

Voluntary Paternity Establishment

What you should know about
establishing paternity in South Dakota



South Dakota
Department of
Social Services

Paternity

Paternity means fatherhood or the relationship of a father.

Establishing paternity means either a judge signs a court order stating who the legal father is; genetic testing establishes a 99 percent probability of paternity; or the father and mother voluntarily sign a paternity affidavit naming the father of the child.

Paternity should be established if the parents of the child were not married at the time the mother became pregnant or at the time of the birth of the child.



Importance of Establishing Paternity

Both parents and the child have the right to a parent-child relationship. Both parents and the child deserve an opportunity to develop, enjoy and grow in this relationship.

Identity:

Your child has the right to know both parents and is entitled to the sense of belonging that comes from knowing both parents.

Medical:

Your child should know if he or she has inherited any health problems which may not be detected at birth or in childhood.

Responsibility:

The father has the right to know and the responsibility to support his son or daughter. The mother has the right to get help and support from the father in raising the child.

Money:

Both parents have a legal obligation to support their children. One parent may not be able to support the child on their own.

Benefits:

Your child has the right to access benefits from both parents, such as Social Security, medical and life insurance benefits, inheritance rights, veteran's benefits or others.

Voluntarily Acknowledging Paternity

To voluntarily acknowledge paternity, both parents must sign a paternity affidavit under oath (a copy of the affidavit is included in this booklet). This paternity affidavit is also available at the hospital or medical clinic where the child is born or through the South Dakota Department of Social Services (DSS), Department of Health or the local Register of Deeds Office.

Both the mother and biological father must provide their address, date of birth and Social Security number on the affidavit. The paternity affidavit must be signed by the mother and father in the presence of a notary. The hospital may be able to provide notary service. The completed, signed and notarized affidavit may then be turned into the hospital or may be completed at a later date and forwarded to the South Dakota Department of Health's Vital Records Program in Pierre.

What is paternity or genetic testing and when is it needed?

Genetic testing compares the DNA, or bodily substances, of the child, mother and alleged father to determine the probability that the alleged father is the biological father. These tests are extremely accurate. The tests determine if the alleged father is not the biological father, or determines with a 99 percent or higher degree of certainty that the alleged father is the child's biological father. The DNA samples are generally saliva collected using buccal swabs (much like a Q-tip).

Genetic testing should be requested when either the mother or the alleged father has doubts as to whether the alleged father is the biological father of the child, or does not wish to voluntarily acknowledge paternity. Upon request of the mother or the alleged father, DSS or the circuit court may order genetic testing in appropriate cases. Genetic test results of 99 percent or higher probability of paternity creates a presumption that the alleged father is the biological father of the child and allows the establishment of a child support obligation without further legal proceedings to establish paternity. If the alleged father is found to be the biological father of the child, he may be held responsible for the genetic testing costs.

How can I request genetic testing?

Consult an attorney regarding the best method of arranging genetic paternity testing. In certain circumstances, DSS can also arrange genetic testing.

Are the parties legally required to sign the paternity affidavit?

No. Signing a paternity affidavit is a voluntary act by the mother and alleged father. If the affidavit is not signed, genetic testing or subsequent legal proceedings in circuit court may be required to establish paternity.

What are the legal consequences of signing a paternity affidavit and voluntarily acknowledging paternity?

If both parties sign the affidavit under oath, the law will presume that the named father is the biological father of the child. The mother, the father, their attorney or DSS may then proceed to establish a child support obligation without any further legal proceedings to establish paternity.

If a paternity affidavit is signed, can paternity be disputed at a later date?

Yes. Either party can rescind the affidavit by commencing an Action in circuit court within 60 days of signing the affidavit so long as there is not an order from a court determining paternity that is over 60 days old.

Under South Dakota law, a party can also contest paternity for a period of up to three years after signing the paternity affidavit on the basis of fraud, duress or material mistake of fact. In order to do so, the party will be required to commence an action in circuit court.

A presumed or legal father may initiate a court action at any time prior to the child's eighteenth birthday to have himself disestablished as the child's father. Genetic test results that either exclude the presumed or legal father will have to be filed with the court. The court may then set aside a presumption or prior determination of paternity if it is in the child's best interest. If the presumed or legal father has a child support order and then disestablishes paternity, the presumed or legal father continues to be responsible for child support accrued prior to the date of entry of the disestablished order.



How long after the birth of a child can paternity be established?

South Dakota and federal laws allow establishment of paternity any time before the child reaches the age of 18. It is in the interests of all parties to establish paternity as soon as possible following the birth of the child. Also, the mother and alleged father may voluntarily sign a paternity affidavit any time, regardless of the age of the child, in order to have the alleged father's name placed on the birth certificate.

Can the mother and the alleged father sign the paternity affidavit if one or both of them are minors?

Yes. The mother and alleged father may voluntarily acknowledge paternity by completing and signing the paternity affidavit even if both or one of them is under 18.

What if the alleged father does not acknowledge paternity?

If the alleged father does not voluntarily acknowledge paternity and sign the paternity affidavit, the mother or DSS, in appropriate circumstances, may initiate actions to establish paternity or to resolve the matter through administrative or legal proceedings.

For more information, you may want to visit with an attorney or contact the Division of Child Support.

What if the mother is currently married and her husband is not the father of the child?

If the mother is married and her husband is not the biological father of the child, a three-way paternity affidavit can be signed by the mother, the alleged father and the husband. The three-way paternity affidavit can then be filed with the Department of Health's Vital Records Program for inclusion in the child's birth record.

Also, the alleged father can sign the paternity affidavit even if he is married to someone else. The three-way paternity affidavits are available at the hospital where the child was born and the Department of Health and DSS.

If both the mother and alleged father sign the paternity affidavit, does that mean the child's last name must be the same as the alleged father's?

No. The child's last name does not have to be the same as the alleged father's last name just because a paternity affidavit has been signed by the mother and alleged father. The mother and alleged father must agree on the last name of the child which must be either the surname (last name) of the mother or the father. Both the mother and alleged father's names will appear on the birth record and birth certificate.

What about child support?

If the parents and the child are not living in the same household, and the parents are not jointly supporting the child, a court order requiring the non-custodial parent to pay child support based upon the South Dakota child support guidelines can be obtained.

The guidelines consider the number of children and the incomes of both parents to compute a child support obligation amount. One or both of the parents may be ordered to provide health insurance coverage for the child, pay a portion of medical expenses and pay a portion of child care expenses, if any.

The non-custodial parent will still be required to pay child support even if he or she moves to another state. States have mutual agreements and laws with each other to enforce and collect child support. If the custodial parent is receiving Temporary Assistance to Needy Families (TANF) or is receiving child support enforcement services, the Division of Child Support will proceed to establish and enforce an appropriate child support order based on the child support guidelines.

How long will the parties be required to pay child support in South Dakota?

Under South Dakota law, and unless a court orders otherwise or the child is legally emancipated, the parents are required to support their child until the child reaches the age of 18, unless the child is a full-time student in a secondary school, and then until the child graduates or attains the age of 19, whichever comes first.



Does the father have the right to see or visit the child?

Yes. In most circumstances, both parties have the legal right to see and visit the child. Visitation can be established by a mutual agreement of the parties or established by a circuit court order. Following the establishment of paternity, either parent also has the legal right to request the circuit court to change the visitation or custody arrangements based upon the best interests of the child.

The Unified Judicial System has developed pro se parenting time (visitation) forms to assist parents in obtaining a parenting time order or enforcement of a parenting time order. The forms are available for downloading here: <https://ujslawhelp.sd.gov/parenting.aspx>.

The Division of Child Support will not get involved in issues or disputes related to either visitation or custody.

Who can I contact for more information?

If you have any questions about the information in this booklet or questions about your legal rights and responsibilities, please visit with an attorney or you can contact DSS' Division of Child Support.

Address: 700 Governors Drive, Pierre, SD 57501

Phone: 605.773.3641

Email: DCS@state.sd.us

Online: dss.sd.gov/childsupport/

If you have any questions about the child's birth record, please contact the Department of Health, Office of Vital Records at 605.773.4961.





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South Dakota law permits the establishment of paternity by voluntary acknowledgment if the mother of the child was not married at the time of the child's conception, birth or anytime in between. **This form must be signed by both parents in front of a notary public.**

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SOCIAL SECURITY NUMBER - Disclosure of the social security number is mandatory pursuant to SDCL 25-7A-56.2 and the Social Security Act § 205(c)(2), 42 U.S.C. § 405(c)(2) (1998). The social security number will be used by the Department of Social Services to facilitate collecting child support and locating child support obligors, and by the Internal Revenue Service or determining tax benefits based on support or residence of children."

PLEASE SUBMIT THE ORIGINAL NOTARIZED PATERNITY AFFIDAVIT. ANY ALTERATIONS MAY VOID THE AFFIDAVIT.

A PATERNITY AFFIDAVIT CAN ONLY BE USED TO CHANGE THE CHILD'S SURNAME AND ADD THE FATHER'S INFORMATION. CHANGES TO THE CHILD'S FIRST AND MIDDLE NAME OR OTHER INFORMATION ON THE RECORD REQUIRE AN AMENDMENT. SEE <http://doh.sd.gov/records/> FOR APPLICATIONS TO AMEND A VITAL RECORD. ONCE THE REQUESTED ADDITIONS/CORRECTIONS HAVE BEEN MADE ON THE BIRTH RECORD TO THE CHILD'S SURNAME AND THE FATHER'S NAME AND INFORMATION, NO FURTHER CHANGES WILL BE MADE ON THESE ITEMS EXCEPT BY COURT ORDER.

ONCE THE DEPARTMENT OF HEALTH HAS RECEIVED THE PATERNITY AFFIDAVIT, IT WILL BECOME PART OF A SEALED AND CONFIDENTIAL FILE WHICH CAN ONLY BE OPENED BY COURT ORDER OR AT THE REQUEST OF THE DEPARTMENT OF SOCIAL SERVICES. THEREFORE, **IF YOU WISH TO KEEP A COPY OF THIS AFFIDAVIT, PLEASE MAKE ONE BEFORE YOU SEND IT IN.**

FEES:

PREPARING NEW BIRTH CERTIFICATE WITH PATERNITY.....\$5.00

Paternity relates only to the addition of the father's name and information and changes to the child's surname. Any other changes to the birth record must be done using the amendment process.)

CERTIFIED COPY OF NEW BIRTH CERTIFICATE.....\$15.00 each

A completed application must be submitted to obtain a copy of the record. Applications can be obtained on the internet at <http://doh.sd.gov/records/>, from the local Register of Deeds or by calling (605) 773-4961