Northwest Justice Project

Parentage and Parenting Plans for Unmarried Parents in Washington

June 2014

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Parentage and Parenting Plans for Unmarried Parents in Washington

Section 1: Introduction

This publication should help you learn the laws that apply when you have a child and you are not married to or in a registered domestic partnership with the child's other parent. We include information on:

- How to determine if parentage has been legally established and, if appropriate, how to file to establish the parentage of your child (called a parentage action);
- How to get a custody order (called a parenting plan or residential schedule).

This publication may also help you if you want to establish legally that you are **not** the child's parent. This publication gives an overview of the law. It should also help you decide what type of case you need to file in court. It tries to answer basic questions (**examples**: where your case should be filed and how the court decides who gets custody of the children), and has some basic child support information.[1]

> ◈ State law about marriage and marital dissolution also applies to marriages between same-sex couples. The Legal Voice's publication called Questions and Answers: Marriage for Same-Sex Couples in Washington has more information. See www.legalvoice.org.

There have been big changes over time to the *Uniform Parentage Act (*UPA*),* the state law that governs parentage. Different legal rules may apply to you depending on when your parentage case or your paternity affidavit or acknowledgment of paternity was filed. This publication will talk mainly about the newer Uniform Parentage Act, effective as of July 27, 2011. It is at RCW 26.26.011 et seq.

You can also use one of our do-it-yourself packets that have forms and instructions for filing or responding to a Petition to Establish Parentage, or a Petition for a Parenting Plan/Residential Schedule or Child Support. **We also have packets that may help you get Court orders quickly or immediate help in responding to a case filed by someone else.** A complete listing of our family law packets is at the Washington LawHelp web site at www.washingtonlawhelp.org. Or call CLEAR at 1-888-201-1014.

There are several different legal actions to determine parentage. We do not have packets for all of them.

Try to meet with a family law attorney before filing anything in court**, especially** if:

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[1] In this packet, you will see footnotes, like this one. These footnotes will tell you the law or court case that supports the statement that comes before the footnote. RCW stands for Revised Code of Washington, the law of Washington State. Court cases have names, such as *In re the Parentage of Child*. Use the footnotes to look up the law at your local law library, or to tell the court when you are trying to make a legal argument. The references to the law are up to date as of the date we published this packet. The law sometimes changes before we can update the packet.

- you are (or were) married to someone who is not the biological parent of your child
- you believe parentage was established in another state or country
- the other parent is going to disagree with any part of what you are requesting
- you think that Washington should not have jurisdiction over you or your children

If you are very low-income and you live outside King County, call CLEAR at 1-888-201-1014.

> ◈ Our "**Words You May Need to Know"** at the end of this publication may help with some terms used here.

A. Who should NOT use this publication?

Do not use this publication if you are the parent of a child who was conceived through "assistive reproduction." Assisted reproduction includes:

- artificial insemination
- donation of eggs and/or embryo
- in vitro fertilization
- sperm donation

If you conceived your child through assistive reproduction, talk to a lawyer.

Section 2: Some Reasons to Establish Parentage for Your Child

- You want to establish a legal relationship between the child and the parent;
- You want to prove there is no legal relationship between your partner and child (such as might be the case if your spouse or domestic partner is not the child's biological parent);
- You want a custody order (parenting plan or residential schedule) that states who the children will live with, how much time they will spend with the other parent, and who will make important decisions about the children;
- You are afraid the other parent might take the child and deny you contact;
- You want to set child support or give the child rights to inherit from the other parent;
- You want to travel outside the U.S. with the child; OR
- You want to change the child's last name.

Section 3: How do I Establish Parentage?

You establish parentage by either paternity affidavit (or acknowledgment of paternity) or by court order.

A. Establishment by Paternity Affidavit or Acknowledgment of Paternity

The most common official way to establish the parentage of a child has been by having the parents sign a paper called a *paternity affidavit* or, effective July 22, 2011, a *paternity acknowledgment.*)

> ◈ Effective July 22, 2011, the state has changed the name of the paternity establishment form from a *Paternity Affidavit* to *Paternity Acknowledgment*. If you try to file the old form after July 22, the state will send it back to you.

By signing the acknowledgment, the parents are swearing under penalty of perjury that the person named as the father on the form is the child's only possible father. Hospital staff will give an unmarried mother a paternity acknowledgment form while she is in the hospital after the child's birth. The parents may sign it before the child goes home for the first time. You can also sign a paternity acknowledgment later.

A paternity affidavit or acknowledgment is not a court order. But if you file it with the Washington State Department of Health on or after July 1, 1997, it has the same legal effect as a court order establishing parentage.[2]

A paternity affidavit or acknowledgment is legally binding even if one or more of the people who signed it is a minor (under age 18).[3] A minor has until he turns 19 to rescind (take back) his/her signature on a paternity affidavit.[4]

Washington State will recognize the validity of a paternity affidavit, acknowledgment or denial filed in another state if that state's own laws do.[5]

What does a paternity affidavit or acknowledgment do? It gives the person named as a child's father all the legal rights and responsibilities of the child's parent, including rights to request custody or visitation, and the responsibility to provide child support.

What cannot a paternity affidavit or acknowledgment do? It cannot establish custody, visitation or child support. To establish child support, a parent (or, if the children get public assistance, the State) must ask for a child support order through the Division of Child Support's administrative process, or in court. Either parent may also file an action to enter a custody order or a child support order. This action is a Petition for Residential Schedule/Parenting Plan or Child Support.

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[2] RCW 26.26.320.

[3] RCW 26.26.315(4).

[4] See RCW 26.26.330.

[5] RCW 26.26.350.

B. Establishment by Court Order

Another way to establish parentage is by filing a legal case in court, asking the court to determine who the child's parent is. In Washington, we call this type of case a parentage case. If you do not want the State to file this case or if the State refuses to do so (see below), then you will need to hire a lawyer or use our do-it-yourself packet, *Filing a Petition to Establish Parentage*.

If you do not have a paternity affidavit or acknowledgment, or if your affidavit was signed before July 1, 1997, you may ask the State to file a parentage case on behalf of your child. The prosecuting attorney's office in your county has a special group of prosecutors who work on parentage and child support cases. The prosecutor will not represent either parent, but will file the case and help keep it moving through the court system. Having the prosecutor file the case also means that any settlement of your case that you and the other parent agree to will also need the State's approval. To ask the State to start a parentage case, contact your local prosecutor's office, or your region's Division of Child Support office, or check the DCS website: www1.dshs.wa.gov/dcs.

If there is no paternity affidavit or acknowledgment that establishes a child's parentage, the court will decide a child's parentage based on the evidence presented by the people involved in the court case (the "parties" to the case). If the parties all agree who the child's parent is, the court may decide to establish parentage according to the parties' agreement. It is more common for the court to order the parent, child and the person believed to be the other parent to take a genetic test[6] to determine whether that person is the child's biological parent.[7] If the parent is not available for testing, the law says the court may order genetic tests of that person's parents or other close relatives.[8] If the court orders genetic tests and someone refuses to be tested, the court may hold them in contempt.[9]

After you do genetic testing, the court usually rules that the person who is the child's biological parent (or is more than 99% likely to be the child's biological parent) is the child's legal parent. In some cases, the court may decide that someone who is not the child's biological parent will be the child's legal parent anyway.[10] The court may even rule against doing genetic tests.

> ◈ **Example 1:** John signed a paternity affidavit swearing under penalty of perjury that he is the child's parent. The period for rescission or challenge to the acknowledgment passed before John took legal action to prove he is not the parent. John may be permanently established as the child's parent, even if someone else is actually the child's biological parent.

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[6] People often call genetic tests "blood tests." The actual test is almost never a blood test. A lab gets some skin cells from each party by swabbing the inside of their mouths. The test, known as a "buccal swab," is painless.

[7] See RCW 26.26.405.

[8] RCW 26.26.435.

[9] RCW 26.26.575.

[10] RCW 26.26.535 has a list of reasons the court might deny genetic testing.

> ◈ **Example 2**: Mario acted as a child's parent for the first two years of the child's life. He later decided to challenge his parentage of the child. The court may decide that it is not in the child's best interest to allow the challenge and may decide that Mario will be the child's legal parent permanently.[11]
>
> ◈ The next section talks more about a person who has held him/herself out as the child's parent for the first two years of the child's life.

C. Establishment by Legal Presumption

Effective July 27, 2011, you are presumed to be a child's parent if, for the first two years of the child's life, you lived in the same home as the child and openly held the child out as your own.

See a lawyer for advice if you believe this new law describes you or your child's other parent.

Section 4: Where Should I File My Petition for Establishment of Parentage or Petition for Parenting Plan?

A. Does Washington have personal jurisdiction over the alleged parent?

If you want to file a Petition to Establish (or Disestablish) parentage in Washington, make sure Washington has *personal jurisdiction* over the alleged parent.[12] The Uniform Parentage Act (UPA) and the Uniform Interstate Family Support Act (UIFSA) determine whether Washington has personal jurisdiction over the alleged parent.

> ◈ If you also want to ask for a parenting plan or residential schedule as part of the parentage action, make sure Washington has jurisdiction over the child. See Subsection B, below.

The person whose parentage is being determined is the "alleged parent."

If the alleged parent lives in Washington: you may file a parentage action in Washington. If the alleged parent does not live in Washington, you may be able to file your case in Washington anyway. Washington may have personal jurisdiction over the alleged parent for several different reasons, including that the alleged parent:

- signed a paternity affidavit, acknowledgment or denial in Washington

[11] RCW 26.26.116(2) explains what the parent must do in the first two years of the child's life.

[12] RCW 26.26.515(1).

- lived in Washington and provided financial support for the child before the child was born (even if the child was not in Washington)
- lived in Washington with the child
- brought the child to Washington to live or caused someone else to bring the child to Washington to live
- had sexual intercourse in Washington that may have resulted in the child's conception
- agrees to personal jurisdiction in Washington
- responds to the parentage action without challenging personal jurisdiction
- is personally served with the summons and petition for the parentage action in Washington[13]

If there is more than one alleged parent (**example**: two possible fathers): you may file a parentage action in Washington even if Washington has personal jurisdiction over only one of the alleged parents. You will only be able to establish parentage of the parent over whom Washington has personal jurisdiction.

If genetic tests show that the Washington alleged parent is not your child's biological parent, you may need to file a second parentage action in the state that has personal jurisdiction over the other alleged parent to determine that person's parentage of the child.[14] The Division of Child Support may be able to help you file parentage actions in more than one state. They can refer you to government agencies in other states that may be able to help you establish parentage or child support. Call DCS at 1-800-442-KIDS.

If the children have not always lived in Washington: read Paragraph B of this Section for help in deciding whether Washington has jurisdiction over the children. If Washington does not have jurisdiction over the children, you may still file a parentage action in Washington, but you must file a petition for a parenting plan or custody order in the state that has jurisdiction over the children.

> ◈ If the alleged parent is a Native American who is living on reservation land (even if it is not the alleged parent's tribe of origin), you may have to file your parentage action in tribal court.[15] Talk to an Indian law attorney to find out where to file.

B. Does Washington have jurisdiction over the child?

If you are filing a Petition for a Parenting Plan/Residential Schedule or Child Support in Washington, and you want a parenting plan or custody order, make sure Washington has

[13] RCW 26.26.515(2); *see also* RCW 26.21A.100.

[14] RCW 26.26.515(3).

[15] RCW 37.12.010.

jurisdiction over the child. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) determines whether Washington has jurisdiction over your children.

If you want the court to set child support against the other parent as part of your Petition for a Parenting Plan or Child Support case, make sure Washington has personal jurisdiction over the child's other parent. See discussion Subsection A, above.

If Washington does not have jurisdiction over your children, do not file for a parenting plan or custody order in Washington.[16] You may need to file a parenting plan or custody action in another state. If Washington has jurisdiction over the alleged father, you may file a Petition for Parenting Plan/Residential Schedule or Child Support to ask only for child support.

> ◈ If you want only child support and not a parenting plan or custody order, you may file a Petition for Parenting Plan/Residential Schedule or Child Support in Washington and limit your petition to child support. You could also ask the Washington State DSHS Division of Child Support to help set support through an administrative process. The administrative process often is quicker and easier for people representing themselves. Contact DCS at 1-800-442-KIDS, or see http://www.dshs.wa.gov/dcs/ for information about local offices and DCS services.

- If your children have always lived in Washington and no other state has entered a custody order regarding your children, Washington has jurisdiction over your children. Skip the rest of this section.
- **If your children have not always lived in Washington**, make sure Washington has jurisdiction over them before you file a request for a parenting plan or residential schedule in Washington. Following are some basic guidelines to help you decide if Washington has jurisdiction over your children. Jurisdiction is complicated. **If you have questions about whether Washington has jurisdiction over your children, talk with a lawyer.**

1. **If you already have a court order about custody of the children**, and one of the parties to that case or the children still live in the state that entered the court order, that state will continue to have jurisdiction over the children. You must file a custody action there (this is called *continuing jurisdiction*).[17] If another state has *continuing jurisdiction* over your children but there is jurisdiction in Washington over the parent, you may still file a parentage action or a Petition

[16] The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), RCW 26.27 and forward, and the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. §1738A, determine whether Washington has jurisdiction over your children.

[17] RCW 26.27.211.

for Parenting Plan/Residential Schedule or Child Support, but that case can only be about child support. If Washington has continuing jurisdiction over your children, you may get a parenting plan in Washington.

2. If no court has ever entered an order about custody of your children, Washington has jurisdiction over your children if:

   a. Your children have lived in Washington with a parent (or someone acting as parent) for at least six months in a row before your court case is filed – Washington is your child's home state;

      OR

   b. Your child is less than six months old, and has lived in Washington with a parent (or someone acting as parent) since birth at the time your court case is filed – Washington is your child's home state;

      OR

   c. Washington was your child's *home state* (either a. or b. were true) within six months before your court case is filed, and one parent or person acting as parent has continued to live in Washington since the child left the state.

3. If Washington does not have continuing jurisdiction (under 1. above) or home state jurisdiction (2. above) over your children, you may still be able to get a parenting plan or custody order in Washington, if you can show there is an emergency, or no other state is the children's home state (meets the requirements of 2.a., 2.b., or 2.c. above). [18]

If another state is your children's home state, or was your children's home state within the last six months, then Washington probably will not have jurisdiction over your children until they have lived in Washington for six months in a row.

> ◈ You cannot give Washington jurisdiction to decide custody of your children by agreement.[19] If Washington does not have jurisdiction over your children under the UCCJEA, you must file a court case asking for custody in the state that does have jurisdiction over the children, or you will need to ask the other state to decline jurisdiction and allow Washington to take jurisdiction. If you want to ask another state to decline jurisdiction, talk with a lawyer.

[18] RCW 26.27.201; RCW 26.27.021.

[19] *Campbell v. Campbell,* 180 Ind. App. 351, 388 N.E.2d 607 (1979).

4. **Emergency jurisdiction:** In a few cases in which an emergency exists requiring a court to enter orders to protect your children from abuse, Washington may be able to take emergency jurisdiction over the children.[20] Emergency jurisdiction usually is temporary. Washington's orders typically will last only until someone files a legal case in the child's home state, or the home state declines. Your children must actually be in the state of Washington at the time you file your petition for Washington to take emergency jurisdiction.

> ◈ If Washington takes emergency jurisdiction over your children and you want the children's home state to decide custody of your children, you must file a custody action there as quickly as possible and have the Washington court communicate with the other state. If you wait too long, Washington will become the children's home state. Then the other state can lose jurisdiction to Washington.[21]

If you have any questions about whether Washington has jurisdiction over your children, talk with a lawyer as soon as possible.

C. I have been served with a Petition to Establish Parentage or a Petition for Parenting Plan/Residential Schedule and Child Support. I do not think my case should be in Washington. What should I do?

If you think that the Washington court should not have jurisdiction over you, you must argue about jurisdiction BEFORE you file anything else in the case. Try to talk to a lawyer, if you can afford one. **Do not** do anything that could give Washington jurisdiction over you, such as filing a response, signing agreed orders, or asking the court to grant relief to you (other than dismissing the case).

If you do not tell the court that you do not think Washington has personal jurisdiction over you right at the beginning, you will probably lose your chance to object.[22] You can object to jurisdiction over your children at any time, but it is best to do it early.[23]

If possible, write to the court **before** you have a hearing. Tell the court why you believe Washington does not have jurisdiction over you. You may also file a motion to dismiss for lack of jurisdiction. For more information on filing a motion to dismiss for lack of jurisdiction, talk with a lawyer or see your Courthouse Facilitator.

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[20] RCW 26.27.231(1).

[21] RCW 26.27.231(2).

[22] Civil Rule (CR) 12(b), (g), (h); *Sherrer v. Sherrer*, 334 U.S. 343, 92 L. Ed. 1429, 68 S. Ct. 1087 (1948).

[23] Civil Rule 12(h)(3). Whether Washington has jurisdiction over your children (also called subject matter jurisdiction) is determined by the UCCJEA, RCW 26.27 et. Seq.

If you already have a hearing scheduled, and you cannot write to the court before the hearing, go to the hearing in person (or try to take part in the hearing by phone, by calling the court and arranging it in advance). Tell the judge why you think there is no jurisdiction over your case. If the judge decides in your favor, then s/he should dismiss the case. If s/he does not, be ready to respond to the case in Washington.

> ◈ If you are going to a hearing to tell the judge you think Washington lacks jurisdiction, you should still prepare a response to the motion or petition *before* the hearing. Do not file the response. Bring it with you to the hearing. If the judge decides Washington has jurisdiction, you can ask the judge to read your response.

D. What if my paternity affidavit or acknowledgment is not from Washington?

If the paternity affidavit or acknowledgment was signed in another state, you may still be able to file a Petition for a Parenting Plan. First, make sure Washington has jurisdiction over the children. (See Subsection B of this Section.) Second, you must prove to the court in Washington that your paternity affidavit or acknowledgment legally established parentage under the laws of the state where it was signed and filed. You will also need to be able to show that it is final (can no longer be rescinded or cancelled). Start by contacting the agency in the other state where your paternity affidavit or acknowledgment was filed. Try also to talk to a lawyer in the other state, or research the law about paternity affidavits in that state. Be ready to give written proof of the other state's law to the court in Washington.

E. What if my parentage court order is not from Washington?

If you have a court order establishing parentage from another state, but you need a parenting plan or custody order, you may be able to file a Petition for a Parenting Plan in Washington. First, make sure Washington has jurisdiction to enter a custody order as discussed above in Subsection B of this Section. (Discuss your case with a lawyer if you are not sure.) Before you do so, try to get a certified copy of the court order establishing parentage in the other state, and any other court orders from that case, including any court orders that state has made about custody or visitation.

F. In which county should I file my parentage or petition for parenting plan case?

If the child lives in Washington, you must file your parentage or petition for parenting plan case in the county where the child lives. If the child does not live in Washington, file your parentage action in the county where the alleged parent lives or is found. [24] If the child does not live in

[24] RCW 26.26.520.

Washington, you probably cannot file a petition for parenting plan in Washington. See discussion above in Subsection B.

Section 5: Frequently Asked Questions About Parentage

A. What is a Paternity Denial?

You may use a paternity affidavit or acknowledgment form to establish that a presumed father is **not** the legal father of a child.[25] (It is the same form as an acknowledgment. We call it a *paternity denial* when used this way.)

Example: if a married woman gives birth to a child who is not her husband's, a paternity acknowledgment may establish the child's correct parentage. The husband must sign the acknowledgment form stating he is not the child's father. The child's mother and biological father must also sign a paternity acknowledgment stating that the husband is not the father, and that the biological father is the father. The husband, biological father and mother must all sign the paternity acknowledgment for the acknowledgment to be legally effective. If someone will not sign, you will need to file a Petition for Establishment of Parentage.

> ◈ Under state law, domestic partners may not use the paternity denial. If you are a domestic partner and you need to deny parentage of your partner's child, see a lawyer.

B. What if my Paternity Affidavit was filed before July 1, 1997?

If your paternity affidavit form was signed and filed with the Department of Health **before** July 1, 1997, your acknowledgment is not a permanent legal determination of paternity. It did create a **legal presumption** of parentage.[26] If you are the parent named in a paternity affidavit filed before July 1, 1997, DCS or a court can order you to pay child support. You do **not** have a clear legal right to request residential time with your child in court. If you want to establish parentage to ensure a child has inheritance rights or to establish a parenting plan, you must file a Petition to Establish Parentage, using form WPF PS 01.0100. Or, contact your county prosecuting attorney's office, or the Division of Child Support, to ask the State to start a parentage case.

[25] RCW 26.26.320.

[26] RCW 26.26.370(2).

C. What if I want to cancel the paternity affidavit, acknowledgment or denial?

Act very quickly. Your deadline for rescinding (cancelling) the acknowledgment is probably very short. The date your paternity affidavit or acknowledgment was filed with the Department of Health determines your deadline and how to challenge it.

- If you do not know the date your paternity affidavit or acknowledgment was filed, call the Department of Health at (360) 236-4300. The receptionist may be able to tell you whether there is an acknowledgment on file with the Department, but cannot tell you other information, such as the date your acknowledgment was filed. To find out your filing date or other information about your acknowledgment, write the Department of Health for a certified copy of your acknowledgment. Our do-it-yourself packet called *How do I Request a Copy of my Paternity Affidavit* has instructions about how to request a certified copy of your paternity affidavit or acknowledgment.
- It may take a few weeks to get a copy of your paternity affidavit or acknowledgment.

If your paternity affidavit or acknowledgment was filed after July 1, 1997, you have, **at most**, **60 days** from the date the acknowledgment was filed with the Department of Health to rescind it. If you have any court hearings about the child before your 60 days have passed, **you must rescind your acknowledgement by the date of the first court hearing even if that is earlier than 60 days**. To rescind the acknowledgment, you must file a court action. The Summons and Petition for Rescission of Paternity affidavit Within 60 Days and other forms you will need to file that case are available on the Administrator for the Courts website: www.courts.wa.gov/forms.

Special law for teen parents: Effective July 22, 2011, if you were a minor at the time that you signed a paternity acknowledgment or denial, you now have until your 19th birthday to rescind your signature.

If your paternity affidavit was filed before July 1, 1997, your paternity affidavit is not a final legal determination of parentage.[27] Generally, you may challenge it no matter how much time has passed, by filing a Summons and Petition for Establishment of Parentage, Form WPF PS 01.0100. See our do-it yourself packet, *Filing a Petition for Establishment of Parentage*. However, a court may decide it is against the child's interests to establish parentage. (See Section 3 B.)

[27] RCW 26.26.370.

D. What if I want to challenge parentage and the rescission deadline has passed?

If you signed your paternity affidavit or acknowledgment on or after July 1, 1997, and more than 60 days have passed since it was filed, you may challenge the acknowledgment only for a few specific reasons.

You must file a challenge within four years after you filed the acknowledgment with the Department of Health. If less than four years have passed, you may challenge the paternity affidavit or acknowledgment by filing a court case. You will have to prove there was fraud, duress, or material mistake of fact.[28] To find out whether you can make your case, talk to a lawyer about your case. (**Example**: you might be able to show material mistake of fact if genetic tests show that the father named on the acknowledgment is not the biological father.) In any case where the children are over two years old, the court must appoint a Guardian ad Litem. If more than four years have passed, you may not file any type of legal challenge to the paternity affidavit or acknowledgment.

E. The other parent's name is on the birth certificate. Does that establish parentage?

No. If you and the other parent did not sign a paternity affidavit or acknowledgment and no court has entered an order establishing parentage, the birth certificate alone does not legally establish the parent-child relationship.[29]

You can probably use the birth certificate for some purposes, such as getting veteran's benefits. But you need to establish parentage to get a custody order or to get the right to inherit money or property or Social Security death benefits for your child if the other parent dies.

F. My partner has been with me since the child was born. He has acted in every way like the child's parent. Does that count for anything?

Maybe. Under changes to the UPA effective July 27, 2011, the law presumes you are a child's parent if you do the following **for the first two years of the child's life**:

- you live in the same household with a child
- you openly hold out the child as your own

You may file a court action before the child turns four to challenge this presumption. This may be hard to do. See a lawyer.

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[28] RCW 26.26.335.

[29] If the parents of the child marry each other after the child's birth, the birth certificate may create a legal presumption of parentage. See RCW 26.26.116(d).

G. What if my spouse/domestic partner is not the child's parent?

When a child is born during a marriage or domestic partnership, or within 300 days after a marriage or domestic partnership ends (or the other parent dies), the law presumes both parties are the child's parent. We call the spouse/domestic partner the child's *presumed parent*.[30] The spouse/domestic partner will have all legal rights and responsibilities for the child, unless someone legally disproves the spouse/domestic partner's parentage of the child.

You ask the court to disprove the spouse/domestic partner's legal relationship with the child by filing a Petition for Establishment of Parentage case. Or you can have the spouse/domestic partner, the mother and the child's biological father sign a paternity affidavit or acknowledgment.[31]

H. What if the wrong person is established as the parent?

If you have a paternity affidavit or acknowledgment or a court order that names one person as the child's parent, but you believe that he is not the parent, you must file a legal case to ask the court to name the right person. Act as quickly as possible. Many of the deadlines for filing a legal challenge to a parentage court order or paternity affidavit or acknowledgment are very short. Also, talk to a lawyer, if possible.

1. What if the Paternity Affidavit, Acknowledgment or Denial Is wrong?

> ◈ This subsection only applies where the paternity affidavit, acknowledgment or denial was signed on or after July 1, 1997. If the affidavit or denial was signed before July 1, 1997, go to Subsection B below.

If you believe you are the child's father but you did not sign the paternity affidavit or acknowledgment, you may file a legal challenge to the paternity affidavit or acknowledgment using a "Summons and Petition for Establishment of Parentage Pursuant to RCW 26.26 (Ch. 302 L 2002 § 509(2))," form number WPF PS 16.0100. Our do-it-yourself packet, *Filing a Petition for Establishment of Parentage*, can help.

Under Washington law, you must start your court case no more than four years after the parentage acknowledgment you are challenging was filed with the Department of Health.[32] You will not be able to ask the Department of Health for the filing date of the acknowledgment. (You did not sign it. It is not yours to ask for.)

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[30] RCW 26.26.116(1).

[31] RCW 26.26.310.

[32] RCW 26.26.540(2).

If you think it has been close to or more than four years, you may file your case anyway. Make a motion to ask the court to help you find out the filing date.

2. What if the court Judgment and Order Establishing Parentage is wrong?

If you were a party to the court case in which established parentage, you must file a Motion to Vacate the Judgment and Order Establishing Parentage under Civil Rule 60.

But:

- There are only a few legal reasons for filing a motion to vacate.
- You must make your motion to vacate within a reasonable time after the court entered the final order.

Read Civil Rule 60. Talk to a lawyer. Our packet called *Filing a Motion to Vacate* also has information.

If you were **not** a party to the case that established parentage, you can try to challenge the Judgment and Order Establishing Parentage. You may file a "Petition for Establishment of Parentage Pursuant to RCW 26.26 (Ch. 302 L 2002 §509(2))," form WPF PS 16.0100. Our do-it-yourself packet, *Filing a Petition for Establishment of Parentage*, has forms and instructions.

I. I am not a parent. I am a teenager. The person who signed my paternity affidavit is not my dad. Can a child challenge the paternity acknowledgement or parentage order?

Yes, if:

- The judge did not appoint a guardian ad litem (GAL) to represent you in the court case that established parentage AND
- the acknowledgment or order is not supported by genetic tests[33]

You may file a challenge no matter how much time has passed since the acknowledgment or order was entered using a "Petition for Establishment of Parentage Pursuant to RCW 26.26 (Ch. 302 L 2002 §509(2))," form WPF PS 16.0100. [34]

Section 6: Who Will Get Custody Of Our Children?

In Washington, the courts generally do not use the words *custody* and *visitation* when talking about how much time each parent spends with a child. They talk about the *residential schedule* and *decision-making authority* for the children.

Residential schedule: As part of your parentage petition or petition for parenting plan case, the court can decide which parent the children with live with the majority of the time (or whether they will live with each parent half of the time) and how much time the children will

[33] RCW 26.26.630(2).

[34] RCW 26.26.540(2).

spend with the other parent. If the court only deals with the child's residence and visitation, it will enter a court order called a Residential Schedule.

Residential schedule plus decision-making authority: If the court enters a Parenting Plan instead of a Residential Schedule, it will make decisions about the child's residence and visitation, who will make decisions about the children's school, medical care and other issues, and how the parents will resolve any future disagreements about the parenting plan.

The way the court makes decisions about your temporary and permanent parenting plan is complicated. We give an overview of the law. Talk with a lawyer about your case if at all possible.

A. Who needs a Parenting Plan?

If you and the other parent have any children together who are less than eighteen years old, you must fill out a parenting plan or a residential schedule. If you were served with a petition and a parenting plan or residential schedule by the other parent and disagree with what the other parent is asking for, you must file your own parenting plan/residential schedule so the court knows what you want. The court may enter a temporary parenting plan (to cover the period while the case is pending) and will enter a permanent parenting plan when the case is over.

B. How does the Parenting Plan affect my rights to see my children?

After a judge or court commissioner signs a parenting plan or residential schedule, it is a court order. Both parents must follow it.

If you do not follow the parenting plan or residential schedule, the court could find you in contempt. You could even face prosecution for custodial interference unless you have a good excuse. A good excuse for not following an order would be if following it would cause serious harm to you or the child. Even then, you cannot simply refuse to follow the court order. You must return to court to ask for a change in the order.

If you do not want to follow part of a court-ordered parenting plan, get the other parent's permission in writing, or contact a lawyer. File your action to modify the parenting plan as soon as possible so that the court will approve a new, more appropriate schedule. If you believe your child may be in danger, you can also contact Child Protective Services, State of Washington Department of Social and Health Services (CPS).

C. How will the court decide who the children should live with?

Under Washington law, there are several factors the court must consider when deciding who this.

D. What are some reasons the court might restrict one parent's time with the children?

The court must first consider whether there is a reason under RCW 26.09.191 to limit one parent's residential time with the children, or whether to keep that parent from having any

contact at all with the children. In most cases, the court **must** limit a parent's residential time with a child (and cannot order joint decision-making or alternative dispute resolution) if that parent, or a person living with that parent, has engaged in any of the following:

- Willful abandonment of the children that continues for a long time, or the parent substantially refuses to perform parenting functions (care for the children); OR
- Physical, sexual or a pattern of emotional abuse of any child (whether your child or someone else's); OR
- A history of acts of domestic violence[35] or an assault or sexual assault that causes serious bodily harm or the fear of such harm; OR
- The parent has been convicted as an adult of one of a number of sex crimes, including rape of a child, child molestation, sexual misconduct with a minor, incest, or sexual exploitation of children, or the parent has been found to be a sexual predator.[36]

The court **may** choose to limit a parent's residential time (and order that there will be no joint decision-making or alternative dispute resolution) if the court finds any of the following:

- The parent neglected or substantially failed to provide care for the children; OR
- The parent has a long-term emotional or physical problem that interferes with his/her ability to parent the children; OR
- The parent has a long-term substance abuse problem (including alcohol) that interferes with his/her ability to parent the children; OR
- There is no emotional bond between the parent and the child or that bond is seriously damaged; OR
- That parent has engaged in the abusive use of conflict which has created a danger of serious damage to the child's psychological development; OR
- The parent has denied the other parent contact with the child for a long time without a good reason; OR
- The court finds another reason that unrestricted contact with the parent would be bad for the child.[37]

E. How will the court limit a parent's residential time if it finds a limiting factor under RCW 26.09.191?

If the court decides that a limiting factor applies to one or both parents, there are many restrictions the court could order. In most cases, the court will not allow the children to live the majority of the time with a parent to whom a limiting factor applies. In very rare and serious

[35] RCW 26.50.010(1) defines domestic violence.

[36] RCW 26.09.191.

[37] RCW 26.09.191(3).

cases, where the court decides no other limits will protect the child from harm, the court must order that the parent to whom the limiting factor applies may not have any contact with the child.[38]

There are specific, detailed rules the court must follow if a parent or someone living with a parent has been convicted of a sex crime against children, or has been found to have molested or otherwise harmed children in a civil case such as a dependency (CPS case). There are only very limited cases in which that parent may again have unsupervised contact with his/her child or children.

> ◈ If you or the other parent in your case has been convicted of such a crime, talk with a lawyer. Read RCW 26.09.191 very carefully. We do not address here all of the specific restrictions that apply to parents convicted of sex crimes or sexual abuse.

In the parenting plan, the court may order any restriction that would be "reasonably calculated to protect the child from the physical, sexual or emotional abuse or harm that could result if the child has contact with the parent requesting residential time."[39] Some common restrictions include requiring that parent to:

- See the children only when supervised by a professional supervisor or neutral third party
- Complete domestic violence or substance abuse treatment
- Submit to random drug or alcohol tests (often urinalysis or UAs)
- Complete a parenting class
- Participate in mental health counseling, or take any physician-prescribed medication for his/her mental health condition
- Complete a sexual deviancy evaluation
- Stop interfering with the other parent's contact with the children
- Stop creating conflict or getting into disputes with the other parent without good reason

F. None of the RCW 26.09.191 limiting factors applies. How will the court decide who the children will live with?

If no limiting factors apply, RCW 26.09.187 requires the court to consider a number of specific factors to decide on the residential schedule. The court's goal is to "encourage each parent to maintain a loving, stable and nurturing relationship with the child, consistent with each child's developmental level and the family's social and economic circumstances."[40]

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[38] RCW 26.09.191(m)(i).

[39] RCW 26.09.191(m).

[40] RCW 26.09.187(3)(a).

Most importantly, the court must consider "the relative strength, nature and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child."[41] The court will probably order that the children will live with the parent with whom they are most closely bonded, and who has done more of the day-to-day care of the children. The court will also consider:

- Agreements of the parents, if entered knowingly and voluntarily
- Each parent's past and future potential for parenting the children
- The emotional needs and developmental level of each child
- The child's relationship with brothers and sisters and other adults important to the child, the child's involvement with school, and the child's activities and community
- The parents' wishes
- The child's wishes, if s/he is mature enough to give his/her opinion (usually when s/he is a teenager)
- Each parent's work schedule[42]

The court should give little weight to:

- which parent earns more
- which parent is going to remarry

See Section 7 for Yakima County Superior Court's suggested residential guidelines. These show one idea of how much residential time the children should spend with each parent, in cases where there has been no abuse of the children or domestic violence. If you believe the other parent may present a danger to the children or you, consider a different type of schedule. Talk to a lawyer about what to ask for in your parenting plan.

G. I want joint custody. Will the court order this?

The court can enter a parenting plan or residential schedule that gives each parent half the residential time with the children. It can only do so if the following are true:

- Neither parent has a limiting factor under RCW 26.09.191 AND
- The parents knowingly and voluntarily agreed to the schedule OR
- The parents have a history of cooperation and shared parenting, and live close enough to each another to ensure they can share parenting of the children AND
- The court finds that such a schedule is in the children's best interests[43]

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[41] RCW 26.09.187(3)(a)(i).

[42] RCW 26.09.187(3)(a).

[43] RCW 26.09.187(3)(b).

H. Who gets to make important decisions about the children?

In the parenting plan, the court will also decide which parent will make important decisions about the child. Either parent will be permitted to make emergency decisions about the child, and may make day-to-day decisions (such as what the child will eat, or who will babysit the child) when the child is in that parent's residential care.[44]

For non-emergency decisions, such as where the child will go to school, what doctors or other health care providers the child will see, when the child gets medical care, and what religious institution the child goes to (if any), the court may allow one or both parents to make these decisions. The court must order that only one parent can make these non-emergency decisions if there is a limiting factor under RCW 26.09.191 against the other parent that requires no joint decision-making, or if both parents say that they do not want joint decision-making. The court may order sole decision-making to one parent if that parent disagrees with joint decision-making because:

- One of the limiting factors under RCW 26.09.191 applies to the other parent
- The other parent does not have a history of participating in the decision-making about the children
- The parents do not have a demonstrated ability and desire to cooperate with each other in decision-making
- The parents do not live close enough to each other to make joint decisions in a timely way[45]

Religious upbringing: In most cases, the court should treat decisions about the children's religious upbringing differently from decisions about school and medical care. Unless the court decides that the children may be harmed by being exposed to a parent's religious views, the court should allow each parent to provide the child with the religious instruction the parent chooses while the children are with that parent.[46] This is not "joint" decision-making. It is each parent making decisions on that parent's residential time and not interfering with the other parent's decisions.

I. What is alternative dispute resolution? What does it have to do with the Parenting Plan?

The parenting plan has provisions to help you and the other parent solve any future disagreements about the parenting plan. Alternative Dispute Resolution (ADR) means ways of solving disputes besides going to court. These include:

- counseling

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[44] RCW 26.09.184(4)(a) & (b).

[45] RCW 26.09.187(2).

[46] *See In re Marriage of Jensen-Branch*, 78 Wn. App. 482, 899 P.2d 803(1995).

- mediation
- arbitration

You and the other parent may choose one of the above options. Some people find ADR helpful.

The court will just require you to return to court if you disagree about the parenting plan in the future when one of the following is true:

- a limiting factor under RCW 26.09.191 applies to one parent
- the parents cannot participate in dispute resolution equally
- one you cannot afford alternative dispute resolution[47]

If you choose counseling, you will typically meet with a mental health professional who will use counseling techniques to help you and the other parent solve your disagreement. If you choose mediation, you will meet with a mediator: a neutral third party who may be a lawyer, retired judge or court commissioner, or a mental health professional. The mediator will try to get you to come to an agreement. If you choose an arbitrator, you will meet with a neutral third party (a lawyer, retired judge or court commissioner) who may try to help you reach agreement, but who will make a decision that you both must follow if you cannot reach agreement. If your parenting plan allows arbitration, you will still have the right to file a motion with the court to ask for a review of the arbitrator's decision if you disagree with it.

You will need to pay a counselor, mediator or arbitrator in most cases. It can cost a lot. But ADR can also help you avoid the stress, expense and unpredictability of going to court.

Our publication called Mediation: Should I Use It? has more information.

J. What if I want to move to a different state with the children?

In 2000, the law changed about when and how one parent can move with a child when the parents do not live together and there is a parenting plan or other custody/visitation order in place. All parenting plans must now talk about what must happen if one of the parents wants to move (relocate). That language is part of the parenting plan form. It CANNOT be changed or taken out, even if the other parent agrees. The requirements include:

- having to give the other parent notice before a move
- giving the parent who is not moving a chance to object to the move
- being able to ask the court to change a parenting plan, including which parent the children live with, based on a parent's relocation

Read the law at RCW 26.09.405 through .560. Also, read our publication called Questions and Answers about Washington's Relocation Law.

[47] RCW 26.09.187(1).

K. I just want an Order that formalizes what the living arrangement has been since we established parentage. Is there an easier way to do this?

Possibly. You can file a Motion instead of filing a petition, as long as both are true:

- At the time you file the motion, less than 24 months have passed since entry of the Order establishing parentage AND
- Your proposed parenting plan or residential schedule does not change who has custody

The form is called a Motion for Parenting Plan/Residential Schedule. The form number is PS 04.0500. Download it from the state court forms list.

Section 7: Residential Schedule Guidelines Used in Yakima County Superior Court When Parents Get Along and There is No Need for Restrictions on Either Parent

When parents live away from each other because they are divorced, separated, or never lived together, it is important to set a schedule of time the children will spend with each parent. These guidelines should give you an idea of what one court decided was generally best for a child at each stage of development given somewhat ideal circumstances. Each case is unique. Your court may choose to order a different schedule.

These guidelines are appropriate in cases where the parents get along well and there are no reasons to limit either parent's access to the children. Parents will have to change the suggested guidelines if they live far away from each other, where there has been domestic violence or another limiting factor should restrict visits with one parent, or where the parents are uncooperative with each another to the point that their relationship interferes with the schedule.

Children are influenced by each parent they spend time with. Parents and stepparents must support an ongoing relationship with the other parent. Both parents should help the child know it is normal and healthy to feel good about both parents and to enjoy time with each.

These guidelines were developed by child development experts and were adopted by the Yakima Superior Court. They are arranged by the normal developmental stages of children. **Children are all different**. Some children may fit into an older or younger stage, depending on their personality and abilities. Design the parenting plan to fit the stage you believe your children to be in despite the age guidelines.

INFANTS (Birth to 18 Months)

Birth to Six Months

RECOMMENDATION: two hours, at least twice a week

A baby must have consistent physical care and sensitive, cooperative interaction between the infant and caregiver. The pattern of access should not interrupt the ability of the parents to provide smooth child care routines. Visitation should happen often enough to

help the infant and parent bond. Daily contact of a few hours in the primary residence of the infant is ideal, with both parents sharing in feeding, bathing, changing, and otherwise caring for and playing with the infant.

It is best if both parents are committed to the infant developing a good relationship with both parents. Cooperation is important at any age, but it is the most important factor in designing a plan for infants. When parents cannot restrain themselves from fighting or arguing in from of the infant, visitation should be somewhere besides the residential home. Special family circumstances may require that visitation be in a protected setting or the office of a mental health professional.

During this stage of infancy, frequent and predictable contact with the infant is best. Unless circumstances allow several contacts each week, time with the infant away from the residential parent should be limited to one or two hours at a time.

6 to 18 Months

RECOMMENDATION: Two hours, twice per week and four hours, once per week

The major issue at this age is the forming of secure attachments. The most important features of care giving are stability and responsiveness. Young children can quickly lose feelings of attachment to people they do not see often. Like with younger infants, the more frequent and stable the visitation is, the longer each visit can be. If visits are less than once or twice a week, visits should not be more than three hours at a time. Children this age need routine contact with familiar people. Overnights away from the primary caregiver should be discouraged unless the instability for the child is outweighed by other factors.

TODDLERS (18 Months to 3 Years)

RECOMMENDATION: two hours, twice per week and eight hours, once per week. Alternate holidays at eight hours each day for Easter, July 4th, Thanksgiving, Christmas Eve, and Christmas Day. Overnights not generally recommended.

Toddlers develop a sense of separateness from the parents and learn to master their limits. Toddlers should have adequate freedom to explore and permission to resist the parent on unimportant issues, but must be required to obey in areas of safety, self-control, and social interaction.

Frequency and consistency are still important, but children of this age can handle a schedule of access that provides less frequent contact. An 18 month old who visits with a parent only on weekends can handle an additional half-day or less during the week. For older toddlers, when the nonresidential parent has been a regular and significant caretaker, an overnight per week is possible once the toddler's used to the other parent's home. Weekend long access is still not recommended.

PRESCHOOLERS (3 to 5 Years)

RECOMMENDATION: Two hours, twice per week and alternating weekends from Saturday at 9:00 a.m. until Sunday at 6:00 p.m. Alternate Easter, July 4th, and Thanksgiving for an overnight visit each holiday. Alternate Christmas Eve plus the two days before and Christmas Day plus the two days after. Add visits of two non-consecutive (not in a row) one-week periods.

Preschool children are developing sex role identification and peer relationships as well as learning to manage their impulses. Parents must model clear roles and values and use effective parenting skills.

The level of conflict between parents appears to be more important than the schedule of contact for preschool children. Almost as important is the predictability of the contact. Frequent contact also is preferred. Weekly access of one overnight for younger preschoolers and full weekends for older preschoolers throughout the year is recommended. More frequent contact is even better, assuming a low level of conflict between the parents. A few week-long contacts for holidays and summer vacation can be handled well by the preschooler who is familiar with the parent. If circumstances make visits longer than a week at a time necessary, the parents should consult with a professional to help the children handle the lengthier time period.

EARLY ELEMENTARY (5 to 9 Years)

RECOMMENDATION: Every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m. If Friday is a school holiday, the weekend begins Thursday at 6:00 p.m. If Monday is a school holiday, the weekend ends Monday at 6:00 p.m. Add one weekday from 5:30 p.m. until 7:30 p.m., once per week. Alternate Thanksgiving for 4 days, the first half of Christmas vacation one year, and the second half of Christmas vacation the next year. Alternate spring vacation. During the summer, visit of 30 days, unless the parents agree to a shorter or longer period, or the Court finds a different period would be better. During the summer, the primary residential parent should have one weekend visit (exceptions can be made for long trips, etc. with the nonresidential parent, such as the nonresidential parent taking the child on a week-long vacation during the year).

For children this age, the primary influence of the parent is now shared with teachers, peers, and often community contacts. Schedules of access must take into account various organized activities in which children can be involved.

The recommended schedule is a minimum of two weekends per month, and assuming the parents get along reasonably well, more frequent access including midweek contacts. At 7 to 8 years of age, children are most satisfied when they have contact with the nonresidential parent several times a week. Extended time with the other parent is possible at this age because of the child's developed sense of time. Up to six weeks may be appropriate, but not necessarily to be taken all at one time. When staying for long periods with the nonresidential parent, contact with the residential parent, by phone and visits, should be arranged.

LATE ELEMENTARY (9 to 12 Years)

RECOMMENDATION: Same as 5 to 9 Years

The schedule here can be much the same as for ages five to nine. However, children of this age generally need to be involved in the decisions affecting them. Also, by ages 11 to 12, their friends and school activities have more importance which may lead children to want less contact with both parents and a more flexible schedule.

ADOLESCENTS (12 to 18 Years)

RECOMMENDATION: Same as 5 to 9 Years, with the children having increasing say in a flexible or different schedule.

12 to 15 Years

The younger adolescent needs more support and guidance from parents than does the older one. The recommended schedule is much the same as for ages nine to twelve, recognizing that the younger adolescent needs the flexibility to opt out of occasional visits or vary from the schedule for time with peers or school activities.

15 to 16 Years and older

The older adolescent and the nonresidential parent should set the schedule together. The schedule should take into account that teenagers do not need contact of long duration with either parent, but need to know they can count on both parents. At least brief contact on a weekly or every other week basis is strongly recommended for the teenager and the nonresidential parent.

There is no legally designated age at which children have the right to decide with whom they live or whether or not they will have time with the other parent. In practice, the adolescent's need for independence should be balanced against his/her (sometimes unfelt) need for at least minimal contact with both parents. To some teenagers, spending a full weekend with one parent may be seen as being grounded, especially if that parent's location or desire to spend time with the adolescent interferes with the adolescent's social schedule with peers.

OTHER CONSIDERATIONS

Holidays

In addition to the above suggested schedules, the parents must provide for specific holiday visits, which should be structured according to the family's traditions. Religious or other holidays with significance to the family should be defined and stated in the holidays or special occasion portions of the parenting plan. Sharing of time should be the main consideration. (Example: major holidays such as Thanksgiving and Christmas can be alternated.) Some parents prefer to establish a tradition of Christmas Eve in one home and Christmas Day in the other. Minor holidays that usually make a three-day weekend can be included with a weekend visit. School vacations can be divided between the parents in ways consistent with the children's needs. It is especially important to be flexible with the other parent when special occasions which are important to that parent come up during time the child is scheduled to be with you. Example: if the mother's big family reunion is scheduled during the father's weekend, the parents could agree to switch weekends that month so the children could go to the reunion.

Distance

These recommendations may not work because the parents live far away from each other. When that happens, the parent will have to meet the children's needs for a relationship with both parents with an individualized visitation schedule. If a pre-school child is mature enough to separate from the residential parent, extended time with the other parent may be appropriate. When the child reaches school age, the parent can consider the child spending major portion of school vacations with the nonresidential parent.

Fathers' Day and Mothers' Day

Regardless of the schedule suggested here, the mother should have residential time of at least 4 hours on Mothers' Day, and the father should have residential time of at least 4 hours on Fathers' Day.

Modified with permission from the Yakima Superior Court Guidelines Updated 3/96

Section 8: I Was Served With Parentage (Or Petition For Parenting Plan Or Child Support) Papers. What Should I Do?

A. Find out what county your case is in.

Look at the papers you got. They should say "Superior Court of the State of Washington, County of _____" at the top. Make sure the other party filed your case in the right county. See Section V.

B. Find out whether you have been served with a Motion for Temporary Orders or Ex Parte Restraining Order/Order to Show Cause

Look carefully at the title of your papers (in the upper right section of the first page, under the case number). Many types of court cases deal with a child's parentage.

- If the papers you got include forms called a *Summons* and *Petition,* the first page of the Petition tells you what type of parentage case you have. You will need forms and instructions for responding to the particular Petition you received. **Example**: if you got a *Petition for Establishment of Parentage*, with a form number WPF PS 01.0100, get our packet called *Responding to a Petition for Establishment of Parentage (For Cases with Pre-July 1, 1997 paternity affidavits or no adjudicated or acknowledged father).* If you got a *Petition for a Parenting Plan/Residential Schedule or Child Support,* get our packet called *Responding to a Petition for Parenting Plan/Residential Schedule or Child Support When Paternity has already been Established.* If you got another type of Petition, see the Table in Section X to find out what forms you will need to respond.

- If the papers you got include a *Notice for Hearing* or *Note for Calendar Motion*, and a *Motion and Declaration for Temporary Order,* then you have a Motion for Temporary Orders. You may receive both a Petition and a Motion for Temporary Orders. If you received a Motion for Temporary Orders, get our packet called *Responding to a Motion for Temporary or Emergency Orders in a Parentage Case*.

- If the papers you got include an *Ex Parte Restraining Order/Order to Show Cause,* then you have a Motion for an Ex Parte Restraining Order/Order to Show Cause. You may get both a Petition and a Motion for an Ex Parte Restraining Order/Order to Show Cause.

Get our packet called *Responding to a Motion for Temporary or Emergency Orders in a Parentage Case*.

- If the papers you got include a Motion for Parenting Plan or Residential Schedule and a proposed Parenting Plan or Residential Schedule, and if an Order Establishing Parentage was entered in the past 24 months, get advice from a lawyer about what forms to use.

> ◈ An Ex Parte Restraining Order/Order to Show Cause is a court order the other party got without giving you notice first. You must obey the Ex Parte Restraining Order until your court hearing.[48] At your hearing, the court will decide whether the ex parte restraining order will remain in effect.

C. Respond on Time!

When you are served with legal papers, you must figure out right away how to respond. In many cases, if you do not respond on time, the other party will automatically win what they are requesting. **For a motion, you may have as few as four business days after you receive the papers to file your response.** It may take time to find legal resources, and to read through this packet. Begin as soon as possible after you receive the papers. If you cannot respond in time, you must file *a Notice of Appearance* and ask for a *continuance.* (See below).

D. Talk with a lawyer.

Even if you cannot afford to hire a lawyer to file your case, talk at least once with a lawyer for advice. If you are very low-income, and you live outside King County, call CLEAR. If you are in King County, call the King County Bar Association for referrals to low or no-cost legal advice clinics for family law cases.

E. Get the Do-it-Yourself Packets that you need.

See Section 11 below.

Section 9: What If I Need A Court Order Very Soon?

In many cases, you may want the court to enter orders before you go to trial, settle, or otherwise finish your case. You may want to request *temporary orders.* A judge enters temporary orders very quickly. They can last until trial or the end of your parentage case.

Example: You should ask for temporary orders if you want the court to enter a parenting plan before trial that says which parent the children will live with and how much time they will spend with the other parent. Do this through a *Motion for Temporary Orders* or, in emergency situations, through a *Motion for an Ex Parte Restraining Order/Order to Show Cause*.

[48] You may file a Motion to Quash the Ex Parte Restraining Order before the hearing. You will need a lawyer for that. It is easier to simply respond to the Motion for an Ex Parte Restraining Order/Order to Show Cause and wait for your scheduled hearing to let the court decide whether the restraints in the order should stay in effect.

A. What if I want genetic testing?

You must file a special motion for genetic tests. We have no packet that tells you how to file this type of motion. However, if the local Courthouse Facilitator does not have a packet to tell you how to file a Motion for genetic testing, fill out the following forms and follow the instructions for filing and serving a motion in our packet entitled *Filing a Motion for Temporary Orders in a Parentage Case*. You will need:

- ✓ Motion and Declaration for Order to Require Genetic Tests
- ✓ Order Requiring Genetic Tests
- ✓ Declaration re: Chain of Custody

B. What is a temporary order?

A temporary order is a court order that gives you certain rights and/or protections before your case is finished. You may request a temporary order at any time between when you file your Summons and Petition and the day your case is final. To get a temporary order, you must file a Motion for Temporary Orders and give the other parties notice and a chance to respond to your motion. You will have a hearing within about a week to three weeks. Then the judge will decide whether to grant what you asked for in your motion.

C. Do I need a temporary order?

Think about the following things:

- Are you happy with the way things are going right now, without the temporary order? Do you need to ask the court for help to order the other party to do something (or stop doing something)?
- You may ask the court to order many types of things in a temporary order, including:
  - ⇒ A parenting plan or residential schedule that says how much time the children will spend with each parent until the case is finished. **Example**: a parenting plan can also give you scheduled visitation with the children if the other parent is denying you visitation.
  - ⇒ Restraining orders that order one party not to harass or come near the other
  - ⇒ Restraining orders that order a parent not to take the children out of state
  - ⇒ Orders for temporary child support or attorney's fees
  - ⇒ Appointment of a guardian ad litem (GAL) to represent the child in the case, where the child is younger than two

D. Do I need an emergency order?

You may need protection from the court right away. An *Ex Parte Restraining Order/Order to Show Cause* takes effect right away. The court often enters this kind of order without any

advance notice to the other party. (The other party will have a chance to have a hearing where the judge will decide whether to continue the order.)

You may need an emergency order if you cannot wait one to three weeks for a hearing to get help from the court. This happens, for example, when the other party is harassing or harming you, has harmed the children or is a danger to them, or has threatened to take the children.

If you file a Motion for an Ex Parte Restraining Order, you may also ask for the same types of orders that you can get in a Motion for Temporary Orders. You do not need to file both types of motions.

E. What if I want to change my temporary order?

You can ask the court to change a Temporary Order any time before your case is final.[49] To do so, you must file another Motion for Temporary Orders.

F. What if the other parent has hurt me or the children?

If you are afraid that the other party may threaten or hurt you or your children, the court can issue special orders to help protect you and your children. If you have been a victim of domestic violence,[50] or someone has threatened to harm you, you may ask the court for a Protection Order. It is best to do this before you file a parentage action. You may also ask the court to enter a permanent protection order as part of the final orders in your case.

Depending upon what the judge or commissioner decides at your hearing in your case, a Protection Order can:

- Give care of children to one parent
- Set up a schedule of time children will have with the other parent (or stop the other parent from seeing the children)
- Keep a person away from your home, work or school
- Order a person not to threaten, assault, harass or stalk another
- Order a person to attend treatment for domestic violence and/or alcohol/drug treatment

For more information about getting a Protection Order, contact your court's protection order advocates, your local domestic violence program, or call the 24-hour statewide domestic violence hotline at 1-800-562-6025.

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[49] RCW 26.09.060(10)(b).

[50] "Domestic violence" means acts of violence or threats of harm by a family or household member against another family or household member or their children. RCW 26.50.010(1). If your partner has injured or threatened you or your children with bodily injury, you may be a victim of domestic violence.

G. What is a Guardian ad Litem?

If your children are under age two: you may ask the court for in a Motion for Temporary Orders to appoint someone to make a recommendation about parenting arrangements to the court. There is some information about GALs and parenting evaluators in this publication. Our packets, *Guardian ad Litems in Family Law Cases*, and *Working with GALs and Parenting Evaluators: Tips for Parents in Family Law Cases*, have more information.

> ◈ If the court appoints a GAL in your case, the GAL is a party who must get notice of all court hearings and be served with any legal documents in the case.

If your children are age two or over: The court **must** appoint a GAL to represent the children if your case involves a presumed parent. RCW 26.26.530. (See Section 5F above for the definition of presumed parent.)

Generally, a GAL in a parentage case may serve two different, but related purposes:

- to represent a minor child in the legal case OR
- to conduct an investigation and make recommendations to the court regarding the child's best interests

In "disestablishment" cases, the GAL may make recommendations about whether it is in the child's interests to have genetic testing. **Example**: A child was born during a marriage or domestic partnership who is not the spouse/domestic partner's child. The child is under age two. The GAL may provide information to the court about whether it would harm the child emotionally if the person known to be the child's father proved to be different from the actual father.

A GAL may also conduct an investigation of the parents and child. The GAL looks at the parenting history, abilities of all the parties, and the child's situation. Then the GAL makes a recommendation to the court about what type of custody and visitation would be in the children's best interests. A GAL will not just tell the court what your child wants.

In some counties, the GAL will be a privately employed person who charges by the hour for his/her time. The parties usually share the fees for a GAL. If you cannot afford to pay for a private GAL, ask the court if your county has a volunteer family law GAL program called Court Appointed Special Advocates (or a CASA) who can be appointed for free.

You should ask the court to appoint a GAL or parenting evaluator:

- if there has been any physical or sexual abuse of you or the children
- if one of the parents is seriously mentally ill
- if one of the parents has an alcohol or drug addiction

The court may sometimes decide to appoint a GAL in your case even if you do not ask for one. The court does not have to accept or follow a GAL's recommendations. However, the court does usually follow their recommendations.

> ◈ **Guardian ad Litems are "Mandated Reporters."** State law requires a Guardian ad Litem to report a family to law enforcement or to CPS when the GAL has a reason to believe a child in a family the GAL is investigating is an abuse or neglect victim.

Section 10: Will The Other Parent Have To Pay Child Support?

A. What is child support?

It is money paid one parent pays a party taking care of the children (usually, the other parent) to help support the children. The parent usually must pay child support monthly. The amount is based on the Washington State Support Schedule, which considers the children's needs and both parents' incomes.

A parent has a legal duty to help support his/her children. A court usually cannot order an unmarried parent to pay support until parentage is established.[51] In most cases that establish parentage, the parent with whom the children do **not** live most of the time will have to pay the other parent child support. Even if the parents each have half the time with the children, the court may order one parent to pay the other support if there is a big difference in the income each parent earns.

B. How does the court figure out the child support amount?

The court calculates child support based on the income of both parents and the number and ages of the children, using the Washington State Child Support Schedule. The Schedule shows all the factors that the court takes into account when setting support.

The Schedule works a little like an income tax table. The court figures out each parent's income. It adds the parents' incomes together and finds the amount of support on the Schedule that applies to the number and ages of children that you have.

The court wants to make sure your children have enough money to meet their needs.[52] Support should pay for:

- clothes and food

[51] There are some exceptions. A man who signed a paternity affidavit acknowledgment or paternity affidavit before July 1, 1997 does not have his parentage of the child legally established for all purposes. He may still have to pay child support. A man who is married to the mother of a child born during (or 300 days after) the marriage or domestic partnership may have to pay support for the child, even if the child is not his, until he disproves parentage. See RCW 26.26.101, RCW 26.26.111.

[52] *In re Marriage of Mattson*, 95 Wn. App. 592, 599-600, 976 P.2d 157 (1999).

- a place for the children to live (rent/mortgage and utilities)
- adequate daycare
- medical care

Both parents may also have to share costs for uninsured health care, day care, school tuition and long-distance visitation expenses in proportion to their incomes and considering the number of children living with them.

The court takes into account parents' ability to pay. (The parents may not have enough money to meet the children's needs.)

Our publication called *Understanding the Washington State Child Support Schedule and How Child Support is Set in Washington* has more information.

Section 11: What Forms or Packets Will I Need to File My Response?

The list below should help you decide which packets or forms you will need to respond to the parentage case with which you have been served. Read the list carefully. Pay attention to the numbers of the forms. Some forms that are for different parentage cases have very similar names. **Example**: there is a Petition for Establishment of Parentage, form number WPF PS 01.0100 and there is a Petition for Establishment of Parentage pursuant to RCW 26.26 (Ch. 302 L 2002 §502(2)), form number WPF PS 16.0100. These two Petitions are for different parentage cases.

Papers You Received Were:	Packet or Forms You Should Use:
Summons and Petition for Establishment of Parentage, WPF PS 01.0100	Use our packet ***Responding to a Petition for Establishment of Parentage*** (For Cases with Pre-July 1, 1997 Paternity affidavits or No Adjudicated or Acknowledged Father).
Summons and Petition for Establishment of Parentage Pursuant to RCW 26.26, WPF PS 16.0100; ▫ If you also received a Proposed Parenting Plan or Residential Schedule ▫ If you also received child support papers (Child Support Worksheets, a Financial	File the form Response to Petition for Establishment of Parentage Pursuant to RCW 26.26, WPF PS 16.0300. Use our packet called ***Responding to a Petition for Establishment of Parentage***. ➢ File your own Proposed Parenting Plan, WPF PS 01.0400 or a Proposed Residential Schedule, WPF PS 01.0450

Papers You Received Were:	Packet or Forms You Should Use:
Declaration, Sealed Financial Source Documents Cover Sheet with attachments),	➢ File your own Washington State Child Support Worksheets, Financial Declaration (WPF DRPSCU 01.1550), and attach your financial papers to a Sealed Financial Source Documents Cover Sheet (WPF DRPSCU 09.0220).
Summons and Petition for Residential Schedule/Parenting Plan or Child Support, WPF PS 15.0100 or 15A.0100 (out-of-state paternity affidavit)	Use our packet, ***Responding to a Petition for a Parenting Plan/Residential Schedule (Custody) or Child Support When Parentage Has Already Been Established***.
Summons and Petition for Rescission of Acknowledgment of Paternity Within 60 Days, WPF PS 11.0100	File the form Response to Petition for Rescission of Acknowledgment of Paternity Within 60 Days, WPF PS 11.0300
Summons and Petition for Rescission of a Denial of Paternity Within 60 Days, WPF PS 12.0100	File the form Response to Petition for Rescission of a Denial of Paternity Within 60 Days, WPF PS 12.0300
Summons and Petition for Challenge to Acknowledgment of Paternity, WPF PS 13.0100 ▫ If you also received a Proposed Parenting Plan or Residential Schedule ▫ If you also received child support papers (Child Support Worksheets, a Financial Declaration, Sealed Financial Source Documents Cover Sheet with attachments)	File the form Response to Petition for Challenge to Acknowledgment of Paternity, WPF PS 13.0300 ➢ File your own Proposed Parenting Plan, WPF PS 01.0400 or a Proposed Residential Schedule, WPF PS 01.0450 ➢ File your own Washington State Child Support Worksheets, Financial Declaration (WPF DRPSCU 01.1550), and attach your financial papers to a Sealed Financial Source Documents Cover Sheet (WPF DRPSCU 09.0220).
Summons and Petition for Challenge to Denial of Paternity, WPF PS 14.0100	File the form Response to Petition for Challenge to Denial of Paternity, WPF PS 14.0300

Papers You Received Were:	Packet or Forms You Should Use:
▫ If you also received a Proposed Parenting Plan or Residential Schedule	➢ File your own Proposed Parenting Plan, WPF PS 01.0400 or a Proposed Residential Schedule, WPF PS 01.0450
▫ If you also received child support papers (Child Support Worksheets, a Financial Declaration, and Sealed Financial Source Documents Cover Sheet with attachments)	➢ File your own Washington State Child Support Worksheets, Financial Declaration (WPF DRPSCU 01.1550), and attach your financial papers to a Sealed Financial Source Documents Cover Sheet (WPF DRPSCU 09.0220)

A. I have more questions about the law. Can I get more information?

We have other publications and packets on www.washingtonlawhelp.org, and links to help you do legal research. For more information, or if you do not have internet access, visit your local law library (usually in your county's Superior Court building). The library staff may be able to help you find what you need.

Section 12: Words You May Need To Know

Acknowledgment of Paternity: See definition of Paternity Affidavit.

Affidavit: A written statement you make under oath and have notarized by a Notary Public. Washington no longer requires affidavits. The courts now use Declarations. (See definition of Declaration, below.)

Appearance: Informing the court and the parties of your whereabouts and your desire to take part in your case. You can appear either in person at a hearing, or in writing, usually by filing and serving a Notice of Appearance.

Bailiff: A member of the judge's staff who is in charge of courtroom procedure and security. The bailiff may sometimes be the same person as the clerk.

Calendar: The court's schedule of cases to be heard. Also called a Docket.

Caption: The heading of each legal document. It has the name of the court, the names of the parties, the case number, the name of the document itself, and, sometimes, the type of case.

Certified Copy: A copy of a document from the court file made by the court clerk that has an official stamp on it stating it is a true copy. Usually, you pay for a certified copy.

Clerk of the Court: An officer of the court who handles clerical matters like keeping records, entering judgments and providing certified copies. Usually, there is one head clerk. Many people who work in the Clerk's Office are also clerks.

Commissioner/Court Commissioner: Like a judge, but only makes decisions relating to a specific subject matter. Many counties have family law commissioners who decide only family law cases[53].

Continuance: Delaying your court hearing to a later date.

Custodian: The person the children live with most of the time.

DCS: Division of Child Support. The state office (part of DSHS) that creates, enforces and sometimes changes child support obligations. DCS used to be called CSD, OSE and SED.

Declaration: A written statement made to the court under oath.

Default Order: An order the court enters if the responding person does not respond on time.

Dissolution: The legal word for divorce.

Domestic partnership: a state registered domestic partnership that meets the requirements of Washington law.

Ex Parte: Going before the court without notifying the other party.

Filing: Giving court papers to the Court Clerk to place in the case file.

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[53] Many decisions in family law cases are made by court commissioners instead of judges. To make this packet simpler, in most places we just use "judge."

Hearing: Going before a judge or court commissioner to request a court order.

Jurisdiction: The court's authority to make decisions regarding certain people and issues. If a court does not have jurisdiction, it has no power to make orders.

Motion: A formal request to the court for an order.

Motion Docket: The court's schedule of motions it is going to hear.

Note/Notice of Hearing: A written request to the clerk to schedule your case for hearing.

Order: A court document signed by a judge or commissioner that requires someone to do or not do something. If you disobey an order of the court, the court can hold you in contempt of court.

Parentage: Is the legal name for the legal relationship between an unmarried parent and their child. Also the name of the type of court case.

Paternity Affidavit: A special form, known after July 22, 2011 as a Paternity Acknowledgment. Unmarried parents typically use this form to state who the father of the child is. In Washington, these forms are often offered to the mother in the hospital right after a child's birth. The form must be signed by the mother and the father (and presumed father) of a child and filed with the Washington State Department of Health. If the form is filed after July 1, 1997, and is not rescinded, it is a final legal determination of parentage. If the form was filed before July 1, 1997, there is a legal presumption that the father named on the form is the child's father, but the form is not a final legal determination of parentage.

Petitioner: Is the person who first files a legal case. The petitioner in the caption of a form does not change, even when the other party files motions later.

Presumed parent. A person the law recognizes as a child's parent until a court order or paternity affidavit or acknowledgment establishes (or disproves) the parent-child relationship. Under state law, generally, you can become the presumed father parent of a child in one of three ways: (1) you are married to or in a domestic partnership with the child's other parent before, at the time of, or 300 days before a child's birth; (2) you signed a paternity affidavit before July 1, 1997; (3) for the first two years of the child's life, you lived in the same home as the child and openly held the child out as yours.

Pro Se: Acting without a lawyer's help; representing yourself in court.

Process: Written notice to appear in court.

Respondent: The person against whom a legal case was originally filed.

Response: A formal written answer to a petition filed with the court.

Service: Giving court papers to the other party.

Temporary Order - An order entered after a case is filed and before it is finished which is only in effect while the case is going on.

Venue: The county where the case should be filed.