

# **Paternity**

## **What is Paternity?**

Paternity means fatherhood. In the legal sense, “establishing paternity” refers to the determination of a child’s “legal” father and the related rights and obligations of the father to the child. Every child has a biological father, but not every child has a “legal” father. When paternity has been established, it means that someone has been named the legal father of the child.

In South Dakota, paternity is automatically established if the parents are married to each other when the child is born or within ten months after dissolution of the marriage – the husband is presumed to be the legal father and his name will be on the child’s birth certificate. But if the parents of a child are not married to each other when the child is born, then paternity must be established before the father’s name will be placed on the child’s birth certificate and before the father has any legal rights or responsibilities to the child.

Signing an affidavit of paternity at the hospital does not establish legal rights to the child for custody or parenting time. To establish legal rights an action must be started in circuit court or the father does not have legal rights to custody and parenting time. SDCL 25-5-10 establishes that the mother of an unmarried minor born out of wedlock is entitled to its custody, services, and earnings subject to the court’s right to award custody of the child to either parent, considering the best interests of the child as to its temporal, mental and moral welfare.

## **How is paternity established in South Dakota?**

In South Dakota, paternity can be established either “voluntarily” or “involuntarily” until the child turns 18 years old. When the mother and father agree that the father is in fact the biological father, paternity can be established voluntarily. To voluntarily establish paternity, both the father and mother must sign what’s called a “Paternity Affidavit Form.” This is often done at the hospital when the child is born, however this does not confer legal rights of parenting time and custody to the father.

The form can also be obtained later from the South Dakota Department of Social Services, Department of Health or the local Register of Deeds office. The mother and father must both sign the same form in front of a Notary. Once signed and notarized, the Paternity Affidavit must be filed with, or sent to, the South Dakota Department of Health. Once properly filed, the father is the legal father of the child and his name will be added to the child's birth certificate. However, being on the birth certificate does not confer legal rights of custody and parenting time to the father.

For a father to have legal rights of custody or parenting time it is necessary to start a civil action, a paternity action, in circuit court establishing those rights. This can be done amicably with the parties by filing a summons and complaint, that can and should be followed up with a stipulation and agreement setting forth the terms of the parties parenting time with the child, which would then be adopted by the court as a court order. The court order is a legally enforceable document that provides the father with his legal rights of custody and parenting time. If the parties cannot come to a mutual agreement on custody and parenting time with the child, the court will hold a hearing to determine what is in the best interests of the child.

When either the mother or the father disputes paternity, paternity must be established "involuntarily." In South Dakota, there are two involuntary methods of establishing paternity: by contacting the Department of Social Services (DSS) or by filing a petition (legal paperwork) to establish paternity in Court.

If one parent does not want to sign the Paternity Affidavit, the other parent can seek to establish paternity by requesting a DNA test through DSS, which will only happen if you are establishing child support. Today, a DNA test requires that the child, mother and father have the inside of their cheeks swabbed. The DNA is then sent to a laboratory for analysis. If necessary, DSS can get a court order requiring the other parent to cooperate. If the test determines that the man is the biological father, he is established as the legal father.

The other way of involuntarily establishing paternity is to file a "Petition to Establish Paternity" with the Circuit Court. Filing the petition begins the court process. A custodial mother can also begin the court process by filing for child support. If a child is receiving public assistance, DSS may also file a petition to establish paternity.

If either the Mother or the Father denies paternity, the Court may order DNA testing. If the court determines that the Father is in fact the biological father, the Court will issue a Judgment of Paternity, making the father the legal father, and his name will be added to the child's birth certificate. Within the processing to determine paternity, the court can also issue child support, custody and parenting time orders.

## **Why should paternity be established?**

Establishing paternity means more than just having a father named on the child's birth certificate. There are benefits for the child, the mother and the father when paternity is established.

Establishing paternity helps children:

- Have a relationship with both parents;
- Learn about family history, including medical histories; and
- Access medical insurance and other benefits like life insurance, Social Security, Veterans benefits and inheritance.

Establishing paternity helps mothers to:

- Share the responsibilities of parenthood; and
- Share the costs of raising their child (once paternity is established the mother can seek court ordered child support).

Establishing paternity helps fathers to:

- Gain legal rights to their child (like being able to ask a court for custody or parenting time with their child);
- Receive notice of relocation of the child;
- Have input on how child is raised, for example decisions regarding education, medical care and religion
- Establish a bond with their child; and
- Participate in their child's life.

This information does not address same sex relationships or surrogacy, if you have questions on these issues consult an attorney.

This information does not address disestablishment of paternity, if you have questions on this please consult an attorney.

*This information is provided by The State Bar of South Dakota. Based in South Dakota law and is designed to inform, not to advise. No person should ever apply or interpret any law without the aid of an attorney who knows the facts and may be aware of any changes in the law.*

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