

Washington Parenting Law for Unmarried Couples



Northwest Justice Project

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Part 1. Should I read this?

Read this

- To learn about state law on issues unmarried couples with children face when they break up.
- If you live or lived together as a couple in Washington.

[Washington Property Law for Unmarried Parents who are Separating](#) explains state law on property law issues. Find it and other fact sheets at [WashingtonLawHelp.org](#).

❖ This is not a substitute for advice from a lawyer. It will not tell you how a court might rule in your case. Talk to a lawyer for that.

The law in this area can change. 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, one may agree to do part of it. You might be able to talk to a lawyer at a free legal clinic.

❖ If you have a low income and live outside 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, for a free half-hour of legal advice.

Part 2. Does Washington State have common law marriage?

No. You must have a marriage license ([RCW 26.04.140](#)) and a valid marriage ceremony ([RCW 26.04.070](#)). Washington recognizes common law marriages from another state if that state authorizes them.

❖ [RCW](#) stands for [Revised Code of Washington](#), the state's laws.

Part 3. What if we have children together?

Motherhood is typically established by giving birth to or adopting a child. [RCW 26.26.101\(1\)](#).

Fatherhood is most commonly established by one of these:

- a court (parentage) case
- being married to the mother at or soon after the child's birth
- adoption
- filing an Acknowledgment of Parentage with the state

[RCW 26.26.101\(2\)](#).

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- ❖ Neither parent has a greater legal right to have the child live with them until the court enters an order.
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Part 4. What is an Acknowledgment of Parentage?

It is a form both parents sign and file with the Washington Department of Health stating that the person the form names is the only possible father. It used to be called a **paternity acknowledgment** or **paternity affidavit**.

Hospital staff usually gives an unmarried mother this form in the hospital after the child's birth. The parents often sign it before the child goes home. You can also sign it later. When you file it with the Department of Health, it has the effect of a court order establishing the person named the child's legal parent. [RCW 26.26A.220](#). This is true even if anyone who signed it is under age 18. [RCW 26.26A. 215](#).

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- ❖ A signed and filed acknowledgment of parentage naming you the father gives you all a parent's legal rights and responsibilities. These include the right to get a parenting plan and the responsibility to pay child support.
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An acknowledgment of parentage does not automatically create a parenting plan or child support order. It gives you the right to get these.

Part 5. Can I get a court order saying who the legal parents are?

Yes. One party or the State of Washington can file a parentage case in Superior Court. You can ask the court

- To establish legally who the child's parents are.

- Usually, to approve a parenting plan and/or set child support.

Read [Parentage and Parenting Plans for Unmarried Parents in Washington](#).

Part 6. Can the State help establish parentage and collect child support?

Maybe. The State of Washington Division of Child Support (DCS) may file a parentage case in court or establish an administrative child support order if one of these is true:

- you ask for services
- the child gets welfare benefits

If you do not have an acknowledgment of parentage, you can ask the State to file a parentage case on your child's behalf. The prosecutor does not represent either parent. Read [Parentage and Parenting Plans for Unmarried Parents in Washington](#).

If you only want the other parent to pay child support, DCS can start a procedure to get an administrative support order. They will often do this if you already filed an acknowledgment of parentage.

❖ **DCS will not help you get a parenting plan.**

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.

Part 7. How do I get custody or visitation?

❖ Washington law does not talk about "custody" or "visitation." It calls court orders between parents **parenting plans** or **residential schedules**.

You can file in court for a Parenting Plan. It orders:

- Custody and a visitation schedule
- Who gets to make major, non-emergency decisions about the child
- How the parents will work out major disagreements

❖ A court-ordered residential schedule only covers items in the first point.

The last page here lists self-help packets with forms and instructions you can use.

Part 8. Do I have to go to court to get a parenting plan?

Yes. You will usually file a parentage case or a petition for a parenting plan.

If the parents agree on a proposed Parenting Plan, the court will usually approve it.

If you do not agree, the court will enter a Parenting Plan after a hearing or trial.

The court will look at many things. The most thing is the child’s best interests.

❖ See the end for a list of resources with more about parenting plan laws.

Part 9. I am not a biological or adoptive parent. I helped raise the child. Can I get custody or visitation?

Maybe. You must file a Petition for De Facto Parentage ([RCW 26.26A.440](#)) and prove all these to the court:

- you lived with the child for some time
- you consistently took care of the child
- you took care of the child without expecting to be paid for it
- you have a “parent-like” relationship with the child
- you held the child out as your own
- you had a bonded, dependent, parent-like relationship with the child
- the child’s biological or adoptive parent supported this relationship
- continuing your relationship is in the child’s best interest

Part 10. I am not a de facto parent. Can I get custody as a nonparent?

In 2020, you can still file a nonparent custody case in superior court. [RCW Chapter 26.10](#). Starting in 2021, you can no longer file this type of court case.

A nonparent can get custody **only** if one of these is true:

- the child is not in a parent’s physical custody
- you prove the parents are unfit
- you prove that living with an otherwise fit parent would harm the child’s growth and development **and** you are fit

Read [Non-Parent Custody: Frequently Asked Questions and Answers](#).

Part 11. I am a nonparent. The parent will not let me see the child. Can I get court-ordered visits?

You can now file a court case to ask for visits. This procedure is new. It might be hard to win this kind of case. Read [Washington’s New Nonparent Visitation Rights](#).

Part 12. Where do I file my parentage or parenting plan case?

You can file in the county where the child lives. [RCW 26.26A.420](#), [RCW 26.10.030](#). If the child does not live in Washington now, you can file in the county where the other parent lives. [RCW 26.26A.420](#).

If another state has entered a custody order, or the child does not live in Washington now or has not lived here very long, you may not be able to get a parenting plan here. Talk with a lawyer or read [Parentage and Parenting Plans for Unmarried Parents in Washington](#).

Part 13. Can I bring up property and debt issues in a parenting plan or parentage case?

Some counties do not permit this. Talk to a lawyer in your community to find out about local procedures.

Part 14. What if I have an emergency?

If you are a domestic violence victim, you may be able to get a Domestic Violence Protection Order. See the list of domestic violence-related publications at [WashingtonLawHelp.org](#).

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- ❖ You should also try to get help from your local domestic violence shelter. Shelters provide services such as safety planning, temporary shelter, legal advocacy, and counseling. For the program nearest you, call the National Domestic Violence Hotline: 1-800-799-7233.
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If you file a parentage or parenting plan case, you may be able to get temporary or restraining orders. WashingtonLawHelp.org has more on these types of orders.

Part 15. Do I have to go to court?

It depends. You can sometimes establish parentage and child support without filing a lawsuit. Only a court can create a binding parenting plan.

Sometimes during the court process, you might be able to work out a settlement. You can turn your agreement into a court order for the judge to sign. This is often easier and cheaper than going to trial.

If you are a nonparent, and the parent(s) will let you have custody, you can get a court order under [RCW 26.10](#) or a court-ordered guardianship. You can use a **temporary parental consent agreement** in temporary situations. Use our [Temporary Parenting Consent Agreements](#) packet.

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- ❖ A parent can revoke (cancel) a temporary parental consent agreement any time.
 - ❖ Schools and medical providers may not accept a temporary parental consent agreement.
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A Temporary Parental Consent Agreement is not a lasting alternative to a court order. Read [Non-Parent Custody: Frequently Asked Questions and Answers](#).

Part 16. Are there forms and instructions I can use?

These packets are available at WashingtonLawHelp.org:

- [File a Petition to Decide Parentage](#)
- [File a Petition for a Parenting Plan, Residential Schedule and/or Child Support: Parentage Cases](#)
- [Make a Parenting Plan Printable Packet](#) or [Make a Parenting Plan](#), a Washington Forms Online interview that will help you draft this form.
- [File an Agreed Petition for Parenting Plan, Residential Schedule or Support: Parentage Cases](#)

Part 17. Should I talk with a lawyer?

Yes. Even if you cannot afford to hire one, a family law attorney will sometimes take on part of the case, or give advice at a family law clinic. A lawyer can

- explain local procedures
- tell you if you have a strong case
- help you see what claims you might make and your rights and responsibilities
- advise how to take practical steps

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.
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