

PARENTAGE

This guide is meant to be used by lawyers who assist clients in parentage proceedings at no charge or at a reduced fee. Persons who wish to represent themselves will find that they probably will need at least limited representation by a lawyer. See our separate booklet regarding how limited representation works.

Legal Bases. Actions to establish parentage are governed by the statutes beginning at Tenn. Code Ann. §§ 36-2-301. They are in addition to adoption proceedings commencing at Tenn. Code Ann. §§ 36-2-101 and proceedings to acknowledge parentage pursuant to Tenn. Code Ann. §§ 68-3-203(g), 68-3-302 or 68-3-305(b). Tests for parentage must be conducted pursuant to Tenn. Code Ann. § 24-7-112.

Custody. Absent an order of custody to the contrary, custody of a child born out of wedlock is with the mother.

The Presumed Father. A man is presumed to be the father of a child if:

- The man and the child's mother are married or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce.
- Before the child's birth, the man and the mother have attempted to marry each other in compliance with the law, although the attempted marriage is or could be declared illegal, void and voidable.
- After the child's birth, the man and the mother have married or attempted to marry each other in compliance with the law although such marriage is or could be declared illegal, void, or voidable; and:
 - The man has acknowledged his paternity of the child in a writing filed under the putative father registry established by the Department of Children Services;
 - The man has consented in writing to be named the child's father on the birth certificate; or
 - The man is obligated to support the child under a written voluntary promise or by court order.
- While the child is under the age of majority, the man receives the child into the man's home and openly holds the child out as the man's natural child.
- Genetic tests have been administered as provided by statute, an exclusion has not occurred, and the test results show a statistical probability of parentage of 95% or greater.

Rebutting the Presumption of Paternity. With the exception noted below, the presumption of paternity may be rebutted in a parentage proceeding. The exception: If the mother was legally married and living with her husband at the time of conception and has

remained together with that husband through the date a petition to establish parentage is filed, and if both the mother and the mother's husband file a sworn answer stating that the husband is the father of the child, any action seeking to establish parentage must be brought within 12 months of the birth of the child. In the event that an action is dismissed based upon the filing of such a sworn answer, the husband and wife who filed such sworn answer may not deny paternity in any future action.

Agreements between Parents. A court may enter an order of parentage upon the agreement of the mother and father unless the court on its own motion orders genetic testing.

The Petition. A petition to establish parentage of a child may be filed by:

- The child, if the child has reached the age of majority, or if the child is a minor, the child through a guardian or next friend;
- The child's mother, or if the mother is a minor, the mother's personal representative, parent, or guardian;
- A man claiming to be the child's father, or if the man is a minor, the man's parent, guardian, or personal representative; or
- The Department of Human Services or its contractor.

One man or several men may be named as the father. The naming of one man as father does not preclude a later suit against another man if the court finds that the first man is not the father of the child. If the petition is filed before the birth of the child, all proceedings may be stayed until after the birth, except service of process, the taking of depositions to preserve testimony, and the performance of genetic testing.

Summons, Notice, or Warrant. Parentage actions may be commenced by service of a summons as in civil cases and tried as civil actions. In the alternative, notice of the filing of the complaint may be delivered to the defendant or the defendant's representative or sent to the defendant at the defendant's last known address. If the defendant fails to make an appearance or file an answer to the complaint, the court may proceed as in civil cases or may issue a warrant for the apprehension of the defendant, commanding an officer to apprehend the defendant and bring him before the court.

Jurisdiction over the Defendant. A Tennessee juvenile court may exercise personal jurisdiction over a non-resident defendant even where the conception occurred elsewhere if there are sufficient minimum contacts between the defendant and the State of Tennessee to satisfy the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The juvenile court may also be able to exercise personal jurisdiction over a non-resident defendant even in the absence of minimum contacts where the defendant is personally served with process while present in Tennessee.

Statute of Limitations. An action to establish the parentage of a child may be instituted before or after the birth of the child and until three years beyond the child's age of majority. Judgments for child support in a parentage case are enforceable without limitation as to time.

Courts in Which to File. The juvenile court or any trial court with general jurisdiction has jurisdiction except that, in a county having a population not less than 825,000 and not more than 830,000 according to the 1990 federal census or any subsequent federal census, only the

juvenile court has jurisdiction. The petition may be filed in the county where the father resides or is found, the county where the mother resides or is found, or the county in which the child resides or is present when the application is made. However, a man who seeks to establish parentage of a child who is the subject of a pending petition for adoption must file the petition in the court where the adoption petition is filed. A petition to establish parentage that is filed or that is pending subsequent to the filing of an adoption petition involving the same child must be transferred to the court where the adoption proceedings are pending. The latter has exclusive jurisdiction unless the adoption petition is denied or dismissed.

Rules of Procedure. The Tennessee Rules of Civil Procedure generally apply in parentage cases, even those filed in courts where they do not otherwise apply.

Legal Assistance. The Department of Human Services and its contractors have the statutory duty to inform the individuals in parentage cases where they are seeking to recoup child support that they will not provide legal assistance concerning custody or parental access and that the individuals have a right to independent counsel.

Temporary Order of Support. The court must, upon motion of a party, enter a temporary order of child support pending the final determination of paternity. The order must be based upon a showing of clear and convincing evidence of parentage after genetic tests.

Cost of Tests. Under *Little v. Streater*, 452 U.S. 1 (1981), the State may be obligated to pay for parentage tests in those cases where the State is prosecuting the parentage action as part of its program to recoup public assistance benefits from non-supporting parents.

Expenses. The court must include in each order of parentage an order that the non-prevailing party or, if parentage was not contested, the person who is being confirmed as the father of the child by the order of parentage, pay into the court an amount equal to the sum of any fees required to be paid by the Department of Health for the processing or issuance of a birth certificate. Also, a biological father of child conceived as result of the father's extended extra-marital affair with a married mother is obligated to pay fair portion of expenses incurred in connection with the mother's pregnancy and recovery and for the child's birth, including a prorated portion of insurance costs. *In re T.K.Y.*, 205 S.W.3d 343 (Tenn. 2006).

Health Insurance. In any case in which the court enters an order of support in a case enforced under Title IV-D of the Social Security Act, the court must enter an order providing for health care coverage to be provided for the child or children. The provisions of Tenn. Code Ann. § 36-5-501(a)(3) also apply with respect to enrollment of a child in the noncustodial parent's employer-based health care plan.

Revocation of Licenses. If the court determines that an individual party has failed to comply with a subpoena or a warrant in connection with the establishment of paternity or enforcement of an order of support, it may invoke the provisions of Tenn. Code Ann. § 36-5-101(f)(5) to revoke licenses granted by the State.