



# Paternalty and Child Custody

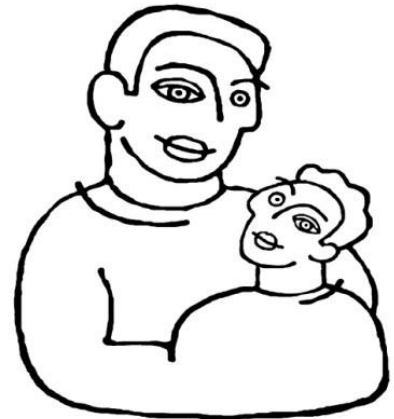
## How is paternalty established?

“Paternalty” means who is legally the father of the child. If the parents are not married when the child is born, there is no legal father until paternalty is established. There are 2 ways to establish paternalty.

### 1. Recognition of Parentage (ROP)

Both parents sign a sworn statement that the man is the child’s father. You can get the form at the hospital when the child is born or from your county’s child support office. You can also call the Minnesota Department of Human Services at (651) 431-2000. To file the ROP, mail it to:

Minnesota Department of Health - Office of State Registrar  
PO Box 64882  
St. Paul, MN 55164-0882



The ROP is only valid when it is filed with the Department of Health. If the mother is not married to someone else, and the parents are at least 18 years old, this statement of paternalty is final. The ROP can be done at any time. You do not need a lawyer, but talk to one if you can before you sign it, to learn how it will affect your rights.

The ROP can be used by a court to set child support. It does **not** give the father **any** right to custody or to parenting time (visitation).

The mother or the man who signed the ROP can cancel (revoke) the ROP within 60 days. You have to do this in writing! Get the form you need from the Department of Health. File it with them to make it valid. After 60 days, you can only cancel the ROP by going to court. You need evidence that the man is not the father. There are time limits to do this. Act fast!

### 2. Paternalty Order From Court

Sometimes the court must decide paternalty. One parent may not want to sign the ROP, or more than one man may claim to be the father, or the mother may have been married to someone else when the child was born. The court will look at the evidence, including genetic

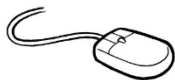
tests and the past relationship between the mother and the possible father. You can ask for a genetic test but you do not HAVE to have one to establish paternity.

If the parents are married, the husband is thought to be the father of the child. If the husband or wife wants to start a court case to *deny* paternity, then, in some cases, they must start it before the child turns 3.

### Will the county attorney help me?

- If you have custody of the child, the county attorney will file a case to set paternity, and child and medical support. If you are a parent who does not have custody but wants to establish paternity, like an unmarried father, the county should help you in most cases. You may end up owing child support once paternity is established.
- The county attorney will **not** handle custody or parenting time (visitation) issues.
- A parent with low income can ask the court for a lawyer in a paternity action. And only for establishing paternity. If paternity has been established, or you have signed an ROP, and you need help with custody or parenting time, call your legal aid office or volunteer lawyer office.

You can [find forms](#) to fill out yourself if you do not have a lawyer. The state court website has forms on custody and parenting time.



- Go to [www.mncourts.gov](http://www.mncourts.gov)
- Click on *Get Forms* on the top menu
- Click on the topic you need



### Why is it important to establish paternity?

Paternity has to be established for a court to recognize certain rights of fathers and children.

- A father does not have a **right** to custody or parenting time until paternity is established.
- A child has a **right** to get child support. Child support can't be ordered until paternity is established. A child can get support until they are 18 years old (20 years old if still in high school). Support can include paying health insurance and medical and day care costs. See our fact sheet [Getting Child Support](#).

When the court first sets child support, the father may also have to pay for the costs of the birth of the child, past child support or MFIP benefits.

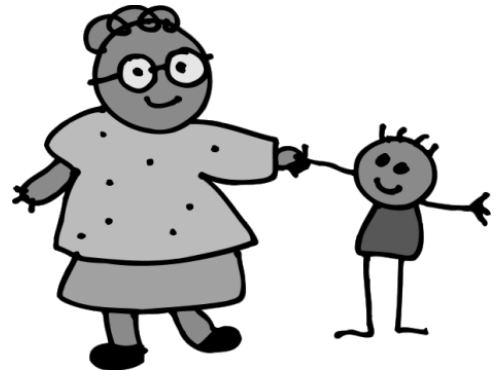
- If the father dies, the child can inherit from the father. The child can get benefits, such as Social Security, if the father gets them or if he dies.

## How Are Custody and Parenting Time Set?

- If the parents were not married when the child was conceived or born, the mother has sole custody until a court decides otherwise.
- If there is a **paternity hearing**, the court will decide custody, child support and parenting time based on the best interests of the child, the same as it would in a divorce.
- The father has no right to custody or parenting time unless he goes to court for them.
- If there is an ROP and no paternity hearing, the father must bring a motion to get custody and parenting time. The court will decide what is best for the child.
- If there is an ROP, and the parents have a domestic abuse hearing, the court may grant the father temporary parenting time in the Order for Protection.
- If the parents get married and later get divorced or ask for legal separation, the court will decide custody and parenting time in the divorce or legal separation case.

## What types of custody are there?

- **Legal custody** means the right to make major decisions for the child, like schools, health care, and religion. Legal custody can be individual (one parent) or joint (both parents).
- **Joint legal custody** means that both parents have equal rights and duties in making these major decisions.
- **Physical custody and residence** means living with the child and having the daily care and control of the child. One parent can have sole physical custody even if the parents have joint legal custody.
- **Joint physical custody** means that the child lives about half the time with one parent and half with the other.



## How is custody decided?

If both parents want custody of the child, the court looks at all important facts to decide on the **best interests of the child**. These are:

1. A child's physical, emotional, cultural, spiritual, and other needs. How does the parents' plans for the child affect these needs and the child's development?

2. Does the child have any special medical, mental health, or educational issues that need special parenting arrangements or access to services?
3. What does the child want? If the court decides the child is able, old enough and mature enough to make a choice.
4. Has domestic abuse happened in either parent's household or relationship? What are the details of what happened and will it affect parenting or the child's safety or needs?
5. Does a parent have physical, mental, or chemical health issues that affect the child's safety or developmental needs?
6. How has each parent provided care in the past?
7. The willingness and ability of each parent to keep caring for the child. How will the parent meet the child's developmental, emotional, spiritual, and cultural needs? Can the parent be consistent and follow through with parenting time?
8. Will changes to home, school and community affect the child's well-being and development?
9. The relationship of the child with each parent, brother and sister, and anyone else who is important to the child. How will the proposed custody plans affect these relationships?
10. It is usually better for the child to spend as much time as possible with both parents. The court looks at this and also looks at if spending less time with one parent might harm the child in some way.
11. Will each parent help the child have contact often and regularly with the other parent? (except when there is family violence – see #4)
12. The willingness and ability of parents to cooperate in raising their child. Can the parents share information? Can they keep the child away from their conflicts? Do they have good ways to resolve arguments over big decisions about the child?



**The court must write findings on *all* of these things.** The court must say how it decided on the best interests of the child. The court will not look at the actions of a parent if it does not affect their relationship to the child. The court will look at whether a parent has made a false charge of sexual abuse, physical abuse or neglect.

## Can custody be changed?

Yes. The court can change custody if the situation of the child or the parents changes, and a new order is needed for the best interests of the child. **The court will only look at facts that have changed since the old order or facts that were unknown at the time of the old order.** The court can only change custody when:

- Both parties agree to the change or
- The parent with custody has let the child become integrated into (fully part of) the home of the other parent or
- The child's present home endangers his/her physical or emotional health, or growth, and a change will do less harm than staying in an unsafe home or
- The court has denied a request of the primary custodial parent to move the residence of the child to another state, and the custodial parent moves anyway, despite the court's order.



To change a custody order, the parent must bring a motion in court. The parent must have witnesses, affidavits or other documents to show one of the above reasons to change custody.

**Note:** Without any of the circumstances above, a parent has to wait one year from the time custody is first decided before they can ask for changes. If there was a motion to modify a parent has to wait 2 years from the time the motion is decided before they can ask for changes. It doesn't matter if the motion to modify was granted or not.

**Fact Sheets are legal information NOT legal advice. See a lawyer for advice.**

*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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