

**LEGAL
REQUIREMENTS**

42 USC 666(a)(5)
45 CFR 302.31, 302.33
45 CFR 302.36
45 CFR 302.70 (a)(5)
45 CFR 303.5
45 CFR 303.7

MCL 333.2824
MCL 552.29, 552.45
MCL 600.705
MCL 722.711 - 722.730
MCL 722.1001 - 722.1013
MCL 780.166a
MCL 552.1101 -1901

Federal law, state law, and federal regulations require that states:

- Establish paternity of children under the age of 18.
- Cooperate amongst themselves in establishing paternity.
- Abide by timeframes for actions in establishing paternity.
- Establish paternity by voluntary acknowledgment or other legal process.
- Establish a simple civil process of voluntary acknowledgments required by state law.
- Use voluntary acknowledgments as a basis for seeking a support order without further proceedings to establish paternity.
- Give full faith and credit to a determination of paternity made by any other state whether established through voluntary acknowledgment, administrative, or judicial process.
- Attempt to serve process in accordance with state guidelines and complete service within 90 calendar days of locating the putative father, or document unsuccessful attempts.
- Establish paternity or exclude the putative father by genetic tests or legal process within one year of the later of successful service of process or the child reaching 6 months of age.

These standards apply to each putative father identified and located in multiple allegations of paternity.

**ACTIONS UNDER
THE STATE
PATERNITY ACT**

The Paternity Act provides for the following actions in providing for the support of children born out of wedlock:

- Commencement of proceedings to determine paternity:
 - during the pregnancy of the mother, or
 - any time before a child reaches the age of 18, or
 - for a child for whom paternity has not been established or whom paternity action was brought but dismissed because of statute of limitation of less than 18 years.

- Establishment of both paternity and child support orders.

Note: Establish support orders that reserve child support because application of child support guidelines would be inappropriate and unjust when and while parties:

- live together, and
 - function as a family unit, and
 - receive public assistance, if applicable.
- Ordering of support until the child reaches age 18, or until a child reaches the age of 19 years and 6 months when the child:
 - attends high school on a regular, full-time basis, and
 - is expected to graduate, and
 - lives with the payee of support, or
 - lives in an institution.
- Establishment of support obligations for children beyond age 18 by agreement of the parties.
- Awarding of support for a period prior to entry of the order. However, there are limitations on retroactively awarding support when proceedings are initiated after a child reaches age 6. In these instances, the Court may only award support for the period before the date of the complaint when the putative father:
 - paid support, or
 - resided out-of-state, or
 - avoided service of process, or
 - coerced the complainant not to file a complaint before the child reaches age 6, or
 - completed an Affidavit of Parentage form.

Exception: Support may be awarded retroactively before the date of the complaint if the defendant agrees to it.

The Paternity Act also:

- states that an action to determine paternity cannot be brought under this act if paternity was established under the Acknowledgment of Parentage Act or under the law of another state;
- eliminates the opportunity for either party to request a trial by jury;
- states that the court may order recoupment of genetic testing expenses from the father if paternity is established. Documentation of these expenses is admissible without foundation testimony and constitutes prima facie evidence of costs.

ACTION UNDER THE ACKNOWLEDGMENT OF PARENTAGE ACT

The Acknowledgment of Parentage Act states that:

- An Affidavit of Parentage can be executed under the Acknowledgment of Parentage Act anytime during the child's lifetime.
- An affidavit form is valid and effective if signed by the mother and father and those signatures are notarized by a notary public authorized by the state in which the affidavit is signed.
- The mother and father must be given notice orally and in writing of the consequences and rights and responsibilities of signing the Affidavit of Parentage form.
- A completed and notarized affidavit establishes paternity and the affidavit may be the basis for court ordered child support, custody, or parenting time without further adjudication under the Paternity Act.
- A minor parent may sign an Affidavit of Parentage form with the same effect as if they were of legal age.
- After a mother and father sign an affidavit, the mother is presumed to have custody of the minor child unless otherwise determined by the court or agreed upon by the parties in writing.
- The mother and father waive the following rights by signing the Affidavit of Parentage:
 - Their right to blood or genetic testing to determine if the man is the biological father of the child;

- Any right to a court appointed attorney, including the PA, to represent either party in a court action to determine if the man is the biological father of the child; and
- The right to a trial to determine if the man is the biological father of the child.

All completed Affidavit of Parentage forms must be forwarded to the:

Central Paternity Registry
Division of the Registrar
Department of Community Health
3423 North M.L. King Blvd.
Lansing, MI 48909

- The mother or the man who signed the affidavit, the child who is the subject of the affidavit, or a Prosecuting Attorney (PA) may file a claim for revocation of an affidavit.

ACTION UNDER OTHER MICHIGAN LAWS

Use the Paternity Act whenever possible. See the section on Interstate Action, long arm to determine if there is sufficient contact to assert a jurisdiction over a putative father who resides in another state.

Other Michigan laws provide for the following actions to be taken in establishing paternity and/or support obligations:

- The court can resolve an issue of paternity involving the parties in divorce situations.

Uniform Interstate Family Support Act (UIFSA) provides for establishing paternity of a child who lives in another state when the putative father resides in Michigan. Procedures used in establishing paternity under UIFSA generally must follow those in the Paternity Act (MCL 722.711).

Note: The issuing state's law governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order (MCL 552.1605).

ESTABLISHING PATERNITY

Support Specialists (SS) evaluate the need for paternity services in IV-D cases and initiate referrals to the PA. Other state's IV-D agencies also initiate paternity referrals.

Take appropriate action from the following in establishing the paternity of a child under the age of 18:

- Evaluate paternity referral information and take action to establish paternity and a child support obligation when appropriate, using the most appropriate legal process available.

Note: Use the Family Support Act or Status of Minors Act in seeking a support order after execution of an affidavit under the Acknowledgment of Parentage Act or if paternity is established under the law of another state without further proceedings to establish paternity.
- Establish paternity in a IV-D case for a child born out-of-wedlock who is under the age of 18.
- Determine or establish paternity, where permitted under state law, for a child under age 18 who was born or conceived during a marriage but is not, or may not be, an issue of the marriage. See Socially Illegitimate Children/Divorce Intervention later in this item.

TIMEFRAMES FOR PATERNITY ACTIONS

Paternity actions in IV-D cases must be taken within timeframes specified in federal regulations. Those timeframes govern service of process and subsequent actions to establish paternity or conclude action against the putative father. They also apply to intrastate actions when Michigan is the responding state.

Services of Process Timeframes

Within 90 calendar days of locating a putative father, federal regulations require:

- completion of service of process necessary to proceed with paternity action, or
- documentation of unsuccessful attempts to serve process.

Referral Timeframes

Referral timeframes affect the time available for service of process when the SS locates a putative father.

Support Specialist Actions

The SS initiates paternity referrals within:

- Seven (7) calendar days of the date a putative father is located when the SS does not attempt to obtain an Affidavit of Parentage.
- Twenty (20) calendar days of the date a putative father is located when an attempt to obtain an affidavit is not successful.

The date of location is specified on the referral.

Note: If the SS obtains an Affidavit of Parentage, the SS initiates a referral for establishment of a support obligation. See Item 240.

Prosecuting Attorney Actions

Use state guidelines provided in Item 240 to serve process. Within 90 calendar days of the date a putative father is located:

- complete service of process necessary to take paternity action, or
- document attempts to serve process if those efforts were not successful.

Continue efforts to serve process until service is completed or location information is found to be inadequate to permit service. Initiate and complete activities to relocate a putative father within timeframes in Item 210 if location information is inadequate.

Service of process timeframes begin with the date you relocate the putative father.

Actions After Service Timeframes

Within 1 year of the later of successful service of process or the child reaching 6 months of age, federal standards require that:

- paternity be established, or
- putative father be excluded by genetic tests, or
- putative father be excluded as a result of a court determination.

Make every effort to establish paternity in IV-D cases within federally mandated timeframes.

IDENTIFICATION AND REFERRAL

The SS generally interviews the client to identify the marital status of the mother and obtains other relevant information prior to referral to the PA. The SS determines if the mother is:

- legally married at the time of conception or birth, then her husband is considered by law to be the father unless a court has determined that the husband is not the father, or
- not married at the time of conception or birth, paternity can be established voluntarily or a judge can declare a man the legal father of the child.

Support Specialist Actions

The SS also takes the following actions:

- Explains the benefits of establishing paternity.
- Assists the client in determining the timeframe during which conception occurred and with whom the client was having sexual relations when she became pregnant.
- Provides services to locate a putative father.
- Attempts to secure an Affidavit of Parentage when the client identifies only one man as fathering the child.

- Searches the Central Paternity Registry for verification when there is an indication that paternity was established previously.

The Central Paternity Registry data base contains:

- Acknowledgments filed with birth certificates since 1989.
- Hospital acknowledgments filed since January 1994.
- ALL acknowledgments completed after June 1, 1997.
- ALL Notices of Order of Filiation after January 1, 1997.

Refer to Item 140 - Safeguarding Information for use of Information in Central Paternity Registry.

The affidavits on file at DCH from 1989 through May 31, 1997 will be available to child support staff through the Central Paternity Registry system but will remain confidential and not available to the public. These records will be identified by the system and include the statement "Confidential -- For Administrative Use - Not for Distribution" on screens and printouts.

Note: The Probate Courts may have on file affidavits not meeting criteria for Central Paternity Registry data base above.

Requests for certified copies of affidavits filed prior to 1989 should be directed to the Probate Court.

Note: Request certified copies of affidavits for contested cases only. OCS monitors requests for certified copies.

The SS initiates a paternity referral:

- when an attempt to obtain an affidavit from a putative father is improper or unsuccessful;
- for each putative father when the client identifies two or more putative fathers and each father is located;
- when divorce action is pending in Michigan and the parentage of a child born or conceived during the marriage is at issue. See "**Socially Illegitimate Children/Divorce Intervention**" later in this Item;
- when a voluntary acknowledgment of paternity was not obtainable on an out-of-state request.

Prosecuting Attorney Actions

The PA interviews the client to review and confirm paternity referral information and obtain additional information needed to pursue paternity action.

The PA takes the following appropriate actions:

- limit questions to only those necessary in establishing paternity and securing support;
 - restrict questions regarding a client's sexual history to the period 60 days before and 60 days after conception;
- Note:** Questions such as "Have you ever had sexual relations with anyone else at any time? If so, who and when?" are inappropriate and not germane to the issue at hand.
- accept multiple paternity referrals involving the same child, and
 - ascertain the identity of the natural father, and attempt to establish paternity.
 - identify individuals who could not have fathered the child when you determine there are additional putative fathers after receiving a paternity referral and proceed with action against the man who fathered the child.
 - determine if a polygraph examination is necessary to substantiate information provided by the client.

Note: Limit and judiciously use these examinations.

It is anticipated that a polygraph examination will be necessary only when previous information given by the client is contradicted. (**Example:** The client provides subsequent information or a defendant credibly denies paternity.)

METHODS OF ESTABLISHING PATERNITY

There are two methods for establishing paternity for unwed parents. They are:

- voluntary acknowledgment, or
- court order

Acknowledgment of Parentage Act

Support Specialist Actions

The SS attempts to obtain an Affidavit of Parentage under the Acknowledgment of Parentage Act before initiating a paternity referral in cases where the:

- Agency acts as the complainant under the Paternity Act.

Note: Pursuant to MCL 722.714(8), the Agency can act as the complainant when the child receives public assistance, including medical assistance. The Agency can determine it necessary to act

as the complainant when (i) a client is noncooperative, (ii) to prevent unnecessary antagonism between the putative father and the client or (iii) to protect the interests of the Agency.

- Putative father is willing to acknowledge paternity and there is only one putative father identified.
- Parties live together and receive public or medical assistance.

Prosecuting Attorney Actions

The PA solicits form B-229, Affidavit of Parentage, pursuant to the Acknowledgment of Parentage Act when the SS's efforts fail.

Note: A putative father may give greater consideration to completing a B-229 when the request is made by the PA.

Obtaining a B-229 under the Acknowledgment of Parentage Act has the following advantages over proceedings under the Paternity Act:

- Genetic tests may not be necessary.
- Less time and costs are required to obtain an affidavit and companion support order than conducting a paternity trial.

Parents' Rights & Responsibilities

Provide all unwed parents with oral and written information on the purpose and completion of the form and the information on the rights and responsibilities of the parents prior to signing the Affidavit of Parentage.

Note: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires that the mother and father be given notice orally and in writing on the consequences, and rights and responsibilities that arise from signing the Affidavit of Parentage form.

The mother and father waive the following rights by signing the Affidavit of Parentage:

- Their right to blood or genetic testing to determine if the man is the biological father of the child;
- Any right to a court appointed attorney, including the PA, to represent either party in a court action to determine if the man is the biological father of the child; and
- The right to a trial to determine if the man is the biological father of the child.

Use the B-229 form to execute an acknowledgment of parentage. See Exhibit 1 for a facsimile and completion instructions.

Minor mothers and fathers can sign an affidavit with the same effect as if they were of legal age.

Changes to Birth Certificate

Inform unwed parents that affidavits completed outside the hospital setting do not change the birth certificate. Unwed parents completing the affidavit outside the hospital and wanting the father's name to appear on the birth certificate should:

Complete an Application to Name a Father on a Michigan Birth Record-B-79b (Community Health Form). This form is available at Local Registrar's offices or can be mailed by calling 517-335-8656 and leaving the name, address, and telephone number on voice mail.

- Get a certified copy of affidavits filed PRIOR to June 1, 1997 from the Probate Court.

Note: The Department of Community Health receives all original affidavits filed after June 1, 1997. Therefore, it is not necessary to send a certified copy of affidavits filed after June 1, 1997.

Make a note on the Application that the affidavit was completed after June 1, 1997 so that Community Health can verify the recording in the Central Paternity Registry. (The Affidavit of Parentage form should be submitted to DCH several weeks prior to submitting the application to change the birth certificate so that the affidavit has time to be entered into the CPR.)

- Pay the required fee (currently \$26.00. This fee includes a certified copy of the replacement record.) and
- Submit all these items to:

Division of the Registrar
MI Dept of Community Health
3423 North M.L. King Blvd.
POB 30195
Lansing, MI 48909

Consider taking support action against the legal father when a putative father signs a B-229 form and a court of competent jurisdiction has not determined that the legal father is not the biological father. See "**Socially Illegitimate Children/Divorce Intervention**" later in this Item.

Note: A B-229 completed by a putative father and mother may be deemed voidable if it is later discovered that a legal father exists.

For recording into the Central Paternity Registry for IV-D access, send the completed original B-229 to the:

Central Paternity Registry
Division of the Registrar
MI Dept. of Community Health

3423 North M.L. King Blvd.
Lansing, MI 48909

Establish the support obligation under the Family Support Act, Status of Minors Act, or Child Custody Act when an affidavit under the Acknowledgment of Parentage Act is obtained.

Note: Request that the child support obligation be reserved because application of child support guidelines would be inappropriate and unjust when and while parties (i) live together, (ii) function as a family unit, and (iii) receive public or medical assistance.

Ensure that federally mandated timeframes for paternity actions, including service of process, can be met should efforts to obtain an affidavit fail.

Claim for Revocation

The Acknowledgment of Parentage Act, effective June 1, 1997, allows the mother, the man who signed the acknowledgment, the child, or a PA to file a claim for revocation.

A claim for revocation can be filed either as:

- Original action in the Circuit Court of the county where either the mother or man resides. If neither party lives in this state, file the claim in the county where the child resides.
- Motion in an existing action for child support, custody, or parenting time in the county where the action is and all provisions in the act apply as if it were an original action.

A claim for revocation must be supported by a signed affidavit with facts that constitute one of the following:

- mistake of fact,
- newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed,
- fraud,
- misrepresentation or misconduct,
- duress in signing the acknowledgment.

The court will decide what further action is necessary.

The Clerk of the Court forwards a copy of the Order of Revocation to the State Registrar. The State Registrar vacates the acknowledgment and may amend the birth certificate as prescribed by the Order of Revocation.

PATERNITY ACT Paternity establishment through a court action is completed under the Paternity Act. The Act is also used to obtain an order for support. Orders of Filiation and support are entered under the Act when:

- court finds against the defendant, or
- father acknowledges parentage, or
- default is entered against the putative father.

File adjudications of paternity in the Central Paternity Registry.

Genetic Testing The Paternity Act includes provisions for court ordered genetic testing. The PA will determine who is subject to testing and arrange for specimen draws. Test results exclude individuals who could not be the father of a child and provide a probability of paternity for a nonexcluded man. Genetic testing can be useful particularly when resolving paternity issues such as:

- disputes when the parties are willing to stipulate to the results;
- cases involving multiple allegations of paternity.

The mother and alleged father must be served with notice of paternity testing. The notice should include explanations of all of the following:

1. The test to be performed.
2. The purpose and potential uses of the test.
3. How the test results will be used to establish paternity or nonpaternity.
4. How the individual will be provided with the test results.
5. The individual's right to keep the test results confidential.

The party must be notified that child support will be determined and the rights to custody and parenting time may be determined during the paternity action.

The Paternity Act also provides for presumptions of paternity based on genetic testing results. Paternity is presumed under the Act:

- when the probability of paternity calculated for a nonexcluded man is 99% or higher;
- for the person with the highest probability of paternity if two or more individuals are determined to have a probability of paternity of 99% or higher.

Admit genetic test results by an accredited laboratory into evidence without foundation testimony. Objections to the genetic results or the report will be waived unless the mother or father put in writing and file

with the court specific reasons based on expert evidence for the objection within 14 calendar days after service.

A request and advance payment by the contestant is recommended in order to obtain additional genetic testing in any case where the original test result is contested.

Note: The burden of proof in rebutting a presumption of paternity is on the putative father if he decides to challenge a presumption of paternity.

A presumption of paternity can be used to support a motion for summary disposition in a paternity case.

Petition for a default judgment if a party refuses to submit to court ordered genetic testing, or disclose the refusal of a party to submit to testing if a trial is held.

Destroying Genetic Material

The court shall order a man's genetic testing material be destroyed after an exclusion.

The contracting laboratory retains the alleged father, mother and child's genetic testing material for no longer than the period of years prescribed by the national standards under which the laboratory is accredited.

Contract Provisions

Genetic testing services are provided by the federal Title IV-D Program to enable the establishment of paternity in situations where there is no legal father. The IV-D Program contracts with a nationally recognized scientific organization for genetic testing services.

The current contract with National Legal Laboratories, Inc. (NLL) will be in effect from April 1, 1996 through March 31, 1999.

Contract Rate

The rate is \$45.00 per individual tested or \$135.00 for a trio.

The fee includes one genetic report of the results, a postage paid draw kit if needed, and expert witness or deposition if needed.

Contact the OCS District Program Manager for prior approval in writing, if there are special needs for testing which go beyond the normal procedures. Send a copy to the laboratory of the signed approval so charges can be paid.

Phlebotomy Services

The cost for this service is in addition to the genetic testing costs. The NLL price is \$7.00 per individual.

Make arrangements for specimen draws and phlebotomy payments.

Photographs

Photos should be taken in all cases where specimens are drawn separately to assist with final identification.

Arrange with the draw site to have photos taken when all persons are not present at the same time. The original photo will be provided to the PA with the genetic report and a copy of the identification sheet.

Note: If the laboratory receives specimen from a trio of persons who were drawn separately and there are no photos, the lab will make a note on the ID sheet and will proceed with testing.

Note: If a "no photo" situation later demands further identification arrange for a new specimen. Request written approval from the OCS District Manager and attach to additional request. The specimen will be tested at additional costs.

Probability of Paternity

A probability of paternity will be calculated for a man who is not excluded.

Probability of paternity is the likelihood that the non-excluded man is the father and is generally described as a percentage. The percentage is obtained when the tested man is compared to a random man of the same race. The laboratory will be testing to at least a 99.0% probability of paternity. This means all cases with inclusion will be tested to the Michigan level of "refutable presumption."

Exclusion

Exclusion refers to the probability that a given genetic system will exclude a man falsely accused of paternity. Every genetic system has an associated probability of exclusion.

An exclusionary genetic report means the tested specimen was not from the biological father of the child in question. When the appropriate genetic information is not found in the person tested, exclusion is absolute. This is assuming that a genetic mutation did not occur (less than .001% chance of occurrence if a direct exclusion is found).

In DNA testing, findings of non-paternity are based on at least two exclusions. In systems other than DNA, findings of non-paternity are based on at least one direct exclusion or, in the absence of a direct exclusion, at least two indirect exclusions.

Cumulative Probability of Exclusion

Cumulative probability of exclusion refers to the probability that the falsely accused man will be detected and excluded by the combination of systems used for testing. Testing systems utilized by the laboratory yield a cumulative probability of exclusion of at least 99.9%. This number indicates the cumulative power of the testing systems and is the level of testing to which an included man must be tested to attempt to reach the desired probability of paternity.

Genetic Report

The laboratory is required to furnish one report of test results to the PA within 30 days if testing circumstances are normal. The report includes:

- The date(s) of sample collection.

- The name of each individual tested and the relationship to the child.
- The racial origin(s) assigned by the laboratory to the mother and alleged father for the purpose of calculation.
- The phenotypes established for each individual in each genetic system examined.
- If a finding of non-paternity is rendered, the basis of the finding will be provided.
- If there is a failure to exclude, the report will further include:
 - the individual paternity index for each system reported,
 - the cumulative paternity index,
 - the probability of paternity expressed as a percentage,
 - the designation of Polymerase Chain Reaction if buccal swab is used.
- An explanation if results are inconclusive.

Expert Witness Services

Notify the laboratory immediately when an expert witness appearance may be needed. Notify the laboratory immediately when a scheduled appearance is canceled. The laboratory will provide expert witness depositions or affidavits when needed.

When an expert witness is needed the cost of this service is included in the contract rate for one appearance on cases brought to court in Michigan. If more than one appearance or more than one day is required for the expert witness to complete testimony, costs will be paid by the requesting party.

Specimen Storage

The laboratory will store partials for one year on a routine basis and for longer periods of time if needed. The year begins when the genetic report is sent to the PA. Requested extensions of storage time are automatically for six (6) months.

Partials include the missing party or parties from an original trio, or a second or third alleged father on a previously tested trio.

The laboratory will store all tested specimen for ninety (90) days to allow the PA time to review the report and ask questions when necessary.

Notify the laboratory if a case is finished or disposed of in some other way than completion of genetic testing, such as acknowledgment signed, death, or dismissal due to something else.

Special Situations Buccal Swab

Buccal swab is available when circumstances are apparent that a blood specimen will not be available; for example, a baby less than six months old or persons who panic when blood is drawn.

Pre-arrange for the phlebotomist to use buccal swabs, if desired. If a situation becomes difficult, the phlebotomist may decide to use the buccal swabs.

"Only Man"

When a mother insists the tested and excluded man is the "only man:"

- The lab will review all paperwork and lab procedures.
- If no problem can be found and further action is necessary,
- The District Manager must determine the need and request in writing for new testing,
- If the man will cooperate, the new draw and tests will proceed,
- If there is a lab problem, it will be corrected at their expense and will require a new draw.

Redraws

The lab will call the PA involved in the case immediately if a redraw is necessary. A written communication will follow including the reasons so that a court order for specimen draws may be obtained. The lab reports all redraws to OCS central office monthly.

Coordination Fees

Coordination fees are charged by out-of-state labs occasionally. The fee is extra and will be charged to the PA because NLL is not responsible for these costs.

Second Laboratory

If a second lab is engaged on a specific case, the other lab must be AABB accredited and must use AABB standards for all testing done on the Michigan case.

Prosecuting Attorney Activities

Determine who is subject to testing and arrange for specimen draws.

Arrange for minimum administrative effort:

- Determine willingness of parties to stipulate to the results because many paternity disputes can be settled voluntarily based on genetic test results.

- Encourage parties to agree in writing that the chain of custody for specimen samples will not be challenged.
- Arrange for case to have summary disposition whenever possible.

Recovery of Costs Attempt to recover testing costs from the party denying paternity.

Exception: FIP and Medicaid recipients are not required to pay for genetic testing (45 CFR 303.5 (e)(1)).

The following is suggested language for a court order:

It is further ordered that the defendant shall pay to the Friend of the Court the sum of \$_____ per week until the total amount of \$_____ is paid for the genetic testing costs. This sum shall be transmitted by the Friend of the Court to the Family Independence Agency for repayment of the tests administered to the parties and paid for by the Family Independence Agency.

Prepayments If prepayments are arranged, they must cover the entire amount of the costs. The contractor is not required to accept partial prepayments. Prepayment may be made by either the putative father or the mother.

Exception: FIP and Medicaid recipients are not required to pay for genetic testing (45 CFR 303.5 (e)(1)).

Mailing Kits See Exhibit 1 for NLL procedures.

Interstate Cases In interstate cases, federal regulations require the:

- initiating state to pay for the costs of genetic tests;
- responding state to attempt to obtain a judgment for costs when paternity is established including the costs of genetic tests to reimburse the initiating state.

Attempt to obtain the required judgments when Michigan is the responding state.

Forward moneys to the state when payments for genetic testing are received from another state. Ensure checks/payments are:

- payable to the State of Michigan, and
- identified as a "Genetic Test Recovery," and
- include the names of the parties (father, mother, child) and transmit to:

State of Michigan
Family Independence Agency
Attn: Cashier's Office
P.O. Box 30037

Lansing, MI 48909

Interstate Actions

Long Arm

The Paternity Act can be used to establish paternity of a putative father living outside of Michigan when sufficient contact with Michigan can be established. The Revised Judicature Act (MCL 600.705) states any of the following constitutes sufficient basis for jurisdiction:

- transaction of any business within Michigan,
- the doing or causing an act to be done, or consequences to occur, in Michigan resulting in the action for tort,
- the ownership, use, or possession of real or tangible personal property situated in Michigan,
- contracting to insure a person, property, or risk located within Michigan at the time of contracting,
- entering into a contract for services to be entered or for materials to be furnished in Michigan by defendant,
- acting as a director, manager, trustee, or other officer of a corporation incorporated under the laws of, or having its principle place of business in Michigan, or
- maintaining a domicile in Michigan while subject to a marital or family relationship which is the basis of the claim for divorce, alimony, separate maintenance, property settlement, child support, or child custody.

Section 201 of UIFSA allows personal jurisdiction over a non-resident if any of the following are true:

- The individual is personally served with a citation, summons, or notice within this state.
- The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving a contest to personal jurisdiction.
- The individual resided with the child in this state.
- The individual resided in this state and provided prenatal expenses or support for the child.
- The child resided in this state as a result of the individual's acts or directives.

- The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse.
- The individual asserted parentage in the parentage registry maintained in this state.
- There is another basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

Support Specialist Actions

The SS takes the following actions in out-of-state requests:

- attempts to ascertain if paternity was established in another state, or
- attempts to obtain a voluntary Affidavit of Parentage, or
- determines whether the case should be referred to the PA or FOC under UIFSA, or the Paternity Act using long arm jurisdiction.

Prosecuting Attorney Actions

The PA takes appropriate actions from the following options on outgoing interstate cases:

Outgoing Cases

- Ensures that full faith and credit is given to determinations of paternity.
- Contacts the IV-D agency of another state to verify whether an affidavit establishing paternity was filed in that state (it is not necessary to obtain an Order of Filiation when an Affidavit of Parentage has been completed in another state).
- Attempts to establish paternity in cases where the putative father lives outside of Michigan and paternity has not been previously established.
- Reviews each case for potential paternity action in light of existing case law and applicable state statutes in both Michigan and the state where the putative father resides.

Note: Many states pursue paternity under their UIFSA statutes.

- Considers the possibility of a voluntary acknowledgment, or action using Michigan's long-arm jurisdiction.
- Sends referrals in interstate cases to the responding state's interstate central registry within 20 calendar days of determining that a putative father is in another state and long-arm establishment is not appropriate.

Exception: Do not refer cases in which you are taking action using long-arm jurisdiction.

INCOMING CASES

The PA takes appropriate actions from the following options when interstate petitions are received from other states requesting that paternity be established.

- Obtains an Affidavit of Parentage and establishes the support obligation under UIFSA statutes.
- UIFSA allows for a petition for paternity establishment apart from support action.
- Takes action to establish paternity on an interstate basis under Michigan's UIFSA when paternity has not been:
 - Legally acknowledged, or
 - Previously adjudicated, or
 - Established by marriage, and
- Putative father asserts as a defense that he is not the father of the child for whom support is sought.

**SOCIALLY
ILLEGITIMATE
CHILDREN/
DIVORCE
INTERVENTION**

The PA takes support action on behalf of a child born or conceived during a marriage who is not, or may not be, an issue of the marriage. Potential courses of action may vary due to differences in case circumstances. The following guidelines may be of assistance when initiating action:

- Paternity action against the putative father is appropriate after a court of competent jurisdiction determines that a child born or conceived during a marriage is not an issue of that marriage. This includes cases in which a divorce judgment contains a declaration that the child is not an issue of the marriage. Regarding the latter cases, see *Girard v Waggonmaker*, 437 Mich App 231 (1991) and *Department of Social Services v Baayoun* 204 Mich App 170 (1994).
- It may be appropriate to appear at a hearing to protect the interest of the child or public (see MCL 552.29 and 552.45) when divorce action is pending and the status of a child is at issue. Under appropriate circumstances, it may be possible to stop a party from denying paternity of a child born during a marriage.
- Evaluate all available information in cases in which a parent claims that a child conceived or born during a marriage is not an issue of that marriage to determine if there is a basis for the claim. Action to establish the husband's support obligation may be appropriate

when you cannot substantiate the claim of non-paternity. Consider action against the putative father when a court of competent jurisdiction has issued an order finding the husband not to be the father.

- File a support action against the husband to allow the court to make a determination that a child is not the issue of the marriage.

Settlements

The portion of the Paternity Act which allowed for lump sum settlements was declared unconstitutional by the Michigan Court of Appeals and was subsequently repealed by the Legislature. See *Dones v Thomas* 210 Mich App 674 (1995). Settlements are no longer permitted under the Paternity Act.

PARENTING TIME AND CUSTODY ISSUES

Parenting time and custody disputes do not present a legal bar to pursuing support nor can a public or medical assistance client be found noncooperative for failure to agree to parenting time and custody arrangements. Take the following actions in parenting time and custody issues:

- Do not decline to establish paternity and support in a IV-D case because of parenting time and custody disputes.
- Encourage the client to reach an agreement with the putative father concerning parenting time unless there are compelling reasons for denying parenting time.
- Advise the client of available domestic relations mediation through the Friend of the Court.
- Do not represent either party in a custody or parenting time dispute. The court enters an order establishing support with temporary custody and parenting time provisions under the Paternity Act.

MEDICAL SUPPORT/ CONFINEMENT EXPENSES

Medical support in this context refers to obligations for health insurance and reimbursement of the mother's confinement expenses. The Paternity Act, Family Support Act, Status of Minors Act, and other support statutes define support and specify that it can include payment of medical and other health care expenses. The Paternity Act specifically allows for the father to reimburse necessary expenses incurred by or for the mother's pregnancy and confinement as the court deems proper. Confinement expenses are the costs incurred by the mother: (a) during her pregnancy, (b) while delivering the child, and (c) while hospitalized because of her pregnancy. Take the following actions:

- Attempt to secure health insurance obligations (see Item 250) in conjunction with actions to establish paternity and secure child support.
- Consider recovery of the amount paid by the state or Medicaid program for a mother's confinement expenses when taking actions in establishing paternity under the Paternity Act.
- Obtain a statement of the amount paid by the Medicaid program for the mother's confinement expenses from the Third Party Liability Division, Department of Community Health.

Exception: Obtain a statement of the mother's confinement expenses directly from medical service providers when the Medicaid program did not pay for them.

- PA or SS, depending on local practice procedure, request statements by completing form FIA-76, Confinement Expense Request (see Exhibit 2) in its entirety and ensure that the information provided on the form is correct.

The Third Party Liability Division provides responses on the same FIA-76 and/or Report MW-500 (see Exhibit 3). Medical service providers are allowed one year from the date of rendering a service to bill Medicaid.

Note: Incomplete FIA-76's and/or incorrect information on these forms causes processing delays.

Either of the following two options can be used when the amount paid by the state for the mother's pregnancy and confinement expenses is not available from the Third Party Liability Division at the time a support order is entered.

- A general statement establishing the father's liability for the medical costs of confinement and birth.

It is further ordered that the Defendant shall pay to the Friend of the Court of the county for the Plaintiff's pregnancy and confinement expenses arising from the birth of said child(ren). However, the amount and rate of payment shall be reserved for future determination by the court when the amount paid for said expenses by the Family Independence Agency is made available.

It is further ordered that the Family Independence Agency shall submit written verification of the amount paid for the Plaintiff's pregnancy and confinement expenses to the Friend of the Court.

- A "baseline cost" of \$1,750 (minimum confinement expenses paid by FIA in 90% of a random sampling of cases for a specific period) as a temporary payment amount.

It is further ordered that the Defendant shall pay to the Friend of the Court for the County of _____, the temporary sum of \$1,750 at the rate of _____, for the Plaintiff's pregnancy and confinement expenses arising from the birth of said child(ren) until the amount paid for said expenses by the state is made available and paid in full or until further order of the court. The Friend of the Court shall forward such payments to the Family Independence Agency for repayment of Plaintiff's pregnancy and confinement expenses, paid for by the state.

It is further ordered that the state shall submit written verification to the Friend of the Court of the amount paid for the Plaintiff's pregnancy and confinement expenses.

Forward the statement from the Third Party Liability Division to the appropriate Friend of the Court when received.

DISMISSALS

Take the following actions in dismissals of cases:

- Request dismissals of paternity cases "without prejudice," other than those in which the putative father is excluded by blood tests.

Note: This permits future efforts to establish paternity when a complaint is dismissed "without prejudice."

- Resist attempts by defense counsel to inappropriately have a case dismissed "with prejudice."
- Evaluate the reason for dismissal when a complaint is dismissed "without prejudice," and continue action to establish paternity whenever possible. (Example: Continue paternity action if dismissal occurs for failure to serve prior to expiration of the summons but the location of the putative father is known.)
- Determine when it would be appropriate to resume action if there is no present potential for action.
- Inform the SS of the projected date or circumstances under which paternity action can be resumed to ensure that the case is re-referred for action at the appropriate time.