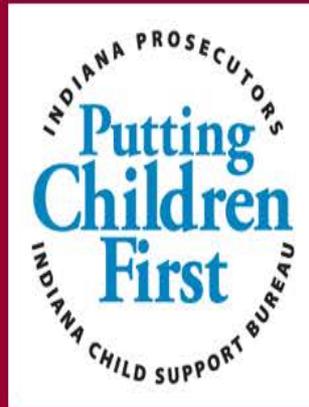


40 Years

Working Together for Children
1976 - 2016



June 14 – 17, 2016

Merrillville, Indiana

Indiana Child Support Conference

Establishing Paternity

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LAW OF PATERNITY ESTABLISHMENT

A. Establishing the legal father of a child

1. Laws are very state based with broad federal IV-D requirements
2. Paternity -A legal “occurrence” which creates a legal relationship between a parent and a child.

LAW OF PATERNITY ESTABLISHMENT

B. Presumption of Paternity

1. Long standing principle rooted in common law: “child born to married couple is a child of marriage”. Husband is presumed to be father

**any challenge to this presumption is a type of paternity disestablishment*

LAW OF PATERNITY ESTABLISHMENT

C. Children Born out of Marriage

1. “out of wedlock” = no legal relationship exists between putative father and child
2. “establishing paternity” creates a legal relationship and a support obligation

LAW OF PATERNITY ESTABLISHMENT

C. Children Born out of Marriage

1. Methods to establish paternity

- a. Parents subsequently marry
- b. Father openly holds child out as his own (paternity by estoppel)
- c. Prior court determinations
- d. Parents execute a voluntary Acknowledgement of Paternity form

LAW OF PATERNITY ESTABLISHMENT

D. Special Consideration

1. Birth Certificates

- a. This greatly varies among states. From proof of paternity to meaning essentially nothing (evidence of paternity)

LAW OF PATERNITY ESTABLISHMENT

D. Special Consideration

1. Interstate Cases

- a. UIFSA requires that: “a determination of paternity made by another state whether through judicial or administrative proceedings or by acknowledgement of paternity shall be given full faith and credit in the courts of this state

2. Incarcerated Putative Fathers

- a. Important to establish paternity even if support order not going to be entered
- b. Potential benefits for child
- c. Create foundation for relationship
- d. Easier to pursue support upon release

METHODS OF PATERNITY ESTABLISHMENT

A. Establishing Paternity Administratively

1. Federal law requires states to have a voluntary paternity acknowledgment process to provide a mother and father the opportunity to establish paternity for a child born out of the marriage.

(42 U.S.C. § 666(a)(2), 45 CFR 302.70(a)(2),
and 45 CFR 303.101(b))

METHODS OF PATERNITY ESTABLISHMENT

A. Establishing Paternity Administratively

1. Federal law and Regulation require state to have laws which require hospitals and birthing centers to make available acknowledgment of paternity forms for filing with a state registry.
a complete form filed appropriately constitutes conclusive evidence of paternity without further judicial ratification. 42 U.S.C. §666(a)(5)(E), 45 CFA 302.70(a)(5)(iv) and (vii)
2. Most states allow for completion and filing of form in conjunction with support proceeding.
3. After 60 days, the Acknowledgment of Paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact. 42 U.S.C. 666(a)(5)(D)(iii)

METHODS OF PATERNITY ESTABLISHMENT

B. Establishing Paternity Judicially

1. If paternity has not previously been resolved (marriage presumption, acknowledgement) then paternity is addressed in conjunction with establishing support. Most states allow for completion and filing of form in conjunction with support proceeding.
2. Putative father given opportunity to acknowledge paternity or engage in paternity testing (genetic testing). 45 C.F.R. 303.5(d).

METHODS OF PATERNITY ESTABLISHMENT

B. Establishing Paternity Judicially

1. State process must have procedures to create a rebuttable presumption or at state option, conclusive presumption of paternity upon genetic testing results indicating a threshold probability (most often 99%). 45 C.F.R. 302.70(a)(5)(vi)

METHODS OF PATERNITY ESTABLISHMENT

C. Default Orders

1. At any point in the judicial process, if putative father fails to appear after having been properly served, the court shall enter an order finding the man to be the father. 42 U.S.C. 666(a)(5)(H), 45 CFR 302.70(a)(5)(viii) and 45 CFR 303.5(f).

Full Faith and Credit for Child Support Orders Act (FFCCSOA)

- A. Under the provisions of FFCCSOA, all states are required to recognize a determination of paternity made by any other state, whether established through voluntary acknowledgment or through administrative or judicial processes.
- B. Thus, a paternity determination made in another state is valid in **all** states and can **only** be challenged in the original state of determination.

Paternity Disestablishment

A. Child born “Of the Marriage”

1. Presumption applies against the mother & father (wife & husband) until a party attempts to disestablish paternity.

a. Does the presumption of paternity apply (within a marriage & an intact family)

- If Yes

- Has it been rebutted?

- » Non-Access

- » Impotency

- Is it inapplicable?

- » No longer intact family

Paternity Disestablishment

A. Child born “Of the Marriage”

2. Who can challenge the presumption?

- a. Husband/Presumed Father
- b. Mother/Wife
- c. Putative Father

Paternity Disestablishment

A. Child born “Of the Marriage”

3. Parties agree that the husband is not the father
 - a. Mother file a case against the husband.
 1. Presumption of Paternity needs to be addressed.
 - b. Case specific facts
 1. Best interest of the child?
 2. Decision may be based on testimony or DNA Testing

Paternity Disestablishment

B. Child born outside of marriage

1. Court Determination

a. Default Order

- Are genetic tests admissible to disestablish paternity?
- Motion to set aside original order.
- Challenges to service
 - “Where a defendant has not been served with process and who thus has no notice of the institution of the action against him, such person is entitled to have the judgment set aside.” Keiling v. McIntire, 408 N.E.2d 565.
 - How long do you have to challenge?

Paternity Disestablishment

B. Child born outside of marriage

1. Court Determination

- b. Challenge to paternity must occur in state where determination is made.

Paternity Disestablishment

B. Child born outside of marriage

2. Voluntary Paternity Affidavit

- a. Federal law permits states to choose if paternity acknowledgment constitutes
 1. Rebuttable Presumption of paternity
 2. Conclusive evidence of paternity

- b. Recession within 60 days
 1. Either parent who signs a voluntary acknowledgment of paternity (whichever occurs earlier)
 - a. 60 Days OR
 - b. The date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.

Paternity Disestablishment

B. Child born outside of marriage

2. Voluntary Paternity Affidavit

c. Beyond 60 days, challenge must be on basis of fraud, duress or material mistake of fact

1. Defined by case law in each state

d. Example

1. After 60 days and an agreed order for support?

Paternity Disestablishment

B. Child born outside of marriage

2. Voluntary Paternity Affidavit

- e. Acknowledgment signed by biological father when a legal father exists
 - 1. State Law and Process controls.
 - 2. How does your State handle these examples?
 - a. Husband and Wife are separated and another man signed a Paternity Affidavit and/or on the birth certificate.
 - b. Paternity Affidavit is signed but the mother is stating another man is the father.

Paternity Disestablishment

B. Child born outside of marriage

3. What happens if Paternity is set aside?

- Arrears
- Payment Recovery
- Visitation
- Other?

Establishing Paternity Questions?

- Kristen Bruss
- Robert J. Harkins