

Family Legal Care

Parentage and Paternity

Large Print Edition

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This document should not take the place of a consultation with a lawyer. Family Legal Care encourages all individuals involved with the Criminal and Family Court systems to consult with a lawyer.

Definitions of key terms

Parentage is the legal status of being a parent.

Paternity is the legal status of being a father.

Establishing parentage is the process for determining the legal parents of a child.

Judgment of parentage is a court order establishing the legal parent of a child.

Order of filiation is a court order establishing the legal father of a child.

Assisted reproduction refers to methods of having a child other than sexual intercourse, such as surrogacy or in vitro fertilization (IVF).

Intended parent is a person who intends to

be a legal parent of a child born through assisted reproduction.

What is parentage?

Parentage refers to the process that legally establishes a parent's relationship to their child. New York law now recognizes there are many ways to start a family. In New York, parents who use **assisted reproduction** may now establish parentage. Assisted reproduction refers to methods of having a child other than sexual intercourse, such as surrogacy or in vitro fertilization (IVF). The law now allows married and unmarried couples, parents of both same- and different-sex relationships, and single parents to get a court order stating that they are the legal parents of a child.

For the court to establish parentage for unmarried parents who use assisted reproduction, the parents generally must show that they had an agreement to have a child. This agreement typically must be in writing.

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The parents are then known as intended parents. An intended parent agrees to be legally bound as the parent of the child.

What is paternity?

Paternity is similar to parentage. Paternity is the process that legally establishes a father's relationship to their child.

Please note: The term parentage is now used more widely in New York. You may still hear the term paternity. For the remainder of this guide, the term parentage will generally be used.

How do I establish parentage?

Parentage can be established in three ways:

1. **Through marriage:** A child born to married parents is presumed to be the child of both parents. This is true

for same-sex couples. You do not have to establish parentage in court.

2. **By signing the Acknowledgment of Parentage (AOP):** The AOP is a form that unmarried parents sign to legally establish the child's parents. The AOP is **voluntary**. This means that both parents must sign the form of their own free will. You typically sign the AOP at the hospital when your child is born.

3. **By going to court:** You can establish parentage in Family Court by filing a paternity or parentage **petition** and getting an order stating that you are the legal parent. A petition is a written request.

What is the difference between a petition for paternity and a petition for parentage?

In Family Court, a paternity petition generally is used to establish paternity for a father, such as a biological father. An order establishing paternity is called an **order of filiation**. In these types of cases, if you and the other parent do not know or agree on who the father of a child is, the court may order a **DNA test**. A DNA test is also called a Genetic Marker test. If the DNA test comes back as at least 95% positive, the court will issue the order of filiation.

A parentage petition may be used in other situations, such as when a child is born through assisted reproduction or surrogacy. An order establishing parentage is typically called a **judgment of parentage**.

If you are not sure which petition to use or have questions, contact Family Legal Care or speak to an experienced lawyer.

Who can file for paternity or parentage?

A petition for paternity or parentage may be filed by:

- Either parent of the child;
- The child's caregiver;
- The child (although this usually applies only to older children);
- The person who donates sperm, an egg, or embryo;
- The person acting as a surrogate; or
- An agency, such as the Department of Social Services (DSS). DSS will file for parentage and child support if the child's caregiver receives public assistance and lists the child on the budget.

Why do I need to establish parentage?

When parentage is established, you become a child's legal parent. This means that you have all the rights and responsibilities of a parent:

- You have the right to file petitions for custody and visitation.
- You have the right to be notified any time there are certain Family Court cases about your child, such as a custody, visitation, child abuse, or neglect case.
- You may be required to consent before your child can be adopted (unless your parental rights are terminated).
- You have the responsibility to support your child financially. This means you may be ordered to pay child support.
- Your child may also be able to receive certain benefits like Social Security, workers' compensation, veterans' benefits, or an inheritance from you if you pass away or become disabled.

Where do I file for parentage?

You may file for parentage in Family Court or Supreme Court. Parentage must be established before any child support, custody, or visitation case can be decided in Family Court. In Family Court, a jurist will hear your case. A jurist is a judge, referee, or support magistrate. They make decisions in Family Court. Often a support magistrate will hear, or listen to, your parentage case. A support magistrate is similar to a judge and has the power to make decisions about child support and parentage.

You may be able to establish parentage in Supreme Court if:

- You are getting a divorce;
- Have children; and
- Have not had a custody, visitation, or child support case before in Family Court.

When can I file for parentage?

In general, you can file for parentage in Family Court any time from when the mother is pregnant up to when the child turns 21 years old. After the child turns 21, you may have to file for parentage in Surrogate's Court or Supreme Court.

Please note: In the case of assisted reproduction, you can request a judgment of parentage before the child is born. You must then file a form to notify the court of the child's birth. The judgment will only take effect *after* the child is born.

I am legally married to my child's mother. Do I still need to establish parentage?

No. If you and the other parent are legally married at the time the child is born, then you are both automatically considered to be the legal parents. This is called the **presumption of legitimacy**. You do not

have to establish parentage in court. For example, a married woman's husband is automatically presumed to be the legitimate father of her children. Note that the presumption of legitimacy applies to same-sex couples too.

The presumption of legitimacy also means that you can be considered the legal parent of a child even if the child is not biologically yours. You can challenge the presumption of legitimacy in court by proving that you were not available when the mother became pregnant. Examples may be if you were incarcerated or serving in the military overseas. Proving this can be complicated. Contact Family Legal Care or speak with a lawyer if you have questions.

I signed an Acknowledgment of Parentage form. Is there a way to undo this?

Within the first 60 days of signing the Acknowledgment of Parentage (AOP) form, either you or the other parent can file a petition in Family Court to **vacate** the form. Vacate means to cancel. You can file a petition to vacate for any reason.

After 60 days, the court can only vacate the AOP form if you can prove one of three things:

- **Fraud;**
- **Duress;** or
- **Material mistake of fact**

Fraud means that someone intentionally tricked you into signing the form. Duress means that someone illegally threatened or illegally pressured you into signing the form. A material mistake of fact means that there was a serious misunderstanding that led you to sign the form.

My name is on the birth certificate. Do I still have to establish parentage?

Maybe. If your name is on the birth certificate but either 1) you were not married to the other parent when the child was born or 2) you did not sign the AOP form, parentage has not been established. You will need to either sign the AOP form or file for parentage in Family Court.

I believe I am the father of a child, but I do not want to go to court. What can I do?

You can sign up for the **Putative Father Registry**. The Putative Father Registry is a confidential record of fathers of children born to unmarried parents. The Registry includes names and addresses of fathers who either:

- Filed a notice to claim paternity;
- Acknowledged paternity of a child; or

- Were determined by a court to be the father of a child

Putting your name on the Registry is not the same as establishing parentage. The Registry is a way to make sure that you receive notice about certain kinds of cases involving the child in New York State. Other states have their own putative father registries. If the mother lives in another state, you may be able to sign up for the registry in that state. If you are not sure that you are the father, you can file a petition for paternity in Family Court.

I am not sure if I am the father of a child. Can I get a DNA test from court?

Sometimes. In a paternity case, you may request a DNA test in court. If the DNA test comes back at least 95% positive, then the court will enter an order of filiation. The court will not order a DNA test if it is not in the best interests of the child. This is known as

equitable estoppel. See below for more information.

I took a DNA test, but it was not through the court. Can the court use this DNA test to prove parentage?

No. A test that is done privately outside of court, such as a test from a pharmacy, will not be **admissible** in court. Admissible means acceptable or valid. To be admissible, a DNA test must be ordered by the court.

Can the court refuse to order a DNA test?

Yes. The court may not order a DNA test in a parentage case if the court finds that **equitable estoppel** applies. Equitable estoppel can prevent you from challenging parentage if you have been acting as the child's parent and the child recognizes you as their parent. This is true even if you are not the child's biological parent.

The court may hold a hearing to see if equitable estoppel applies in your case. The court is mainly concerned with what is in the **best interests of the child**. The best interests of the child is the standard that the court uses to make decisions about a child. The court can use equitable estoppel to protect the father-child relationship that is already in place. Examples of when equitable estoppel might apply are if the child calls you “dad” or if you provide support for the child. Every case is different.

If equitable estoppel comes up in your case, the court may assign a lawyer to represent your child, known as an **attorney for the child (AFC)**. The court may also assign you a lawyer at no cost to you. This depends on your income.

Equitable estoppel can be complicated. Contact Family Legal Care or speak to a lawyer if you have any questions.

Who pays for a court-ordered DNA test?

In general, the person who asks for the DNA test will be required to pay for it. However, the court may also split the cost of the test between you and the other parent. This depends on your ability to pay.

What if I refuse to take a court-ordered DNA test?

If you refuse to take a court-ordered DNA test, the court can issue a **default order** against you. A default order is an order that is made when someone does not show up to court. A court can also make a default order when someone does not participate in the case or do what the court asks.

Can I get a free lawyer to represent me in my case?

Maybe. If you are the **respondent** in a parentage case, the court may appoint, or assign, you a lawyer at no cost to you. The respondent is the person who did not start the case. You may be asked to give information about your income so the court can determine if you are financially eligible.

I am in an LGBTQ+ relationship. Do we still need to go to Family Court to establish parentage for our child?

Maybe. The presumption of legitimacy applies to same-sex couples too. If you and the other parent were legally married when your child was born, you do not have to go to court to establish parentage. You and the other parent will automatically be considered the legal parents of the child.

If you were not legally married to the other parent when your child was born, you will have to establish parentage another way. Same-sex couples who use assisted reproduction or a surrogate can take certain steps to establish parentage. You may either sign the Acknowledgment of Parentage form or file a petition for parentage in Family Court.

For more information, see Family Legal Care's guide "**LGBTQ Rights in Family Court.**"