

What You Should Know

Every child is entitled to the support of both parents, even if the parents are not married. The best way to ensure your child gets this support is to establish paternity. This brochure explains how to establish paternity and why it is one of the most important things you will ever do for your child's future.

What is paternity?

Paternity means fatherhood. While children need the love of their father, they also need his financial support. Even if the father is not married to the mother, he must help support his children until they reach age 18 (19 if the child is a full-time student still in high school).

Every father is responsible for supporting his children whether he agreed to the pregnancy or not. The man named as the father is referred to as the alleged father until paternity is established.

Why is it important to establish paternity?

Your child has a right to inheritance from both parents and the right to receive any benefits that each parent may have, such as Social Security, medical and life insurance, and veteran's benefits. When paternity is established, a child support obligation can also be established, making the father legally responsible for providing child support. There are also some other benefits to consider.

For example, your child will have the sense of belonging that comes from knowing both parents. Your child also needs to know if he or she has inherited any diseases or birth defects. Finally, every mother has the right to receive help and support in raising the child. While every father has the responsibility of support, he also has the right to know his child.

How is paternity established?

There are four ways to establish paternity.

1. Both parents can voluntarily sign a paternity affidavit at the hospital when the child is born.
2. The father can voluntarily sign legal papers establishing paternity.
3. Genetic testing can be used to establish paternity.
4. Circuit courts can establish paternity.

If the alleged father refuses to voluntarily submit to genetic testing or will not voluntarily sign a paternity affidavit, the mother must commence an action in circuit court. If the mother is receiving Temporary Assistance for Needy Families (TANF) or Medicaid, the Division of Child Support (DCS) takes action to establish paternity. DCS will also help establish paternity for individuals who apply and pay a \$5 fee.

For More Information

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A Guide for Teenage Parents



Establishing Paternity and
Financial Support for Your Child

What is genetic testing?

When a father refuses to acknowledge paternity, genetic testing can be ordered. Genetic testing compares DNA of the child, mother, and alleged father to determine the probability that the alleged father is the biological father. These tests are extremely accurate. They can absolutely determine if the alleged father is NOT the biological father. They can determine with a 99 percent or higher degree of certainty that the alleged father is the child's biological father.

Genetic testing may be necessary when the alleged father questions paternity or does not wish to voluntarily acknowledge paternity. Upon request of the mother or the alleged father, DCS or the circuit court may order genetic testing in appropriate cases.

Genetic test results, which establish 99 percent or higher probability of paternity, also create a presumption that the alleged father is the biological father of the child and allows the establishment of a child support obligation without further legal proceedings to establish paternity. If the alleged father is found to be the biological father of the child, he may be held responsible for the genetic testing costs.

What if the father is a minor?

Even if the alleged father is a minor, he can still be named as the legal father and be ordered by the court to help the mother support the child. Before any legal action can be taken against him, the court will appoint a guardian, usually one of his parents, to look out for his legal interests.

How much child support must the father pay?

The South Dakota Legislature established guidelines which courts must use to determine that an equitable share of paternal income and resources are allocated to the child when that child's parents are separated, divorced, or unmarried. The combined monthly net incomes of both parents shall be used in determining the obligation and divided proportionately between the parents based upon their respective net incomes. The non-custodial parent's proportionate share establishes the amount of the child support order.

If the obligation using only the noncustodial parent's monthly net income is an obligation within the low income obligation areas of the guidelines, that amount shall be compared to the noncustodial parent's proportionate share using both parents' monthly net incomes. The lesser amount establishes the noncustodial parent's child support order.

The father may be required to obtain health insurance for the child and to help pay medical expenses not covered by health insurance. He may also be required to pay the cost of the genetic testing and a share of child care costs. If the child is receiving public assistance, child support payments will go to the state to help pay the cost of those benefits.

How can the father pay when he is in school?

If the father is unable to make monthly payments, his child support obligation accumulates. When the father becomes employed or has other income, he will be required to pay his current support obligation plus an additional amount to pay off the past-due support that has accumulated.

Will the support obligation ever change?

As the income or circumstances of the parents change, the child support obligation may be modified. Once an order for support is entered, a petition to modify the support obligation may be filed by either parent.

Who receives custody of the child?

When paternity is established, the mother is most often awarded custody of the child. However, the father has the right to ask the court for custody. The court will decide which parent will have custody based on the child's best interest.

Does the father have a right to visit the child?

Yes, but visitation is a separate issue from paternity or payment of child support. If the mother refuses to allow visitation, the father may ask the court to establish specific visitation rights.

Can paternity be established if the father isn't living in the same state as the child?

Yes. South Dakota has agreements with other states which may allow the mother to seek paternity, even if the father is in another state.

Is the father's name placed on the birth certificate?

If the parents are not married, the father's name will be placed on the birth certificate if he signs a paternity affidavit or if the court enters an order adjudicating paternity. Paternity affidavits are available at all hospitals and clinics, through the Department of Health, or from the Division of Child Support. A copy of the birth certificate is available for a fee.

