3912EN - Washington Parenting Law for Unmarried Couples Who Are Separating

May 2013
Table of Contents

Section 1: Introduction ................................................................................................................... 1

Section 2: Is this publication for me?.............................................................................................. 1

Section 3: My partner and I have been together for many years. We have never married. Does Washington State have common law marriage? ................................................................. 2

Section 4: My partner and I raised children together. What are our rights and obligations towards the children after our own relationship ends? ............................................................................ 2

Section 5: My partner and I are both the natural parents of the children. We have never married or been in a registered domestic partnership together. How will a court decide parentage, custody, visitation, and child support in our case? ................................................................. 2

Section 6: How do I establish paternity by acknowledgment? ........................................................ 3

Section 7: How do I establish parentage by court order? ................................................................. 4

Section 8: Can I get help establishing parentage and collecting child support? ............................ 4

Section 9: I am a biological or adoptive parent. How do I get custody, visitation, or child support? .......................................................................................................................................... 4

Section 10: How do I get a parenting plan or residential schedule? .............................................. 5

Section 11: I am not a biological or adoptive parent. I did help raise the child. Can I get custody or visitation? .......................................................................................................................................... 5

Section 12: I do not think I meet these standards for an adoptive, biological, or de facto parent. Can I seek custody as a nonparent? .......................................................................................................................................... 6

Section 13: I do not think I meet the standards for a biological, adoptive, or de facto parent. Can I seek visitation? .......................................................................................................................................... 6

Section 14: Where do I file a court case for parentage, a parenting plan, a residential schedule, or child support? .......................................................................................................................................... 6

Section 15: Can I go to Small Claims Court? ................................................................................... 7

Section 16: Can I bring up property and debt issues and issues relating to children in one case? 7

Section 17: I have an emergency. What can I do? ......................................................................... 7

Section 18: Are there alternatives to a lawsuit? ............................................................................. 7

Section 19: Are there forms and instructions I can use? ................................................................. 8

Section 20: Should I talk with a lawyer? ......................................................................................... 8
Washington Parenting Law for Unmarried Couples Who Are Separating

Section 1: Introduction
This publication has basic information about the Washington State law that applies to parenting when unmarried couples separate.\(^1\) The questions and answers here give an overview of some common issues.

Another publication at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org), *Washington Property Law for Unmarried Parents Who are Separating*, has basic information you might need about other issues.

\(\blacklozenge\) This information is not a substitute for individual legal advice. It will not tell you how a court might apply the law in your own case. Talk to a lawyer for that.

The law about unmarried couples in Washington is still developing. It can be hard to figure out what your rights are and what to do. Even if you cannot afford to pay a lawyer to represent you for the entire case, some lawyers will agree to do part of the case. Others will briefly consult through a legal clinic. Meeting with a lawyer may help you understand important legal rights affecting you.

\(\blacklozenge\) If you have more questions and you are low-income and live outside of King County, call CLEAR at 1-888-201-1014. If you live in King County, contact the King County Bar Association’s Neighborhood Legal Clinics, (206) 267-7070, 9 a.m. to 12 noon Monday – Thursday, to ask for a free half-hour of legal advice.

Section 2: Is this publication for me?
Do not use this publication if you are the parent of a child who you conceived through “assistive reproduction.” Assisted reproduction includes:

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

---

\(^1\) In this publication, you will see footnotes like this one. They will tell you the law or court case that supports the statement that comes before the footnote. RCW stands for [Revised Code of Washington](http://www.washington.gov), which is the law of Washington State. Court cases have names, such as *In re the Parentage of ______*. The footnotes may help you find the law at your local law library, or making a legal argument in court. The references to the law are up to date as of the date of publication. The law sometimes changes before we can update the publication.
• sperm donation

If you conceived your child through assistive reproduction, get advice from a lawyer.

Section 3:  My partner and I have been together for many years. We have never married. Does Washington State have common law marriage?

No. For a marriage to be valid in the state of Washington, you must have a marriage license and a valid marriage ceremony. Washington will recognize common law marriages from another state if that state authorizes such marriages.

State registered domestic partners have many of the same rights as married couples when it comes to parenting. The state laws on custody and visitation and the Uniform Parentage Act currently apply to domestic partners the same as to married couples.

If you are currently in a domestic partnership, the state will automatically convert it to a marriage on June 30, 2014 if neither partner is 62 or older.

Section 4:  My partner and I raised children together. What are our rights and obligations towards the children after our own relationship ends?

If you were in a registered domestic partnership: you have the same rights and obligations towards the children as if you were married.

If you were not in a registered domestic partnership: it depends. Read more below.

Section 5:  My partner and I are both the natural parents of the children. We have never married or been in a registered domestic partnership together. How will a court decide parentage, custody, visitation, and child support in our case?

Motherhood is typically established by giving birth to a child or adopting a child. Fatherhood is most commonly established by:

• court action (typically a parentage case) OR
• being married to or in a registered domestic partnership with the mother at or close in time after the birth of the child OR

---


3 [*In re Pennington*, 142 Wn. 2d 592, 602 (2000)]


5 [RCW 26.26.101(2)](https://legi.wa.gov/RCW/26.26.101(2)). The law provides for paternity in certain other situations as well. It also allows for a presumption of paternity when the man was married to the mother at or close to the time the child was born.
• adoption OR
• acknowledgment (filing a Paternity Acknowledgment/Paternity Affidavit or acknowledgment).

Neither parent has a greater legal right to have the child live with him/her than the other parent until the court enters an order.

Section 6: How do I establish paternity by acknowledgment?

Since July 1997, you can officially establish your child’s paternity by having both parents sign a paternity affidavit or acknowledgment (also called a paternity acknowledgment).

By signing the affidavit or acknowledgment, you 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 usually gives a paternity affidavit or acknowledgment form to an unmarried mother while she is in the hospital after the child’s birth. The parents often sign it before the child goes home for the first time. You can also sign it later.

A paternity affidavit or acknowledgment is not a court order. 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 the person named as the child’s legal parent.6 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).7

❖ A minor can rescind (take back) his/her signature on a paternity affidavit up to the age of 19. RCW 26.26.330.

If a paternity affidavit or acknowledgment names you as a child’s father, you have all the legal rights and responsibilities of the child’s parent, including the right to request a parenting plan or residential schedule and the responsibility to provide financial support for the child.

A paternity affidavit or acknowledgment, in itself, does not establish a parenting plan/residential schedule or child support. Once a paternity affidavit or acknowledgment is filed, either parent (or, if the children get public assistance, the State) may ask for a child support order through Superior Court or through the Division of Child Support’s administrative process. Either parent may also file a court action to enter a parenting plan/residential schedule. This action is a Petition for Parenting Plan/Residential Schedule or Child Support. Our packet, Filing a Petition for Parenting Plan (Custody) or Child Support when Parentage has been Established, available at www.washingtonlawhelp.org, has forms and instructions.

Section 7: How do I establish parentage by court order?

One party or the State of Washington files a parentage petition in Superior Court. The petition asks the court to establish legally the parentage of the child. Usually the petition also asks the court to approve a parenting plan or residential schedule and/or set child support. (See the explanations of these terms below.) Our publication called Parentage and Parenting Plans for Unmarried Parents in Washington, available at www.washingtonlawhelp.org, has more information.

Section 8: Can I get help establishing parentage and collecting child support?

Maybe. The State of Washington Division of Child Support may file a Parentage action or establish an administrative child support order if

- a parent asks for services OR
- the child gets welfare benefits

If you do not have a paternity affidavit or acknowledgment, or your affidavit was signed before July 1, 1997, you may ask the State to file a parentage case on behalf of your child. The prosecutor does not represent either parent. S/he will file the case and help keep it moving through the court system. Read more about this process and its advantages and disadvantages in the publication Parentage and Parenting Plans for Unmarried Parents in Washington.

If you simply want to establish a duty to pay child support, the Division of Child Support (DCS) may initiate an administrative procedure. Where paternity has been established by affidavit or acknowledgment, DCS will often get an administrative child support order. They will not establish a parenting plan/residential schedule. Our publications called How Can I Collect Child Support? and Parentage and Parenting Plans for Unmarried Parents in Washington, available at www.washingtonlawhelp.org, have more information.

An administrative child support order is valid until a court order changes or replaces it. Court orders usually do not cancel amounts already due under administrative support orders.

Section 9: I am a biological or adoptive parent. How do I get custody, visitation, or child support?

Washington law does not use the terms “custody” or “visitation.” The law calls court orders between parents “parenting plans” or “residential schedules.”

Either parent can file a court petition asking the court to enter a Parenting Plan or Residential Schedule and to set child support. A court-ordered parenting plan orders:

- The schedule for living or visiting with each parent (used to be called custody and visitation)
- The division of major, non-emergency decisions about the child
- How the parents will work out major disagreements

A court-ordered residential schedule covers items in the first point above only.
The last page of this publication lists other self-help publications that provide an overview of the law on parenting plans/residential schedules. Those have forms and instructions for your use.

**Section 10: How do I get a parenting plan or residential schedule?**

A parenting plan or residential schedule is a court-approved document. It must be part of a court case. For unmarried parents or parents not in a registered domestic partnership, the court case is usually a parentage action or an action to establish a parenting plan/residential schedule.

If the parents agree through mediation or negotiation on a proposed Parenting Plan/Residential Schedule, the court will usually approve it.

If the parents do not agree, the court will decide upon a Parenting Plan after a hearing or trial. The court will look at many things. The most important factor is the best interests of the child.

At the end of this publication, we list resources with more information about the laws on parenting plans and residential schedules.

**Section 11: I am not a biological or adoptive parent. I did help raise the child. Can I get custody or visitation?**

The law on this issue is developing. It could change quickly. At the time of this publication, if you are not a biological or adoptive parent, you may still be able to petition the court for parental rights and duties with that child if you can prove that you are the child’s “de facto” parent.”

You would need to show all of the following:

- you have an actual “parent-like” relationship with the child
- the relationship was formed with the consent and encouragement of a biological or adoptive parent
- you lived with the child in the same household
- you took on the responsibilities of parenting without expecting payment
- you acted as a parent long enough to have developed a bonded, dependent, parent-like relationship with the child
- you have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child’s life

In 2005, the Washington State Supreme Court considered the case of a same-sex couple who had ended their relationship. One former domestic partner filed a court petition asking to establish her “co-parentage.” She had lived with the child and biological mother, and acted as a parent from the child’s birth until she was six years old, with the approval of the child’s

---


biological mother. She and the child had a strong, positive relationship. When the relationship between the adults broke up, the natural mother cut off all contact between the petitioner and the child. The state Supreme Court in this case established the legal principle of “de facto parent.” The Court also decided that if this partner could prove at trial that she was a “de facto parent,” then a court could award her parental rights and responsibilities consistent with the best interests of the child.

Section 12: I do not think I meet these standards for an adoptive, biological, or de facto parent. Can I seek custody as a nonparent?

To seek custody of a child over a parent’s objection, you must file a case in superior court under RCW Chapter 26.10. Under the present state of this law, generally speaking, you can get custody of a child as a nonparent only if

- the child is not in the physical custody of a parent; OR
- you prove that the parents are unfit; OR
- you prove that the child’s growth and development would be detrimentally affected by living with an otherwise fit parent; AND
- you show you are fit.

The publication *Nonparental Custody of a Child: Frequently Asked Questions and Answers* has more information.

Section 13: I do not think I meet the standards for a biological, adoptive, or de facto parent. Can I seek visitation?

At this time, non-parents do not have the right to seek court-ordered visitation over the objection of a fit parent. The law may change.

Section 14: Where do I file a court case for parentage, a parenting plan, a residential schedule, or child support?

You can file in the county where the child lives. If the child does not live in Washington now, you may file a parentage action in the county where the other parent lives.

If another state has entered an order about custody of the child, or the child does not live in Washington now, or has not lived here very long, you may not be able to file for custody in Washington. If you have questions about whether to file in Washington, talk with a lawyer or read our publication called *Parentage and Parenting Plans for Unmarried Parents in Washington*.

---

11RCW 26.26.520, RCW 26.10.030
12RCW 26.26.520
Section 15: Can I go to Small Claims Court?
No. You cannot bring cases to establish parentage, parenting plans, residential schedules, or child support orders in small claims court.

Section 16: Can I bring up property and debt issues and issues relating to children in one case?
The law on this is not clear. Some counties permit it. Others do not. Try to talk to a lawyer in your community to find out about local procedures.

Section 17: I have an emergency. What can I do?
If you are a domestic violence victim, you may be able to get a Domestic Violence Protection Order that has emergency protection. See the list of domestic violence-related publications at www.washingonlawhelp.org.

If you file a lawsuit concerning the children, the court may be able to enter temporary or restraining orders. See www.washingonlawhelp.org’s self-help publications on temporary and emergency orders.

Section 18: Are there alternatives to a lawsuit?
It depends. You can sometimes establish parentage and child support without filing a lawsuit. (See above.) Only a court can create a binding parenting plan/residential schedule. Sometimes during the court process, the parents will negotiate a settlement that they can reduce to a court order approved by the judge/commissioner. This is often easier, quicker, less stressful, and cheaper than going to trial.

If you are a nonparent, and the parent(s) agree that you will have custody, consider getting either a court order under RCW Chapter 26.10 or a court-ordered guardianship. You can also use a "temporary parental consent agreement" in short-term, agreed situations.

- A parent may revoke (cancel) a temporary parental consent agreement at any time.
- Schools, medical care providers and others may not accept it.
A Temporary Parental Consent Agreement is not a lasting alternative to a court order. *Nonparental Custody of a Child: Frequently Asked Questions and Answers* has more information.

Section 19: Are there forms and instructions I can use?

If you decide to represent yourself in court on issues affecting children, these might help:

- *Filing a Petition for Establishment of Parentage*
- *Parentage and Parenting Plans for Unmarried Parents in Washington*
- *Filing a Petition for Parenting Plan (Custody) or Child Support when Parentage has been Established*  
  13
- *Parenting Plans*
- *Filing an Agreed Petition for Parenting Plan (Custody) when Parentage has been Established*
- *Filing a Petition for Parenting Plan (Custody) and Child Support when Parentage has Already been Established*

These packets and other self-help law materials are available at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).

Section 20: Should I talk with a lawyer?

Yes. Even if you cannot afford to hire one for full representation, an experienced family law attorney will sometimes take on part of the case, called “unbundled services” or will provide limited advice in a consultation at a family law clinic. A lawyer can

- explain local procedures
- evaluate your case
- identify the claims you might make and your rights and responsibilities
- advise you how to take practical steps

If you are low-income, you may apply online with CLEAR*Online -  [http://nwjustice.org/get-legal-help](http://nwjustice.org/get-legal-help) or call CLEAR at 1-888-201-1014.

CLEAR is Washington’s toll-free, centralized intake, advice and referral service for low-income people seeking free legal assistance with civil legal problems.

- **Outside King County**: Call 1-888-201-1014 weekdays from 9:10 a.m. until 12:25 p.m. CLEAR works with a language line to provide interpreters as needed at no cost to

---

13 This set of forms and instructions for parentage, custody, visitation, and child support may be useful where the parents are unmarried, the parentage (paternity) of the child has already been established, and parent wants to ask a Washington court for an order setting a residential schedule, parenting plan or child support.
callers. If you are deaf or hard of hearing, please call 1-888-201-1014 using your preferred TTY or Video relay service.

- **King County**: Call 211 for information and referral to an appropriate legal services provider Monday through Friday from 8:00 am – 6:00 pm. You may also call (206) 461-3200, or the toll-free number: 1-877-211-WASH (9274). 211 works with a language line to provide free interpreters as needed to callers. Deaf and hearing-impaired callers can call 1-800-833-6384 or 711 to get a free relay operator at no cost, who will then connect you with 211. You can also get information on legal service providers in King County through 211’s website: www.resourcehouse.com/win211/.

- **Persons 60 and Over**: Persons 60 or over may call CLEAR*Sr at 1-888-387-7111, regardless of income.

⚠️ Effective December 6, 2012, state law about marriage also applies to marriages between same-sex couples. The Legal Voice’s publication called Q & A: Marriage for Same-Sex Couples in Washington has more information.

*The Northwest Justice Project thanks attorney Ron Steingold for his generous assistance in creating this publication.*

---

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

This information is current as of May 2013.

© 2013 Northwest Justice Project — 1-888-201-1014

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)