

# Fact Sheet on Paternity

## Prompt identification

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 states “within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence.”

DHHS Administrative Memo 2-2013 states that “a diligent search for non-custodial parents and alleged fathers must be conducted for consideration and determination of him or her as a resource or placement option for their child. The process of identification of parents should begin at first contact with the family and continue through initial assessment and ongoing case management...All efforts taken to identify and locate the non-custodial or alleged father will be entered in N-FOCUS in the Kinship Narrative.”

## Proving paternity<sup>1</sup>

For any child conceived during a valid marriage, there is a rebuttable presumption that the husband is the legal father to the child. It is the burden of the husband (legal father) to bring an action in court proving that he is not the biological father of the child. Until that time, he is the legal father for the child. For any child not conceived during a valid marriage, a paternity determination is required.

The Nebraska Juvenile Code confers jurisdiction upon the juvenile court over the paternity determination with respect of any child who is under the court’s jurisdiction. Prior to any type of paternity determination, the alleged father is considered the “putative” father.

A paternity determination is a finding by the court that a man is the father of a child. The fact of a child’s paternity may be established by either of the following two methods:

- A. *By Acknowledgement.* The putative father’s signing of a notarized document acknowledging that he is the father of a named child is an “acknowledgement of paternity” and creates a rebuttable presumption that he is, in fact, the father of the child. After the expiration of the recession period, the acknowledgement of paternity is considered to be a “legal finding” which can only be challenged on the basis of fraud, duress or material mistake of fact. The court’s receipt into evidence of the “acknowledgement of paternity” provides sufficient basis for the court to make a determination as to the paternity of a child under its jurisdiction.
- B. *By Judicial Proceeding.* Paternity may also be established judicially by an action filed in juvenile court. The paternity action is initiated by the filing of a complaint. This is a separate legal action than the action which conferred juvenile court’s jurisdiction. The court may order the child, the alleged father and the mother to submit to genetic testing. A party who willfully fails to comply with such order may be held in contempt of court. When the results show a probability of paternity of 99% or more the results create a rebuttable presumption of paternity.

The burden of proof in a paternity proceeding is upon the petitioner. Evidence of genetic test results in the form of a verified written report may be introduced into evidence without the need for proof of authenticity unless a written request is made at least 30 days prior to trial. Once paternity is determined by either method, the “putative” father becomes the legal father and subject to the jurisdiction of the juvenile court.

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<sup>1</sup> Source: Juvenile Court Law and Practice, 2013-2014 Edition, Christine P. Costantakos, West Publishing.