

# THE “LEGAL” BABY’S DADDY

## What Men Need to Know



*“My girl told me that she is pregnant. My cousin says that she was with Rodney too, but I don’t believe it. There is no way that she would be with some punk like Rodney when she has me.”*

**“I’VE BEEN WITH KIM FOR FIVE MONTHS. SHE’S GOING TO HAVE A BABY SOON. I KNOW I’M NOT THE FATHER, BUT WE’RE GOING TO GET MARRIED AS SOON AS SHE LOSES WEIGHT AFTER THE BABY. THE REAL FATHER IS SOME JERK SHE MET DOWN THE SHORE. WE’RE GOING TO BE A FAMILY AND I DON’T WANT THIS JERK AROUND KIM. WE’RE JUST GOING TO TELL THE HOSPITAL THAT THE BABY IS MINE.”**

“Maria and I separated two years ago. Ever since then I have been getting Carlos and Carmen on the weekends. Carmen is not my daughter, but I raised her since she was a baby and she calls me Papi. Now Maria is suing me for child support. There is no way I am paying for Carmen. I love her, but let her own father pay for her if Maria doesn’t want to be with me anymore.”

**Each of these men is making a decision, or made a decision, which will change his life and a child’s life forever!**

Paternity is a very serious matter and what you do today can forever change your life and a child’s life. Identifying the father of a child is called determining “paternity”. Even if you are not the true biological father of a child, you can still be held legally responsible for that child. Even if you are no longer with her, the child’s mother or Welfare can later sue you for support. It can also be devastating later for a child to learn that you are not his or her father. Everyone wants to believe that their girlfriend would not be with someone else, or doesn’t want to be embarrassed in front of their families, or just wants to help out a child who needs a good father-figure. Assuming responsibility for a child who may not be yours does not make you a bad person. However, it can have consequences in the future that may not feel fair to you but with which you will have to live. And sometimes living a lie can harm a child more than the truth. This flier is not intended to make you distrust women. However, sometimes bad situations happen. Hopefully, this flier will give you something to think about and help you make good choices. If you need to begin or are already involved in a paternity case in Philadelphia, it will also review some of Court’s procedures.

### General Things to Remember about Paternity

**No Child is Illegitimate:** Children are no longer declared to be illegitimate in Pennsylvania. The marital status of the mother can affect paternity, but it does not stigmatize the child legally.

**Birth Certificates Don’t Mean Everything:** An unmarried woman can no longer put a man’s name on the birth certificate without his signature. It is now common for no father’s name to appear on the birth certificate. That does not mean that a father cannot be determined later. If a man’s name is on the birth certificate, that man was either the woman’s husband, signed to acknowledge the child, or a Court found him to be the legal father.

**Children Are More Important Than Adults:** The law of Pennsylvania and the Courts are interested in protecting children, both financially and emotionally, even if the financial result seems unfair to the adults. In other words, if you acknowledge a child it is very likely that you will have to pay support for that child even if the child is not really yours!

## Children Born to a Married Woman

**The Husband Is Usually The Daddy:** The biology of a child may not matter if the child is born to a married woman. If the woman is married at the time she becomes pregnant, the law will consider her husband to be the child's father. However, this rule does not apply if it can be shown that the man had no opportunity to have sex with his wife at the time, or if he was unable to father a child.

**The Law Protects Marriages:** While the mother, husband and child are all living together as a family and do not want to question paternity, no outside man can try to establish himself as the father, even if he is the biological father. The Court will not allow him to intrude into a marriage nor consider genetic testing.

**Acting Like the Daddy Can Make the Husband the Legal Daddy:** If the husband and wife are separated or divorced at the time that paternity becomes an issue, then the "husband rule" may not apply. But even if paternity can be questioned, when the husband has acted like the child's father, the Court could still decide that the husband is the legal father. The goal is to protect the child when the husband is the only father the child knows.

## Children Born to an Unmarried Woman

**Acting Like the Daddy Can Make An Unmarried Man the Legal Daddy:** Just like with married people, a man can be held legally responsible for a child by the way he acts. If it can be clearly shown that a man has held the child out to be his biological child, and either received the child into his home or provided support for the child, then he can be held to be the child's legal father, where no other legal father has been established.

**Acknowledgments of Paternity:** The most common way to determine the father of the child when he is not the husband, is either to have DNA testing, or for he and the mother to both sign a document declaring that he is the father. This document is called an Acknowledgment of Paternity and can be signed at the birth or later.

**Paternity at the Hospital and Later:** When a child is born to an unmarried woman, hospitals are required to provide information to her and the man with her who is identified as the father about the benefits of establishing paternity and the opportunity to sign an Acknowledgment. Both mother and father must consent to the Acknowledgment. If signed, the hospital provides the Acknowledgment to the Department of Public Welfare. After the baby's birth, the parents can also submit the same Acknowledgment form to the Department of Public Welfare or it can be signed as part of a Court action, such as child support.

**Determining Paternity When the Mother Will Not Cooperate:** For men who believe that they are the father of a child, but the mother is unwilling to sign an Acknowledgment or give him any information about the child, he can still file an Acknowledgment as a claim of paternity. This does not give him any rights regarding the child, but entitles him to notice if the woman tries to put the child up for adoption. Men can also file a Petition To Determine Paternity with the Family Court if they want to do more than get notice about an adoption and are prepared to be a father to the child.

**Don't Sign If You Aren't Sure!:** Once an Acknowledgment has been signed it is legally binding. However, it may be "rescinded" or undone by either person within 60 days. After 60 days, the Acknowledgment may only be challenged in Court by proving that someone was forced to sign or that one side only signed due to a mistake or fraud on the part of the other party. If a man, or the mother, wishes to make such a claim, he or she would file a Petition to Contest Paternity. While it is possible to do this, it is usually very difficult to question paternity, especially if a long time has passed. An Acknowledgment can be then used at any time in a child support case to require a man to pay child support, even if many years have passed since the man and woman separated and the man has had little contact with the child.

## The Court Case

**Which Court?:** While this can be complicated, generally speaking, any county in Pennsylvania can hear a paternity or support case if that county has a connection to the man. If everyone is not in Philadelphia you may need to get specific legal advice

**Paternity First:** Paternity is always the first issue in a new support case. Therefore, if a woman is positive about the identify of the father of her child, she can simply begin a child support action against the man. However, if either the mother or a man is unsure about paternity, that person should first file a motion to determine the paternity before going ahead with either a child support or a child custody case.

**Filing Your Petition:** Petitions can be filed in Philadelphia either by an attorney at 1133 Chestnut Street, or *pro se* party (someone representing him or herself). The Intake Unit at Family Court, at 34 S. 11<sup>th</sup> Street will help *pro se* parties with some petitions. Fees can vary depending on the type of petition filed. However, in all cases, this fee can be waived for low-income people. The Intake Unit does not usually help file the Petition To Dispute or Determine Paternity, mentioned earlier.

**Step One:** In child support cases, once the complaint is filed, the first hearing will be a conference. The conference officer will start with paternity. If the man and woman are not married and no Acknowledgment is on file, they will be given the choice of signing an Acknowledgment or having a DNA test. If there is just a motion to determine paternity, then that must be filed as a motion and will go directly to a motions judge.

**Relying on the Test & Retesting:** If there will be testing, the parties can also agree that they will accept the results without a special hearing. If they do agree, and the test shows that the man is not the father, the case is simply dismissed. If the test shows that the man is the father, then the parties go back to another conference and start talking about their finances and the amount of support. Retesting is permitted, but only by proving by a preponderance of the evidence that the first test was unreliable or scientifically flawed. As a practical matter, the tests are rarely challenged in most cases and it is extremely difficult to force someone to have a second test.

**Consequences for Not Showing Up:** If a woman sues a man for support and he fails to appear either at the support conference or for the DNA tests, and there is proof that he had notice of the hearing, the Court will declare that he is the legal father. After that, even if the man continues to refuse to come to Court, some amount of child support can be set. Generally, when testing is ordered and either side refuses to cooperate with the testing, paternity can be decided against that person. In other words, if the woman does not bring the child for testing then her claim for support or to establish paternity can be dismissed. If the man does not appear for the testing, then he can be found to be the legal father anyway.

**The Buccal Swab Genetic Test:** The lab at Philadelphia Family Court takes a picture of each man and child tested. In Philadelphia, a buccal swab test is performed, by rubbing a special cotton swab against the lining of the inner cheek. The cells obtained are used for a DNA test. Four swabs are taken; two for testing and two are stored indefinitely. This procedure is safe for infants. LabCorp provides the genetic testing services in Philadelphia at 34 S. 11<sup>th</sup> Street. The cost of a buccal swab is \$67.00 per person. If the man claims that he is not the father of a child, but testing proves that he is, he may be required to pay for the tests. On the other hand, if he is proven to not be the father, there is no cost to him.

**Testing When The Man Doesn't Live in Philly:** When the man lives outside of Philadelphia, the testing is done by the court where he lives. In those cases, the conference officer refers the case to the Paternity Testing Unit at Family Court who will coordinate the testing with the appropriate court. The type of test done will depend on the testing capabilities of the other court. Where the man is on active-duty in the military, the case will be referred by the conference officer to the District's Attorney's Child Support Enforcement Unit to coordinate the testing and other issues.

**Paternity Hearings:** If the parties did not agree to just accept the test results or if the case is only about determining paternity, a paternity hearing will be held in Family Court at 34 S. 11<sup>th</sup> Street. On the hearing day, an Assistant District Attorney (ADA) will be assigned to the courtroom. The ADA will call each case to review the results of the paternity testing, if they were ordered. If there is no agreement, then the case will be decided by a Judge.

**Your Right to an Attorney:** Unlike all other domestic relations matters (i.e. custody, support, divorce and protection from abuse), poor men in paternity cases do have a constitutional right to court-appointed counsel. This right is limited to the paternity hearing and does not apply to any other part of the support case. The District Attorney's Office assists the mother in a paternity action in Philadelphia in most cases. Jury trials are no longer available for paternity cases. In either case, if there is a hearing on paternity and paternity is ultimately decided against the man, the Court may enter a temporary order of support before returning the matter back to the regular support process.

## **Other Cases Involving Paternity**

**Custody Cases:** For children born to unmarried women, paternity is a first issue in custody cases. In Philadelphia, before a man may file for any custodial rights to a child born to an unmarried woman, where the man is filing as the child's father, he must first file an Acknowledgment with the Court. The Acknowledgment should be reviewed at the first custody hearing to determine if the mother denies that the man is the father.

**Testing Deceased Fathers:** In any case where the potential father is deceased, the mother or child may wish to have the body exhumed (or removed from the grave) in order to perform paternity testing. A court may issue such an order if the person making the request can show that it is reasonable. However, that is an extraordinary remedy and would be very costly. Fortunately, today it may be easier to obtain a DNA sample from a deceased person as many hospitals retain samples for some time after treating a patient. Also, if the man had another child support case with the Domestic Relations Branch, the court laboratory may have retained a genetic sample.

**Social Security, Veterans and Workers Compensation Benefits, and Estates Law:** It is not uncommon to need to determine paternity in cases where mothers are seeking Social Security survivors' benefits, Veteran's benefits, or Worker's Compensation death benefits for a child who was born out of wedlock to a deceased worker or veteran. The same need can arise with estate cases if there is a question about the identity of the deceased man's children. In addition to the methods mentioned above for testing a deceased man, the Social Security Administration, Veteran's Administration, Worker's Compensation Board and the Probate Court can also hold their own hearings. Such cases often do not follow the same laws and rules as outlined above. However, these agencies and courts would honor a prior paternity determination in Family Court.

## **The Bottom Line**

Think carefully before accepting responsibility for a child! Once a father is determined, everyone will have to live with that decision. Although sometimes it is tempting to believe that you are the father when you have rational reasons to suspect that you are not, or you want to be a nice guy and help raise a child, there are consequences to those decisions that you may not be able to undo later. Understand your rights and responsibilities before you take action!

This flier is intended to provide legal information only. For legal advice about your situation, you should contact a lawyer. This flier was prepared by Stephanie A. Gonzalez Ferrandez, Esq. an attorney at Philadelphia Legal Assistance (PLA). PLA is primarily funded by the Legal Services Corporation. Low income people may contact PLA with paternity questions. Information about accessing PLA services can be obtained by calling 215.981.3800, visiting [www.PhilaLegal.org](http://www.PhilaLegal.org), or e-mailing [AccessPLA@PhilaLegal.org](mailto:AccessPLA@PhilaLegal.org). Please remember that due to a lack of resources, PLA can only provide attorneys to a very small number of people. We also cannot give advice via the internet. ©2004