample collection only takes a few minutes, and the test results are usually available in three to four weeks. If you wish to arrange private testing, there are a number of accredited laboratories that can provide certified test results (pricing varies for private testing).

How accurate are genetic tests?

Under Virginia law, test results of 98% or higher prove paternity. Very accurate tests can now provide 99+ percent test results to establish the paternity of a child.

Who pays for the genetic tests?

When DCSE arranges for testing, if the tested man is found to be the father, he will be required to pay for the test. If the tested man is not found to be the father and there is an open case with DCSE, DCSE normally pays for the tests.

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If DCSE is not involved, and the tests are requested by the person bringing the petition in court, it is up to the court to determine who will pay. The court may order the party requesting the tests to pay. However, if the man is found to be the father, the court will usually order him to pay. Also, if the petitioning party is indigent and unable to pay, they may ask the court to waive the costs, in which case the court may require the Commonwealth to pay the costs. Generally, when private testing is arranged, the laboratory requests payment from the individual(s) at the time of sample collection.

Why is establishing paternity important?

Every child deserves the financial and emotional support of both a mother and a father. Establishing paternity provides personal benefits for a child, such as:

- **Self esteem.** Children respond to love and support from both parents. Children gain a sense of belonging and benefit from knowing that both parents care for them. They need to know who their father is and that he cares about them.
- **Family identity.** When children know they are part of a family, they are likely to be more secure about who they are and where they come from. Establishing paternity identifies the father's side of the family, and may encourage contact with other family members, such as grandparents, uncles, aunts, or other relatives. It also may give children the opportunity to learn about and appreciate their cultural heritage.
- **Shared parenting.** Parenting is the responsibility of both the father and the mother. Early paternity establishment may lead to involvement of the father in the child's life. More resources are likely to be available to a child supported by two parents.
- **Health history.** Establishing paternity completes the child's health history. It is important for children---and their doctors---to know the family's medical history, particularly genetic traits or histories of conditions or diseases.

Establishing paternity also creates a legal relationship between the father and the child:

- Establishing paternity is required for the father to be legally responsible for child support.
- Establishing paternity is a necessary first step if the father requests custody or visitation rights.
- Establishing paternity may provide legal benefits for the child, such as:
 - A share of social security, disability or veteran's benefits if the father dies or becomes disabled.
 - Rights to any inheritance from the father.
 - Rights to medical or insurance benefits.

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Is having a child such a big deal?

Yes. Parenthood means providing love, care and guidance, as well as food, clothing, shelter and medical care. Paternity establishment shares the responsibility for a child between the mother and the father. Taking responsibility for a child may mean the difference between the child's relying on public assistance or being self-sufficient. Even if the parents are not married to each other, both parents must support their child until he or she becomes an adult.

What last name for the child can be placed on the birth certificate?

The mother may place any last name she wishes on the birth certificate. If both parents sign an Acknowledgement of Paternity form, they may indicate how the child's name should appear on the birth certificate. If the parents cannot agree, then the person wanting the change must petition the court for an order to that effect.

What happens if the mother is married to someone other than the biological father of the child?

According to Virginia law, the husband of the mother is presumed to be the legal father of her child. If the mother is married or was married up to 10 months prior to the birth of the child to someone other than the biological father of the child, paternity by someone other than the husband may not be established by voluntarily signing an AOP form. In such a case, paternity would have to be established in court.

Once paternity is established, does this mean one parent must pay child support?

Both parents are expected to support their child. The non-custodial parent (the parent the child does not live with) is expected to pay child support. The paternity order by the court may include an order for the non-custodial parent to pay child support. If child support is not included in the paternity order and the non-custodial parent is not sharing the responsibility for supporting the child, the custodial parent may apply to the Division of Child Support Enforcement for assistance in getting a court order for support. The amount paid by the non-custodial parent will be based on both parents' earnings.

When paternity is established, can the father ask for custody of the child?

Paternity establishment and custody are two separate issues. The court may include a custody order as part of the paternity order. But if the court does not do so, then the father may start a separate court action to get custody or visitation at any time after paternity has been established. *Courts do not change custody unless there is proof that it is in the best interest of the child.* The courts may also consider joint or shared custody.

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When paternity is established, can the father visit the child?

Paternity establishment and visitation rights are two separate issues. When the mother agrees, the father may visit the child. The court may include visitation in the paternity order. If the court does not do so, then after paternity is established, the father may start a separate court action to get custody or visitation rights if the mother is unwilling to allow him to visit.

What happens if one parent is out of state?

Paternity should be established for a child even if one parent lives or is planning to live in another state.

States have an agreement that allows the child support enforcement agency to assist the mother in proving who the father is even if he lives in a different state. The agreement among states also covers collecting child support from non-custodial parents in other states. If the parents live in different states, establishing paternity will take longer. Each state operates under the same basic guidelines, but the processes and time frames vary from state to state.

What if the father is not 18 years of age?

A man can be named as the father on a child's birth certificate regardless of his age, but only the court can determine paternity and order the father to help the mother support the child if he is under 18 years old. Paternity can be established by the court for fathers as young as 14 years old.

Does a person have to be a U.S. citizen to establish paternity for a child?

No. Paternity establishment does not have anything to do with citizenship status. Paternity can be established using the Acknowledgement of Paternity form for any child born in the Commonwealth of Virginia.

Who can get information from the paternity form?

The information on the Acknowledgement of Paternity form is confidential. Only the Office of Vital Records & Health Statistics in the Department of Health, and the Division of Child Support Enforcement have access to the information. No other federal or state agency can get this information.

What rights do I have if there is a court hearing?

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You have the right to arrange for a lawyer to represent you. An attorney is not appointed to a parent for a paternity case.

FREQUENTLY ASKED QUESTIONS FROM FATHERS

What happens if I don't admit paternity or sign an agreement for genetic testing at DCSE?

There may be a court hearing to decide if you are the father based on evidence that you and the mother provide. Paternity must be proven based on clear and convincing evidence. The judge may order you, the mother, and the child to take genetic tests. Based on the results, the judge will make the final determination of whether you are the father.

The mother said she was using birth control, so I do not think I am responsible for the pregnancy. Why do I have to pay?

It does not matter whether you agreed to the pregnancy or whether you or the mother were using birth control. Legally, you are responsible for supporting the child if you are proven to be the father.

I'm not sure I'm the father. What should I do?

- 1) You may arrange for a laboratory to perform a genetic test (at your cost) to prove conclusively whether you are the father or not.
- 2) You may petition the appropriate court to determine whether you're the father.
- 3) You may apply for services at your local child support office.

If I believe I am the father, can I apply for child support services to establish paternity?

Yes. Either parent can apply for DCSE services. If paternity is established, a support order will be pursued to provide support for the child unless DCSE services are terminated.

I am still in school and have no money. Why should paternity be established? Do I have to pay child support?

Establishing paternity at birth, or as early as possible, protects your child. The father is responsible for supporting his child even if he is a student and regardless of his age. A judge will look at the father's age and income if he is working while in school and will decide how much he must pay. The judge may order the father to find a job before or after school to provide some child support. If he does not, then when the father has income in the future he will be required to pay support.

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FREQUENTLY ASKED QUESTIONS FROM MOTHERS

How do I establish paternity?

If the father is willing to sign an Acknowledgement of Paternity form and you have agreed upon support, you may submit the notarized form to the Office of Vital Records.

If the father is unwilling to acknowledge paternity or is unwilling to provide support, you may petition the appropriate court or contact the DCSE district office that serves your area. You will be asked to provide information related to your pregnancy and sign a form naming the man you believe to be the father of your child. DCSE can ask the alleged father to admit paternity voluntarily or to submit voluntarily to genetic testing to establish paternity with certainty. DCSE can also help you gather evidence to present in court at a paternity hearing.

Do I have to name the child's father and establish paternity in order to get benefits?

Yes. If you want to receive benefits such as TANF or Medicaid, you have to name the child's father.

Do I have to name the father and establish paternity to get benefits if I am afraid he will hurt me or the child?

You may not have to have paternity established if you can prove you have a good reason for not giving the father's name. Talk to your local social services worker if you have this concern. The child support office cannot collect child support if paternity is not established.

What if I'm not sure who the father is?

DCSE can help you find out who the father is. You will be asked some personal questions about who may be the father, but the questions are not meant to embarrass you. They are necessary to help you prove who the father is. DCSE will contact a potential father to ask if he will agree to genetic testing to determine if he is the father. If he does not voluntarily cooperate, he will be ordered to have genetic tests.

Do I need to establish paternity if the father and I are getting along and he is helping me support my child?

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Yes. Even if the father agrees to help support the child now, he may change his mind or become disabled or die. Some benefits are available to the child only if paternity has been established.

I am going to marry someone else. He is going to adopt my child. Why establish paternity?

Plans to marry sometimes change. Adoptions take time. Your child is entitled to child support in the mean time. Ask DCSE for information on establishing paternity if you plan an adoption.

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Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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