



# Methods for Establishing Paternity in Wisconsin

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A child born to a married couple is presumed, by law, to be the child of both spouses. Paternity issues generally arise when an unmarried woman has a child. Depending on the circumstances, a paternity action may be filed in court with paternity decided by a judge, though Wisconsin law allows for paternity to be established using certain procedures that do not require going to court. This issue brief summarizes the various methods for establishing paternity under Wisconsin law.

## ACKNOWLEDGMENT OF A MARITAL CHILD

If unmarried parents marry after their child is born, the parents may establish paternity by signing a form, referred to as an “acknowledgment of a marital child.” The parents must sign the form before a notary and then submit the form to the state registrar’s office of vital records, along with the parties’ marriage record. Local child support agencies can assist parents with the form. Upon receiving the signed form, the state registrar will add the man’s name to the child’s birth record.<sup>1</sup>

## VOLUNTARY PATERNITY ACKNOWLEDGMENT

If both the child’s mother and the male are at least 18 years of age and believe the male is the child’s father, then the male and mother may establish paternity by signing a statement acknowledging paternity. The statement, referred to as the “voluntary acknowledgment of paternity” form, is commonly provided by a hospital or midwife after a child’s birth, though the form may be signed at any time after a child is born. The parents must sign the form before a notary and submit the form to the state registrar’s office of vital records to add the male’s name to the child’s birth record. Again, local child support agencies may assist with this form. State law presumes that a male is a child’s father if he and the mother have acknowledged paternity and if no other male is presumed to be the father due to marriage.<sup>2</sup>

## ADMINISTRATIVE DETERMINATION BASED ON GENETIC TEST RESULTS

Paternity may be established based on genetic tests performed pursuant to a local child support agency’s administrative subpoena power. Specifically, under this method, genetic test results may constitute a conclusive determination of paternity if all of the following conditions apply:

- Both the child’s mother and the male are over 18 years of age.
- A county child support agency required genetic tests be performed using its subpoena power.
- The test results show that the male is not excluded as the father and that the statistical probability of the male’s parentage is 99 percent or higher.
- No other male is presumed to be the father under legal presumptions of paternity related to marriage or acknowledgment.

If a county child support agency receives genetic test results and the above requirements are satisfied, the agency must notify the mother and male of the results and other information, including the right to object. If the mother or male timely object, the agency must commence a paternity action on behalf of the state. If neither the mother nor the male timely object, the agency must file a report with the state registrar to add the man’s name to the child’s birth record, which creates a conclusive determination of paternity and has the same effect as a judgment of paternity. Subsequently, a court action may be filed to address the issues of legal custody, physical placement, or child support.<sup>3</sup>

## COURT RULING IN A PATERNITY ACTION

Wisconsin law also allows for paternity to be established by a court in a paternity case, up until a child turns 19. Several persons are eligible to commence a paternity action under Wisconsin law, including the child, the child's mother, a man alleging to be the child's father, or a child support agency on behalf of the state. In addition, the husband of the mother, who is presumed to be the child's father, or a man legally acknowledged as the child's father at birth, may bring an action to refute paternity. If a man is named as the possible father in a petition for paternity and does not agree, or, if a man states that he is the father of a child and the mother does not agree, a court will make a ruling about paternity.<sup>4</sup>

### Court Procedure

A paternity action is commenced by filing a **summons, notice, and petition for paternity** with the clerk of court for the county in which the child or the alleged father resides. The person filing the action must generally serve the filed documents on the other parent or alleged parent within 90 days of filing the action. The alleged father has a right to counsel in the proceeding. A guardian ad litem (GAL) is appointed for a minor parent, and may be appointed for the child in some circumstances.<sup>5</sup>

Paternity court proceedings are closed to the public and generally involve three stages: the first appearance; the pretrial hearing; and the trial. Paternity can be acknowledged at any of these stages. Generally, the alleged father may admit paternity, deny paternity, or admit paternity subject to confirming genetic tests.<sup>6</sup>

At the **first appearance**, the court must inform the parties of certain information, including the rights and obligations created by a paternity judgment, the right to request genetic tests, and the existence of various defenses to paternity, such as sterility at the time of conception, or lack of intercourse, or another man having intercourse with the mother during the preconceptive period.<sup>7</sup>

At the **pretrial hearing**, the court must evaluate the probability of determining paternity at trial. At this stage, witnesses and other evidence may be presented, as described below. The court may, at the conclusion of the evidence, make a recommendation to the parties regarding the paternity action, including dismissal or settlement. If no settlement is reached at the pretrial stage, a **paternity trial** is held in two parts: first, to determine paternity; and second, if paternity is established, to determine child support, legal custody, periods of physical placement, and any related issues, if necessary.<sup>8</sup>

After a settlement by the parties or upon conclusion of a paternity trial, the court enters a **judgment of paternity**. The judgment contains an adjudication of the child's paternity, an order requiring payment of child support, an order for the child's legal custody and physical placement, an order as to which parent may claim the tax exemption for the child, and orders relating to the payment of birth expenses and costs and fees of the action, including GAL fees and genetic testing fees.<sup>9</sup>

### Evidence Used to Establish Paternity

Genetic tests are a common form of evidence used in a court action to determine paternity, though other types of evidence of paternity are permitted. Wisconsin law generally requires a court to order genetic tests, unless certain exceptions apply. If the results of genetic testing show that the alleged father is not excluded as a possible father of the child and that the statistical probability of the alleged father's parentage is 99 percent or higher, the alleged father is rebuttably presumed to be the child's father.<sup>10</sup>

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<sup>1</sup> ss. 69.15 (3) (b), 767.803, and 891.41, Stats.

<sup>2</sup> ss. 69.15 (3) (b), 767.805, and 891.405, Stats.; 42 U.S.C. s. 666 (a) (5) (D).

<sup>3</sup> ss. 767.804 and 891.407, Stats. For more information, see Legislative Council, 2019 Wisconsin Act 95, [Act Memo](#).

<sup>4</sup> ss. 767.80 (1) and 893.88, Stats.

<sup>5</sup> ss. 767.80, 767.813, 767.815 to 767.83, 801.02 (1), and 801.11, Stats.

<sup>6</sup> ss. 767.853, 767.863, 767.88, and 767.883, Stats.

<sup>7</sup> ss. 767.813 (5g), 767.86, and 767.863 and Stats.

<sup>8</sup> ss. 767.853, 767.88, and 767.883, Stats.

<sup>9</sup> ss. 767.89 and 767.893, Stats.

<sup>10</sup> ss. 767.84, 767.87, and 891.395, Stats.