PATERNITY

INTRODUCTION

GENERAL INFORMATION

This chapter contains information on the following topics:

1. Basic information about paternity establishment;
2. Paternity establishment procedures;
3. Voluntary methods of establishing paternity;
4. Judicial methods of establishing paternity;
5. Paternity testing;
6. Paternity disestablishment.

PATERNITY ESTABLISHMENT BASICS

GENERAL INFORMATION

This topic contains information on the following subjects:

1. An overview of the paternity establishment function;
2. Paternity Establishment time frames;
3. Paternity establishment policy.

PATERNITY ESTABLISHMENT OVERVIEW

A legal responsibility for a child must exist before a father can be pursued for support of the child. If no such responsibility has been determined, paternity must first be established. Under North Carolina law, paternity can be established at any time prior to a child's eighteenth (18th) birthday.

CSS must thoroughly evaluate the circumstances of the child's birth and any subsequent actions that might have been taken to determine if paternity establishment is needed. Paternity testing can be used to provide scientific evidence of biological paternity in making a determination of a legal responsibility of a father.

Paternity can be established by the following legal processes:

1. Voluntary admission of paternity;
2. Civil paternity action (including UIFSA, long-arm actions, and straight civil paternity suits);
3. Legitimation;
4. Criminal non-support proceedings.

North Carolina law also provides processes to set aside a paternity determination and grant relief from a child support obligation to a man who is determined by the court NOT to be the responsible father of a child. See Paternity Disestablishment.

PATERNITY ESTABLISHMENT TIME FRAMES

Federal time frames for establishment of support obligations require that if paternity is at issue for a child, paternity also must be

established within the stated period. When conducting activities for the establishment of paternity, CSS must take all appropriate actions to adhere to the following federal time frames:

PATERNITY/SUPPORT ESTABLISHMENT TIME FRAME

Federal regulation at 45 CFR 303.4 establishes standards for timely action to establish support obligations. The expectation is that within ninety (90) days of locating an alleged father or noncustodial parent (NCP), regardless of whether paternity has been established, CSS must:

- Establish an order for support and, if necessary, paternity;
- Complete successful service of process; or
- Document unsuccessful attempts to serve process.

EXPEDITED PROCESS TIME FRAMES

Federal regulation at 45 CFR 303.101(b)(2)(i) requires states to have and use expedited processes to ensure that paternity and support orders are established in a timely manner. Regardless of whether paternity also must be established, a support order must be established:

- For seventy-five percent (75%) of the cases within six (6) months/ one hundred-eighty (180) days after the date of service of process; and
- For ninety percent (90%) of the cases within twelve (12) months/ three hundred sixty-five (365) days after the date of service of process.

PATERNITY ESTABLISHMENT PERFORMANCE (PEP)

Federal incentive funding is measured by the 12-month expedited process time frame. Federal regulation at 45 CFR 305.2 prescribes the formulas that can be used to determine a state's paternity establishment performance (PEP) level. If the paternity establishment rate for a state is below ninety percent (90%), the rate must be increased incrementally on a yearly basis until the rate reaches ninety percent (90%).

North Carolina's paternity establishment performance level is computed using the following formula:

Total # of children in the IV-D caseload at the end of the federal fiscal year who were born out of wedlock with paternity established or acknowledged

DIVIDED BY

Total # of children born in the IV-D caseload at the end of the federal fiscal year who were born out of wedlock

PATERNITY ESTABLISHMENT POLICY

CSS services for establishment of paternity are available for IV-D cases when a father's legal responsibility must be determined so that support can be pursued.

Paternity establishment services cannot be provided as a stand-alone service for a IV-D case or to any other person or agency for any purpose other than the establishment of a support obligation for a IV-D case. This includes assisting other programs in securing paternity testing to facilitate adoption or for any other purposes. The use of CSS funding and resources are governed by federal regulation and paternity testing laboratory contracts. Therefore, all inappropriate requests for paternity establishment services must be denied.

If a child in a IV-D case has no legally responsible father, paternity must be established before any action to establish a support obligation for the father can begin. To determine if paternity must be established, CSS must take all necessary steps to investigate and evaluate the paternity status of a child, including:

- Interviewing the child's mother, alleged father, relatives, or others who could have needed information;
- Obtaining documents regarding paternity, such as a birth certificate, Affidavit of Parentage, custody/ paternity/ support/ visitation/ adoption or other court orders, marriage/ separation/ divorce documentation, or other documents;
- Collecting any other information and documentation of paternity or any relationship between the mother and alleged father (such as, dates of the relationship, rental agreements, joint bank accounts, letters, photographs, etc.);
- Conducting paternity testing whenever appropriate;
- Recording of all information in the case record; and
- Submitting all information to the CSS agency attorney for review.

If the case evaluation determines that paternity is at issue, appropriate action to establish paternity must be initiated in a timely manner. Selection of the most appropriate action should take into consideration all information gathered, the willingness of the alleged father to participate, federal time frames, and any other pertinent factors.

If the case evaluation determines that paternity is not at issue, CSS should pursue the establishment of a support obligation for the responsible parent. See Support Establishment.

In the event that paternity is not at issue yet the mother alleges that another man is actually the child's biological father, CSS must include the legal father in any paternity or support action for the child. See Legal Vs. Biological Paternity or Paternity Disestablishment.

Paternity establishment applies only to a father's responsibility for his child. For the purposes of establishing and enforcing a support obligation for the mother, issues of whether a child was born of a marriage and the identification of the child's father are not relevant.

Paternity establishment is not an appropriate case activity for a case in which the mother of a child is being pursued for support. However, information on the paternity status is necessary for proper statistical reporting. It also would be necessary if paternity and support of the father are pursued at a later date.

PATERNITY ESTABLISHMENT PROCEDURES

GENERAL INFORMATION

This topic contains information on the following subjects:

1. The paternity establishment process;
2. Requesting birth record data;
3. Paternity establishment involving minor parents;
4. Legal vs. biological paternity.

PATERNITY ESTABLISHMENT PROCESS

The collection of information necessary to determine whether paternity is at issue begins with the application for CSS services and initial interviews of the custodial parent (CP) and noncustodial parent (NCP). If either parent is a minor, CSS must take special precautions to protect the rights of a minor.

CSS schedules and conducts an interview with the CP. At the CP's interview, CSS workers:

- Explain the purpose of the interview and the rights/options/ consequences of establishing paternity.
- Review information provided in the Application for Services or referral from DSS.
- Collect all paternity-related information. Workers can use the NCCSS Paternity Questionnaire for this purpose. They can ask the CP to complete and bring the questionnaire to the interview, or it can be completed during the interview.
- Request any additional information or documents needed that the CP might be able to provide.
- If appropriate, workers allow the CP to sign the Affidavit of Parentage (DSS-4697).

CSS schedules and conducts an interview with the alleged father (NCP). At the NCP's interview, CSS workers:

- Explain the purpose of the interview and the rights/options/ consequences of establishing paternity.
- Ask the NCP to provide any information needed to complete documentation and substantiate information provided by the CP or other sources.
- Ask the NCP to confirm or deny paternity. If the NCP confirms paternity, workers offer him the opportunity to sign the Affidavit of Parentage (DSS-4697), if it is appropriate. If the NCP denies or is unsure of paternity, paternity testing might be appropriate, either voluntarily or by order of the court. Workers offer and arrange paternity testing, as appropriate.

After completing the interviews, CSS workers:

- Record activities and information from the interview in the case record;
- Place all documents received in the case file.

While reviewing and evaluating all data collected, CSS workers:

- Identify and take steps to secure any additional information that might be needed.
- Make a preliminary determination of whether paternity is or is not at issue.
- Have the CSS agency attorney review the documentation and make a final decision on whether or not paternity establishment is required to create a legal responsibility for the child and to pursue support from the father.
- When evaluating case information, workers use the following guide to determine if paternity is at issue:

Was the child born of a marriage?

If the mother is married when a child is conceived or born, NC law presumes that her husband is the child's father. In accordance with NCGS 130A-101, the husband's name must be entered as the father on the child's birth certificate. This "marital presumption" remains until any further determination of paternity is made by a court order. If this presumption exists, paternity is not at issue. As the legally responsible father, the husband is the NCP in the CSS case.

To answer this question, CSS workers:

- Obtain the child's date of birth, and find out whether the birth was premature or full term;
- Collect the date and name of the spouse for all marriages/ separations/divorces of the mother;
- Obtain a copy of the child's birth certificate;
- Ask the CP and NCP if any court orders exist relative to paternity. (If so, paternity might be established already and no longer presumed). Workers obtain copies of all orders and have the CSS agency attorney review them to determine whether or not paternity is at issue.

Has a parental responsibility been addressed by an order of a court?

If a NC court or a court of another state or country has entered an order that established a parental responsibility for a child, paternity is not at issue. This might occur in an order for paternity, support, custody, visitation, or adoption, as well as a divorce or other order of a court. However, if an NC court that removes a parent's responsibility for a child (such as rescission of a voluntary admission of paternity, paternity disestablishment, or termination of parental rights) has been entered, paternity can be considered to be at issue.

To answer this question, CSS workers:

- Ask the CP and NCP if any court orders exist relative to paternity;
- Obtain copies of all orders and any other relevant documents. Workers ask the CP or NCP to provide documents, or they take steps to obtain these documents from the court or other sources as needed. Workers have the CSS agency attorney review them to determine whether paternity is at issue.

Have the parents voluntarily established paternity for their child?

This might occur by the signing of an Affidavit of Parentage in NC or a similar admission of paternity done in another state. If a voluntary admission of paternity has been made and has not been properly rescinded, paternity is not at issue.

To answer this question, CSS workers:

- Ask the CP and NCP if they have signed an Affidavit of Parentage (DSS-4697) in NC or any similar document in another state;
- If the child was born in NC, workers determine if a copy is located in a CSS agency. If so, they obtain the document from that agency. If not, they request it from NC Vital Records.
- If the child was born in another state, workers ask the parents to provide a copy and/or contact the Vital Records entity of the birth state to obtain a copy of the document;
- Ask if either parent has taken steps to rescind a voluntary admission of paternity. If so, workers obtain copies of any order and request birth record data from the state Vital Records agency to determine if the father's name has been removed.

Have the parents legitimated the child?

Legitimation can occur by court order or by marriage of the parents after the birth of the child. If the parents marry, state that the child is theirs and treat the child as their own; no court action is required for legitimation. If a child is legitimated, paternity is not at issue.

To answer this question, CSS workers:

- Ask if either parent has filed court action for legitimation. If so, workers obtain a copy of the order.
- If parents married after the birth of the child, workers ask each of them whether they consider the child to be theirs, are presenting themselves as a family to others, and intend to take responsibility for their child. Workers document their statements in the case record.

- Workers use information obtained in the evaluation process to determine the correct status;
- If insufficient information exists to make a determination, workers continue to seek needed information.

If paternity establishment is needed, workers initiate an appropriate action to establish paternity, based on the information collected about the case.

Paternity testing, whether conducted either voluntarily or by court order, could be an appropriate component of establishing paternity.

If paternity is not at issue because the child has a legally responsible father, workers initiate appropriate action to establish a support obligation. For information on the available methods to establish paternity, see Voluntary Methods for Establishing Paternity or Judicial Methods for Establishing Paternity.

REQUESTING BIRTH RECORD DATA

CSS workers must obtain documentation of whether or not paternity is at issue for a child and include it in the CSS case record. Birth records can provide information on whether or not a father was identified at the time of a child's birth or at a later date. The CSS agency is responsible for ensuring that proper birth record data is obtained and included in the case record.

The official source for birth record information is the Vital Records entity of the child's birth state. This agency maintains the originally-issued birth certificate and any modifications that might have been made. An original record might be revised to correct an error, to add or remove a father's name, to change the child's surname, or to make other modifications.

If a birth certificate is requested from Vital Records, the current version will be provided. Other sources might have only the original document or might not be aware of any modifications that could have been made. Therefore, it is important to consider the potential validity of available documents when requesting a birth certificate from these sources.

Before requesting a birth certificate or Affidavit of Parentage, CSS workers always should confirm whether a document is available within CSS or DSS and whether a request has already been made to Vital Records or another entity.

Possible sources for birth record information include:

- **NC Vital Records -**

  Copies of birth certificates and Affidavits of Parentage that are completed at a child's birth in North Carolina are initially available from NC Vital Records. A nonrefundable $24.00 fee is charged for each birth record search, whether the request is for certified copies, photocopies, or one or both birth record documents. The fee is charged even if no record is found.

- **Vital Records in Other States/US Territories -**

  When CSS workers need birth record data for a child who was born in another state/US territory, they can make a request to the Vital Records entity of the birth state/territory.

  Fees and requirements vary by state/territory, and they must be honored when making a request. Some states might not accept requests from CSS; however, requests from a parent or CSS agency in the birth state might be honored. If requests are not honored, securing the documents from other sources could be required.

- **Vital Records in Other Countries -**

  When CSS workers need birth record data for a child who was born in another country, send a request to the other country's Vital Records entity.

Other possible sources of birth record data include:

- **Custodial Parent (CP) -**

A custodial parent (CP) always should be asked to provide birth information. When requesting that a CP provide a birth certificate or Affidavit of Parentage, always ask if any actions have occurred that could be cause for changes to the birth record. Particularly if the CP is a child's mother, she often can provide them immediately.

If a CP cannot or does not provide birth information in a timely manner, take steps to secure the necessary information from other sources. If other potential sources are available, it is not appropriate to initiate noncooperation or case closure actions for a CP's failure to produce these documents.

- **Register of Deeds -**

  In North Carolina, a copy of the original birth certificate is mailed with the Register of Deeds of the child's birth county. However, the Register of Deeds cannot provide a revised birth certificate or an Affidavit of Parentage.

- **Other Agencies -**

  County DSS or another county child support agency also could be able to provide a copy of a birth certificate that is on file in their agency. Sharing this information is not a breach of confidentiality for any DSS agency.

PATERNITY ESTABLISHMENT INVOLVING MINOR PARENTS

When establishing paternity for a child whose mother or father is an unemancipated minor (under the legal age of 18), CSS must ensure that the minor parent's rights are protected. Prior to each discussion between the CSS agency and the minor mother, minor father, or minor alleged father, advise the individual of the right to have an adult present and document that decision. It is strongly recommended that any discussion with the minor be conducted in the presence of a parent, legal guardian, or other adult who is responsible for, or has an interest in, the welfare of the minor.

If the minor elects not to have an adult present, have the minor individual sign the Minor Parent/Adult Representative Statement (DSS-4540) before continuing the interview. If an adult is present, have that person sign the DSS-4540 document. Retain the completed form in the case file.

Otherwise, the interview process for a minor mother or alleged minor father is the same as that for an adult parent.

NCGS 110-132 states that the written admission of paternity is binding on an individual, whether adult or minor. However, if an adult representative is present at the signing of the Affidavit Of Parentage (DSS-4697) by a minor parent, it is advisable that the adult also sign the affidavit.

For a contested civil paternity case in which the defendant (alleged father) is a minor, the court must appoint a guardian *ad litem* to represent the interests of the minor.

LEGAL VS. BIOLOGICAL PATERNITY

North Carolina law presumes that if the mother is married at the conception or birth of a child, her husband is the father and as such is responsible for his child. This "marital presumption" that he is the legally responsible father is accepted as fact until it is challenged or rebutted. As the presumed legal father of a child, a husband has the right to accept this presumption and responsibility for the child or to challenge it by presenting evidence showing that he is not the biological father of the child.

CSS does not have the authority to make determinations on whether or not the husband is or should be responsible for a child. A rebuttal of paternity must be made to the court and an order entered that the husband either is or is not the legally responsible parent of the child. When the order is entered, the issue of paternity is adjudicated and no longer presumed.

If a married mother states that her husband is not the biological father and requests services to pursue paternity and support from another man, confirm whether a marital presumption or a court determination of paternity for the husband exists. Have the agency attorney review all pertinent documents to confirm the paternity status before taking any actions to establish paternity or support for the child.

The CSS agency attorney must be consulted before proceeding with any paternity case involving both a legal and a potential biological father. When a legally responsible father exists (either presumed or adjudicated), he must be included in any action for paternity or support of the child, unless the CSS agency attorney specifically directs otherwise. In that instance, case documentation must include the basis for the exclusion.

If a court determines that the husband IS the father, CSS can offer services to pursue the husband for support.

- If the court adjudicates the paternity of the husband, the existing paternity ruling is considered final and CSS cannot initiate action to establish paternity for another man.
- If the husband challenges the paternity determination, CSS must not advise or assist in such action. The husband can elect to seek private legal counsel.

If a court determines that the husband IS NOT the father and paternity has not been established for any other man, CSS can offer services to pursue another man for paternity and support.

- Paternity might have been addressed in a separation agreement, divorce order, or other order of the court.
- If the non-paternity of the husband has been determined, the child does not have a legally responsible father. Paternity is at issue, and another man can be pursued.
- The husband (or ex-husband) who the court has determined not to be the legally responsible parent does not have to be included in any action to pursue paternity of another man.

If NO court adjudication of paternity exists, the marital presumption prevails and CSS can offer services to pursue the husband for support.

- If the paternity presumption is challenged, voluntary or court ordered paternity testing might be appropriate to provide evidence of paternity.
- It might be appropriate to file an action to determine paternity and support against the legal and alleged fathers in separate actions or in a single court action. Workers should consult the CSS agency attorney for guidance on a case by case basis.

When a presumed or adjudicated legal father exists, a case must be established with him as the noncustodial parent (NCP).

If another man is then pursued for paternity, create a new case with this man as the NCP.

When managing cases containing the issue of legal and alleged fathers, CSS workers:

- Always begin by confirming whether or not a presumption or adjudication of a legal father exists.
- Inform the custodial parent (CP) of the impact of a "legal vs. biological father" situation and of the services that can and cannot be offered. Legal requirements are likely to be unfamiliar to a CP and could be contrary to what the CP has requested. Before proceeding with the case, workers should advise the CP of how the case will be handled.
- A CP in a Non-Public Assistance (NPA) case who does not want to proceed in the planned manner could choose to close the case. A decision not to proceed in a Public Assistance (PA) case should be made only after a claim of "good cause" has been granted by the PA program.
- Collect and provide all pertinent facts and documents to the CSS agency attorney for review and guidance on handling the case. Remember that each case is unique and must be assessed individually to determine an appropriate course of action.
- If a married mother and a man who is not her husband sign an Affidavit of Parentage for a child, this affidavit does not establish the paternity of the man who signs. It could be presented as evidence in a judicial action to remove the legal father and adjudicate paternity for another man.
- If a legal father exists, only involve an alleged father in any discussion or legal action at the direction of the CSS agency attorney.
- If a court rules that a legal father be removed and establishes the paternity of another man, ensure that the order states both actions. A father's name on a child's birth certificate can be removed only by an order of the court stating that he is not the child's father, and a different father's name can be added only after the removal of an existing father's name.

VOLUNTARY METHODS OF ESTABLISHING PATERNITY

GENERAL INFORMATION

This topic contains information on the following subjects:

1. Voluntary paternity establishment;
2. Hospital-based paternity establishment;
3. Voluntary paternity rescission.

VOLUNTARY PATERNITY ESTABLISHMENT

VOLUNTARY PATERNITY ESTABLISHMENT POLICY

Prior to 1997, an admission of paternity made by a parent required the approval of the court to establish paternity. In 1997, NCGS 110-132 was revised to declare that a voluntary admission of paternity made by the parents of a child has the same legal effect as an order of paternity, unless the admission of paternity is rescinded by either parent. See Voluntary Paternity Rescission.

This statute provides an administrative process by which paternity of a child born out of wedlock is established through the parents signing an Affidavit Of Parentage.

The NC Affidavit Of Parentage contains the following:

- A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the named man is the child's natural father;
- A sworn statement by the named man, declaring that he believes he is the natural father of the child;
- Information explaining the effect of signing the Affidavit and an acknowledgment of the receipt of this information; and
- The Social Security numbers (SSNs) and other demographic data of the mother, father, and child.

Before signing the Affidavit, parents must be given information to assist them in making an informed decision to establish paternity in this manner. This information must include:

- The rights and responsibilities of parents;
- The legal consequences of signing the Affidavit;
- The alternatives to signing the Affidavit; and
- The right and procedure to rescind, or retract an admission of paternity.

This information must be presented in both oral and written forms.

Each parent's signature must be properly notarized and the completed Affidavit filed with NC Vital Records. When filed with NC Vital Records, paternity is established and the name of the father is entered on the child's birth certificate.

NCGS 130A-101 requires that the mother's husband be listed as the father on a child's birth certificate. If the mother is married to someone other than the biological father of the child, the signing of an Affidavit of Parentage by the parents does not constitute establishment of paternity for the biological father.

If an Affidavit is signed in this circumstance:

- The mother's statement should include the selection that she was married to someone other than the father named on the Affidavit.
- CSS must consider the rights of the legal father in any actions to establish paternity or support for the child.

- Judicial action is required to remove the legal father and adjudicate paternity for a different man. The signed Affidavit can be used as evidence in this action. See Legal Vs. Biological Paternity.

Each parent has up to sixty (60) days after signing the Affidavit of Parentage to rescind or retract the admission of paternity. See Voluntary Paternity Rescission.

If the alleged father is not willing to admit paternity, voluntary paternity testing might be an option. Testing that results in a high probability of paternity can often assist him in making a decision to sign an Affidavit.

VOLUNTARY PATERNITY ESTABLISHMENT PROCEDURES

If paternity is at issue for the child and the mother of the child is confident of the identity of the father, CSS workers offer her the opportunity to sign a sworn statement declaring the name of her child's father.

CSS workers take the following actions to establish paternity voluntarily:

- If the mother is a minor, workers inform her of the right to have an adult present and document her decision. If an adult representative is present, they also have the adult sign the Affidavit Of Parentage.
- Workers explain the voluntary process, including parental rights/ responsibilities, consequences, alternatives, and the rescission of an admission of paternity. They advise her that Section 466(a)(13) of the Social Security Act requires the CSS agency to include the Social Security number (SSN) of any person who is subject to a paternity determination or acknowledgement or support order in the records relating to the matter and that disclosure of this SSN is mandatory for provision of CSS services.
- Workers ensure that all known information about the mother, father and child is entered in ACTS before printing the Affidavit, so that all pertinent information is included in the document. Any information not known at the time the Affidavit is printed must be entered on the document before it can be filed with NC Vital Records.
- Workers generate the Affidavit of Parentage (DSS-4697) document.
- Workers have the mother sign the Mother's Certification portion of the Affidavit and check the appropriate box regarding her marital status. Also they have her signature notarized.
- Workers contact the alleged father and schedule an interview.
- If the alleged father is a minor, workers inform him of the right to have an adult present and have the Minor Parent/ Adult Representative Statement (DSS-4540) completed and filed in the case record.
- At the interview, workers explain the voluntary process, including parental rights/responsibilities, consequences, alternatives and the rescission of an admission of paternity. If he requests paternity testing before making a decision to sign the affidavit, workers schedule and conduct the testing, if appropriate.
- Workers advise the alleged father that, under Section 466(a)(13) of the Social Security Act, the CSS agency is required to include the SSN of any person subject to a paternity determination or

acknowledgement or support order in the records relating to the matter, and that disclosure of this SSN is mandatory for the provision of CSS services.

- Workers obtain any additional information about the alleged father and enter it in the case record in ACTS.
- Workers review the Affidavit Of Parentage and add any missing information about the father. NC Vital Records requires that all fields in this document be completed before it is filed in the birth record.
- Workers have the father sign the Father's Certification portion of the Affidavit. Also they have his signature notarized.
- Within five (5) days of completion, workers send the original completed Affidavit Of Parentage to NC Vital Records for inclusion in the birth record. They retain a copy of the Affidavit in the CSS case record and provide each parent with a copy. Paternity is established subject to the right of each parent to rescind the admission of paternity.
- Workers document that paternity is established in the case record. When paternity is established voluntarily, no court hearing is held and no court order is issued.

HOSPITAL-BASED PATERNITY ESTABLISHMENT

In accordance with the provisions of NCGS 110-132(a), the opportunity to voluntarily declare paternity for a child is made available to parents at North Carolina birthing hospitals, county health departments, and NC Vital Records. If parents have established paternity voluntarily at a birthing hospital or other location, CSS must obtain a copy of the Affidavit Of Parentage and document in the case record that paternity has been established.

Completing a new Affidavit is not appropriate because paternity has been established and is no longer at issue.

When parents elect to voluntarily establish paternity at a hospital or other location, designated staff at that entity must provide parents with all of the information about the administrative process that is required by law.

The mother and the natural father are given the opportunity to sign an Affidavit Of Parentage For Child Born Out Of Wedlock (DHHS-1660). This form is identical to the Affidavit Of Parentage (DSS-4697) that NCCSS uses.

VOLUNTARY PATERNITY RESCISSION

VOLUNTARY PATERNITY RESCISSION POLICY

NCGS 110-132(a) provides that an admission of paternity made by signing an Affidavit Of Parentage is considered final, unless it is rescinded (or retracted) by either parent. Rescission is allowed up to sixty (60) days after the date when a parent signs the Affidavit. However, the opportunity to rescind the admission ends if an order establishing paternity and/or support for the child is entered earlier than sixty (60) days after the Affidavit is signed.

An order of rescission only removes an admission of paternity. It is not a determination that this man is not the legal father of the

child. If the court orders the rescission of the paternity admission, the Clerk of Court must notify the State Registrar of Vital Records. The father's name is then removed from the birth certificate. Any future birth records that are requested from NC Vital Records will not include the father's name. However, if the requesting party fails to appear or present the issue, the court must find the alleged father to be the legal father of the child.

After more than sixty (60) days have passed since the signing of the Affidavit Of Parentage, paternity can be challenged in court only on the basis of fraud, duress, mistake, or excusable neglect. The burden of proof is on the challenging party. In such a challenge, the issue of paternity is determined by court order and is no longer eligible for rescission. If a support obligation exists, it remains in effect during the challenge. Also see Paternity Disestablishment.

If the mother names the same alleged father after a rescission order has been entered, paternity establishment activities would proceed as though no action had previously occurred. It is probable that paternity testing and/or a civil paternity action would be appropriate in this situation.

VOLUNTARY PATERNITY RESCISSION PROCEDURES

To rescind an admission of paternity that was made under NC law, the challenging party (father or mother) must complete and file a Motion And Notice Of Hearing To Rescind Affidavit Of Parentage (AOC-CV-916M) with the court, along with a copy of the signed Affidavit Of Parentage, within sixty (60) days of the date of signing by the challenging party. Depending on where the Affidavit was signed, the form number could be:

- Birthing hospital or county health department - Form DHHS-1660;
- CSS agency - Form DSS-4697;
- County Clerk of Court - Form AOC-CV-604.

When filing the motion, the challenger is responsible for notice being served on all parties, including the CSS agency for the CSS case, in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The CSS agency must not assist or advise the challenger in preparing or executing the motion. The CSS agency attorney does not represent the challenging party at the hearing.

NC law does not require that rescission requests be made in any specific county; however, filing usually occurs in the rescinding party's county of residence. If reason exists to believe that a motion to rescind has been filed, it is appropriate for the CSS worker to inquire of the parties or the Clerk of Court to search the AOC Civil Case Processing System (VCAP) to verify the filing.

When notified that the father or mother has filed a motion to rescind an Affidavit with the Clerk of Court, CSS takes the following actions:

- Workers notify the CSS agency attorney of the hearing date.
- Workers obtain a copy of the signed Affidavit Of Parentage. They ensure that the date of the motion is within the allotted time from the date of signing and that no orders for paternity or support have been entered.
- Workers attend the hearing. Both the CSS agency attorney and the caseworker should attend the hearing. If the motion complies with

all statutory provisions, no expectation exists that the agency should object to the filing. However if inappropriate actions are initiated, such as allowing paternity testing, the agency attorney should make proper objections.

JUDICIAL METHODS OF ESTABLISHING PATERNITY

GENERAL INFORMATION

This topic contains information on the following subjects:

1. Civil paternity action;
2. Legitimation;
3. Criminal paternity action for nonsupport;

CIVIL PATERNITY ACTION

CIVIL PATERNITY ACTION POLICY

Civil actions to determine the parentage of a child born out of wedlock are governed by NCGS 8-50.1 and NCGS 49, Article 3. Full civil proceedings (including a hearing and service of process) are required.

In accordance with NCGS 49-14, a civil action to establish the paternity of a child born out of wedlock can be taken at any time prior a child's eighteenth (18th) birthday. Proof of paternity shall be by clear, cogent, and convincing evidence.

However, if a child already has a legally responsible father due to marriage of the child's mother or a prior determination of paternity, paternity establishment is not appropriate, except as allowed in certain circumstances. See Legal vs. Biological Paternity or Paternity Disestablishment.

NCGS 49-16 allows civil actions to establish paternity to be initiated by:

- The mother, father, child, or personal representative of any of them; or
- The Director of Social Services or any person who by law can perform such duties, including CSS caseworkers in the county where the mother resides or is found, the county where the alleged father resides or is found, or the county where the child resides or is found, when the child or mother is likely to become a Public Assistance (PA) recipient.

When paternity is established by civil action:

- It does not have the effect of legitimization;
- The rights and responsibilities of the parents are the same as if the child were legitimate;
- The father becomes responsible for medical expenses incidental to pregnancy and the birth of the child;
- The child's surname remains the same as that of the mother;
- The child is eligible for any Social Security, Veterans, or other benefits as a dependent of the father.

If the defendant is not present and has not appeared at a prior hearing or signed a consent order for the case, signifying awareness of the action, CSS must file an affidavit with the court that indicates whether or not the defendant is in the military or that CSS does not know whether or not the defendant is in the military before a default order establishing paternity is entered. For more information, see the "Military" Chapter.

In any civil action to establish paternity, the court can order the mother, the child, and the alleged father to submit to paternity tests. Paternity testing is required in a contested paternity action that is brought more than three (3) years after the child's birth or that is brought after the death of the alleged father.

Paternity can be established after the death of the alleged father if the action was begun:

- Prior to the death; or
- Within one (1) year after the death, if no estate action has begun; or
- If an estate is established in accordance with NCGS 28A-19-3(a).

If paternity testing is ordered by the court:

- Verified documentary evidence of the chain of custody of the obtained specimens is competent evidence to establish the chain of custody.
- Any party contesting the procedures or result of paternity testing must file written objections with the court and serve copies on all other parties not less than ten (10) days prior to a hearing on the results of the testing.
- If no objections are filed, the test results are admissible as evidence of paternity without the need for testimony or other proof of authenticity or accuracy.

The results of paternity testing in a civil action have the following effect:

- If the probability of paternity of the alleged parent is less than eighty-five percent (85%), the alleged parent is presumed not to be the parent and the results are admitted as evidence. This presumption can be rebutted only by clear, cogent, and convincing evidence.
- If the tests show that the alleged parent is not excluded and that the probability of paternity is between eighty-five percent (85%) and ninety-seven (97%), the results are admitted as evidence and are weighed the same as other competent evidence.
- If the alleged parent is not excluded and the probability of paternity is ninety-seven percent (97%) or higher, the alleged parent is presumed to be the father and the results are admitted as
- evidence. This presumption can be rebutted only by clear, cogent, and convincing evidence.
- If more than one testing expert is involved and a disagreement exists as to the results of the tests, then the court weighs all the evidence in making a determination.

If a paternity determination is pending in a CSS case, the agency can motion the court for a temporary order of support. If paternity

testing has been completed and the results show clear, cogent, and convincing evidence of paternity, the court MUST enter a temporary support order.

- Paternity test results showing a ninety-seven percent (97%) or higher probability of paternity are clear, cogent, and convincing evidence.
- If the alleged father is found not to be the biological parent, the full amount of temporary support paid must be reimbursed to the alleged father.

CIVIL PATERNITY ACTION PROCEDURES

If paternity is at issue for the child and the mother and alleged father have not voluntarily established paternity, CSS should initiate civil action to establish paternity by taking the following steps:

File a Complaint for Paternity with the Court –

Since paternity establishment is required to create a legal responsibility for support, CSS usually files a complaint for both paternity and support in one action. However, only paternity-related information is included here. Following the direction of the CSS agency attorney, CSS workers ensure that all necessary documents and information are prepared and issued, including but not limited to:

- Civil Complaint For Paternity & Support (DSS-4534) – This document must contain all allegations and substantiation of authority for action.
- Civil Summons (DSS-4668) – CSS must provide thirty (30) days for the defendant to respond or answer the complaint.
- Notice of Hearing (DSS-4621) – CSS must provide ten (10) days notice of the scheduled hearing date.
- Subpoena (DSS-4625) - Issue subpoenas for custodial parent (CP) and any other witnesses or evidence needed at the hearing.
- AOC Cover Sheet (DSS-4712) - Provides data that the Clerk of Court needs to enter action in court's automated system.
- Child's birth certificate - NCGS 49-14 requires the inclusion of a copy.

When the complaint is filed with the court, the Clerk assigns a court file number or docket number to the action.

Complete Service of Process -

The defendant and any witnesses must be given proper notice of the hearing. NC Rules of Civil Procedure require that service of an initial action to a defendant must be made as allowed by Rule 4.

A Civil Summons (DSS-4668) expires sixty (60)) days after it is issued if not served within that period.

If additional time is needed for successful service, generate and issue an Alias And Pluries Civil Summons (DSS-4669) before the expiration date.

If evidence of service is not presented, the court should not allow the hearing to proceed. Workers must ensure that proper evidence of

service is prepared and available to the court. Documentation of service can be by:

- Sheriff Return of Service - For personal service; or
- Affidavit of Service and proof of delivery (EX: certified mail "green card", delivery service tracking receipt) - For service by mail or designated delivery.

Prepare for the Hearing -

Workers must ensure that the documentation necessary to support all complaint allegations and to present evidence at the hearing is available.

- Workers gather and organize all needed documents and information (EX: birth certificate, Paternity Questionnaire, voluntary paternity testing agreement, paternity test results, Order Of Rescission, other court orders that are relative to paternity or support, other items as appropriate).
- Workers provide all information to the CSS agency attorney.
- Discuss testimony with the CP and any other potential witnesses.

Participate in the Hearing -

The hearing is set in a civil district court with proper jurisdiction to hear the matter.

- The CSS attorney represents the agency.
- If the CP or alleged father (defendant) elects to hire private attorneys to represent their interests, any discussion regarding the case should be between the CSS agency attorney and the private attorneys.
- Responsible CSS workers should attend, assist the CSS agency attorney as needed, and take detailed notes on all that occurs.

Document Court Actions -

Following the hearing, CSS workers must document thoroughly the actions and results associated with the hearing.

- Serve copies of the order on the CP and noncustodial parent (NCP) and on any private attorney retained by the CP or NCP, by Rule 5 of Rules of Civil Procedure.

LEGITIMATION (NCGS 49-10 THROUGH 16)

Legitimation is the process of legalizing the status of a child born out of wedlock; it is authorized at NCGS 49-10 through 49-13. This procedure places a child in a more favorable position in the eyes of the law than mere establishment of paternity or establishment of a putative father's duty to support the child. As with paternity establishment, a legitimized child becomes the legal offspring of the father and the natural mother for all purposes, including inheritance.

Per NCGS 50-11.1, a child born of a voidable (annulled) or bigamous marriage is still considered legitimate. Therefore, it would not be necessary to subsequently establish paternity or legitimate a child born of these marriages.

CSS does not participate in legitimation actions; however, if parents have taken any action to legitimate their child, paternity is no longer at issue and the legally responsible father can be pursued for support of the child. Therefore, initial case investigation should include a determination of whether legitimation has occurred.

A child can be legitimated in one of the following ways:

1. **Petition or Request of the Father** - With the consent and cooperation of the mother, the father can file a written petition with the Clerk of Superior Court, stating that he is the father of the child and asking that the child be declared legitimate (NCGS 49-10, 49-11, and 49-13). If the Clerk of Court concludes that this man is the father of the child, an order to that effect can be issued. The Clerk of Court sends a copy of the order and a completed copy of the Certificate Of Paternity (AOC-CV-611) to the State Registrar of Vital Records. The Registrar then issues a new birth certificate bearing the full name of the father.
2. **Subsequent Marriage (NCGS 49-12)** - The child is automatically given legitimate status when the mother and a reputed father marry at some time after the birth of the child. ("Reputed father" means the man who is regarded or considered to be the father by the parents.) The parents can then request that the child's birth certificate be amended to include the name of the father. This request can be made to the Register of Deeds in the child's birth county or to NC Vital Records. CSS cannot make this request for a parent, since only the parents can attest to the necessary information. If both the mother and the father acknowledge that they are the parents of this child and were married after the child's birth, the child is legitimated by the subsequent marriage of the parents.

CRIMINAL ACTION FOR PATERNITY AND NONSUPPORT OF CHILD BORN OUT OF WEDLOCK

CSS can initiate a criminal action for support of a child born out of wedlock under NCGS Chapter 49, Article 1. Prosecution can be initiated:

- Within three (3) years after the birth of the child; or
- If paternity was established judicially within three (3) years after the birth of the child up to the child's eighteenth (18th) birthday; or
- If the alleged father has paid support for the child within three (3) years of the last payment up to the child's eighteenth (18th) birthday.

Securing a nonsupport warrant or summons is often misconstrued to be an action that is taken only after paternity is established; however, the question of paternity is necessary for the prosecution for nonsupport.

The State must prove in trial: first, the defendant's paternity of the child, and second, his willful neglect or refusal to adequately support the child. Thus, with the filing of charges for nonsupport for cases in which paternity has not been established, the issue of

paternity can and should be established during the same court hearing. NCGS 8-50.1(a) prescribes that in a criminal action:

- The court must order paternity testing if requested by the State or the defendant;
- The test results must be admitted as evidence;
- The initial cost of testing is assigned to the requesting party.

Conviction of willful failure to support a child born out of wedlock is a Class 2 misdemeanor offense.

Some effects of establishing paternity through criminal proceedings are:

- It does not have the effect of legitimization;
- The child's surname remains the same as that of the mother;
- The child is eligible for any Social Security, Veterans, or other benefits available to a dependent of the father; and
- The paternity ruling of the court is a final determination that is not re-litigated, except under specific provisions of the law. However the duty of support created by a criminal action could end with the expiration of the order or default by the defendant and with imposition of any suspended sentence. For information on criminal actions for support, see Support Establishment.

Criminal action by CSS is not a regularly recommended method of paternity establishment. If specific case circumstances warrant, however, it can be used. When paternity is established through criminal proceedings, the District Attorney, not the CSS agency attorney brings the action on behalf of the State.

If the assessment of a new CSS case indicates a criminal order established the support obligation, the CSS agency attorney should review the order to determine if that order also established paternity. If so, paternity is no longer at issue and should not be re-litigated.

PATERNITY TESTING

GENERAL INFORMATION

This topic contains information on the following subjects:

1. An overview of the paternity testing process;
2. Paternity testing laboratory contracts;
3. Authority for paternity testing;
4. Paternity testing process;
5. Payment for paternity tests;
6. Billing for paternity tests;
7. Exclusion of the alleged father.

PATERNITY TESTING OVERVIEW

Paternity testing provides scientific evidence that can be used in determining a child's parentage or in eliminating the wrong person from consideration. Test results can be presented to the court as evidence or can aid an alleged father in making a decision to

voluntarily admit paternity. However, testing alone is not a determination of paternity.

It might be appropriate to conduct paternity testing for a child in a CSS case if there has been no judicial determination of parentage or no voluntary declaration of paternity by the child's parents. Paternity testing should be explained and offered to participants in any case in which it might be appropriate, including:

- Those in which a child was born to unmarried parents and paternity has not been determined; and
- Those in which the parents were married but only a "marital presumption" of paternity exists. This presumption exists if the parents were married at the time of conception or birth of the child, but no court order, voluntary admission of paternity, or legitimation has addressed the issue of paternity. See Legal vs. Biological Paternity.

Paternity tests can be conducted by agreement of the parties, by the use of an administrative subpoena, or by court order. Paternity testing is strongly recommended for all appropriate cases. The certainty of biological parentage offers many advantages, including the acceptance of a parental responsibility, the foundation for a medical history, and the stability of family relationships.

If paternity testing is appropriate but an alleged father fails to request it in a disputed paternity case, the local CSS agency should initiate the testing, even if it involves payment by the agency. The timely resolution of paternity can produce an earlier establishment of support obligations and a reduced need for Public Assistance (PA), as well as a reduction of the program resources that are needed. These benefits can far outweigh any initial expense that the CSS agency might bear.

PATERNITY TESTING LABORATORY CONTRACTS

GENERAL INFORMATION

Federal regulation at 45 CFR 303.5 requires CSS agencies to secure testing services from laboratories that perform legally and medically acceptable paternity tests to identify or exclude an alleged father. CSS agencies must obtain testing services through a competitive procurement process and at a reasonable cost. Any selected laboratory must be accredited by the American Association of Blood Banks (AABB). CSS agencies must make available a list of such laboratories to the appropriate courts, law enforcement officials, and general public upon request.

The following factors should be taken into consideration when selecting a laboratory:

1. The laboratory's ability to handle the required volume;
2. Established quality control procedures;
3. The quality of reports that indicate the likelihood of paternity when the noncustodial parent (NCP) is not excluded; and
4. The availability of an expert witness.

NCCSS PATERNITY TESTING CONTRACT –

NC DHHS enters into contracts with laboratories for paternity testing for child support cases. Paternity testing services under a State contract are available to all county/local CSS agencies. However, paternity testing for any other purposes cannot be conducted under this contract. Federal reimbursement of test costs is available at the rate of sixty-six percent (66%) of the costs. The county bears the cost of the remaining share, unless the NCP agrees or is ordered by the court to pay some or all of that cost.

The State-contracted laboratory is:

Laboratory Corporation of America (LabCorp)
P.O. Box 2200
1440 York Court Extension
Burlington, NC 27215

COUNTY PATERNITY TESTING CONTRACTS –

County/local CSS agencies can elect to enter into individual contracts with a laboratory. The selection of a laboratory must comply with 45 CFR 303.5 requirements. All scheduling, costs, payments, and consultation are managed in accordance with that contract and not associated with the State contract.

AUTHORITY FOR PATERNITY TESTING

GENERAL INFORMATION

Paternity testing can be initiated by:

- An agreement of all parties;
- An administrative subpoena; or
- A court order.

TESTING BY AGREEMENT OF PARTIES

If paternity has not been determined (either voluntarily or by court order) and no judicial action to establish paternity has been filed with the court, paternity testing can be initiated by agreement of the parties involved. Voluntary testing offers the advantages of a quick resolution of the issue of paternity, a less adversarial environment, and the possible elimination of need for judicial action.

Testing by agreement is NOT appropriate if:

- An Affidavit Of Parentage has been signed and has not been rescinded;
- A judicial action for paternity has been filed; or
- A court order of paternity has been entered.

If a child has a legal father, voluntary testing of another man should not be conducted, except as approved by the CSS agency attorney.

Any agreement for voluntary testing must be made in writing. It should contain all terms of agreement and be signed by the custodial parent (CP) and the alleged father. Any attorney representing either party or an adult representative for a minor parent also might sign the agreement.

The provisions of this agreement should include:

- Appearance at the designated time and place for testing, including any rescheduled time or location;
- Collection of test samples and verification of identity (fingerprinting, photograph, etc.) or use of previously collected samples, and testing of samples that are obtained;
- Responsibility for payment of testing (including the responsible party, payment amounts, and due dates);
- Acceptance of documentary evidence showing the chain of custody of the obtained samples;
- Introduction of test results as evidence to the court without the need for expert testimony;
- Acknowledgment that test results will be given the same evidentiary weight, as accorded in NCGS 8-50;
- Acknowledgement of the receipt and understanding of the written agreement, and;
- Any other appropriate terms of an agreement.

When all terms of the agreement are determined, CSS workers:

- Prepare the agreement document.
- Explain all conditions to the CP and alleged father;
- Have all parties sign the agreement;
- Collect any agreed upon payment from the alleged father; and
- Give both parties a copy of the agreement and retain a copy in the case file.

Although a voluntary agreement is not binding, the failure of a signor to abide by the terms of the agreement could be introduced to the court in a judicial action as an act of bad faith. For more information on voluntary paternity testing, see Paternity Testing Process.

TESTING BY ADMINISTRATIVE SUBPOENA

Under NCGS 110-132.2, CSS has the authority to subpoena a minor child, the minor child's mother, and the minor child's alleged father (including the mother's husband, if different from the alleged father) to submit to paternity testing. If a judicial action to establish paternity has been filed with the court, CSS can issue an administrative subpoena for paternity testing without a judicial order.

Testing by subpoena allows CSS to expedite a judicial paternity action. Conducting the sample collection prior to the initial hearing can provide adequate time for test results to be returned and presented as evidence at that hearing, thereby avoiding the need for a continuance of the matter.

An administrative subpoena must be served in accordance with Rule 4 of NC Rules of Civil Procedure. Refusal to comply with a subpoena could result in a finding of contempt by the court.

A person who is subpoenaed to submit to testing can contest the subpoena. To contest the subpoena, that person must:

- Petition the court for a hearing in the district court of the county of the CSS office that issued the subpoena within fifteen (15) days of receipt of the subpoena; and
- Serve notice of the hearing on all parties who are involved in the proceeding in accordance with Rule 4.

The hearing must be held and a determination made on whether the petitioner must comply with the subpoena within thirty (30) days of the request for a hearing. Once testing is completed, a person who is tested by subpoena can contest the results of the paternity test. CSS must schedule and conduct additional testing after the contesting party makes full payment for new testing.

TESTING BY COURT ORDER

In a civil court action for paternity, the court can order paternity testing at the request of any party. NCGS 8-50.1 requires the requesting party to pay the cost of testing. Additionally, NCGS 49-14 requires paternity testing in any contested civil case if the child is more than three (3) years old or if the alleged father is deceased.

If the court orders paternity testing, the civil action must be continued to a date that provides adequate time for the completion of sample collection, testing, and notification to all parties of the results. Any party can contest the testing procedures or results by filing written objections with the court not less than ten (10) days before a hearing in which the results are to be introduced as evidence and by serving notice all parties to the action. If the procedures or results are contested, CSS must arrange additional testing. The requestor is responsible for the cost of the additional testing.

If no objection is filed, the results are admissible without proof of authenticity or accuracy. These results have the following effect:

- Probability of paternity is less than eighty-five percent (85%) - The alleged father is presumed NOT to be the parent.
- Probability of paternity is between eighty-five (85%) and ninety-seven percent (97%) - The results have same weight as other evidence.
- Probability of paternity is ninety-seven percent (97%) or higher - The alleged father is presumed to be the parent.

In a criminal court action, the court must order paternity testing if the question of paternity is raised. The court is responsible for all scheduling, sample collection, and payment for testing.

USING PREVIOUSLY COLLECTED TEST SAMPLES

Paternity test samples and test results for individuals who are tested under the State contract that are maintained by the testing laboratory can be used in subsequent testing conducted under this contract. Rather than collecting new samples, using existing samples or results can reduce the time and cost of subsequent testing.

DNA samples or results obtained for testing under the State contract can be reused for subsequent tests, including:

- New testing for the same mother/ child/ father group.

- Testing of an individual in a different mother/ child/ father group.
- Testing that was conducted by the county which requested the initial test sample.
- Testing that was conducted by a different county than the initial requesting county.

PATERNITY TESTING PROCESS

When CSS makes a decision to conduct paternity testing, workers take the following steps to conduct testing:

1. Workers create a paternity test record.
2. They schedule the collection of test samples.
3. Provide notice of paternity testing to all parties.
4. Conduct sample collection.
5. Notify the parties of the test results.

PAYMENT FOR PATERNITY TESTING

RESPONSIBILITY FOR PAYMENT

The responsibility for payment of paternity tests and associated costs depends on multiple factors:

1. The alleged father's ability to pay test costs;
2. County responsibility for payment of paternity test costs;
3. The terms of any voluntary agreement reached by the parties;
4. Whether the action for court-ordered tests is civil or criminal; and
5. Whether the case is intrastate or intergovernmental.

ALLEGED FATHER'S ABILITY TO PAY TEST COSTS

When testing is at the alleged father's request rather than by order of the court, CSS workers should discuss the cost of testing with him and determine his ability to pay the cost of testing. If the alleged father as the ability to pay, CSS workers should attempt to secure an agreement for him to pay for all or some portion of the cost.

If the alleged father is unwilling or unable to pay the initial cost of testing in a relatively short period of time, the CSS agency should assume the initial cost rather than delay testing. The benefits of determining paternity and establishing a support order at an earlier date are greater than any costs that might be saved by delaying the testing. The CSS agency also can consider asking the court to order that the alleged father reimburse the agency for some or all of the cost if he found to be the father and is placed under an order to provide support. However, if the alleged father is found NOT to be the responsible parent, an order for reimbursement of paternity testing is not appropriate.

COUNTY RESPONSIBILITY FOR PAYMENT OF TESTING COSTS

The county can pay the initial cost of voluntary or civil court-ordered paternity testing. Two (2) options exist for the final responsibility for the cost. The CSS agency can choose to:

- Use any allowed federal reimbursement (66%) of the cost and pay the remaining share (34%) from county funds; or
- Through written agreement or by order of the court, receive reimbursement from the noncustodial parent (NCP) for all or some of the total cost.

PAYMENT FOR TESTING BY AGREEMENT

When voluntary testing is conducted, all terms of the agreement (including the responsibility for payment of test costs) should be stated in a written agreement for paternity testing that is signed by all parties to the agreement.

The agreement should address initial payment as well as the terms for any repayment plan. Payment due dates should be specified.

If the NCP agrees to pay the test cost initially, county CSS receipts and retains the payment as revenue according to county financial procedures. No federal funds or reimbursement are involved.

If it is agreed or ordered that the NCP will reimburse the county for any portion of the cost that the agency initially paid, the responsibility for payment must be included in the support order. Payments must be made to North Carolina Child Support Centralized Collections (NCCSCC).

PAYMENT FOR CIVIL COURT-ORDERED TESTING

In civil cases, NCGS 8-50.1 requires that the party who requests testing be responsible initially for the paternity testing costs. The expense for testing, expert witnesses, or other fees can be assigned or apportioned at the discretion of the court.

In civil cases, both parties can consider joint movement for paternity testing and stipulate the conditions of payment of costs when it is in the best interest of all concerned. If the local/ county CSS agency is the moving party or has agreed to be responsible for the cost, county funds are used for payments.

If county reimbursement is included in a support order, payments must be made to NCCSCC.

PAYMENT FOR CRIMINAL COURT-ORDERED TESTING

CSS has no involvement in payment for paternity testing in criminal court actions. If he District Attorney's Office moves to have paternity tests performed, the Administrative Office of the Court (AOC) is responsible for initial expenses. If the alleged father/ defendant prevails, AOC remains responsible for payment. If the alleged father/ defendant does not prevail, he is responsible for the expenses, if so ordered by the court. If the alleged father/ defendant is found to be indigent, as defined at NCGS 7A-450, AOC pays for any costs not otherwise paid, regardless of who prevails.

If the alleged father/ defendant is not deemed indigent and moves for the test, he is responsible initially for the expenses. If the alleged father/ defendant does not prevail, he remains responsible for the costs. If he prevails and is adjudicated not to be the father of the child, AOC can reimburse him.

PAYMENT FOR TESTING IN INTERGOVERNMENTAL CASES

If paternity tests are necessary in an intergovernmental case, the responding state/ entity is responsible for paying the test costs, as well as for scheduling and other arrangements for testing.

BILLING FOR PATERNITY TESTS

Billing procedures vary depending on whether the case is civil or criminal, what funds are being used for payment, and the terms of the laboratory contract under which the testing is conducted. The testing laboratory submits bills to the appropriate entity. The receiving entity should review the bill for accuracy and contact the laboratory immediately if discrepancies are found.

EXCLUSION OF ALLEGED FATHER

Paternity testing that results in the exclusion of a man as the biological father of a child does not constitute a legal determination of non-paternity. However, test results are evidence that the court can consider in making such a determination.

If paternity testing excludes the alleged father as the biological father of a child, the appropriate course of action is based on whether a judicial or voluntary determination of paternity has been made, a marital presumption of paternity exists, or the child has no legally responsible father.

If a judicial or voluntary determination of paternity has been entered:

- Exclusionary test results do not void that determination.
- Test results can be used as evidence in a motion or independent action to disestablish paternity.
- The paternity determination remains in effect until a court makes a ruling.

See Legal vs. Biological Paternity or Paternity Disestablishment.

If a marital presumption of paternity exists:

- Exclusionary test results do not invalidate the presumption of paternity.
- Test results can be presented as evidence in a judicial challenge of the presumption by the legal father.
- The presumption of paternity remains in effect until a court makes a ruling.

See Legal vs. Biological Paternity.

If no legally responsible father exists for the child:

- Exclusionary test results do not constitute a legal determination of non-paternity.

- Exclusionary paternity test results might be a valid reason to close a CSS case with the excluded alleged father as the noncustodial parent (NCP).
- CSS workers contact the custodial parent (CP) to discuss the next appropriate action.

When no legally responsible father exists and depending on the circumstances of the case, CSS evaluates the case and takes any of the following actions that might be appropriate.

CSS keeps the case with the excluded NCP open.

If the CP states that the excluded man is indeed the father, the case should remain open until circumstances are reviewed and evaluated. Before closing the case, CSS reviews and documents the following in the case record:

- Workers discuss any questions about the test process, reasons for the continued belief, or additional information that the CP can provide;
- Workers confirm the identity of all tested parties. Allow the CP to review the laboratory documentation (including photos, signatures of tested parties, etc.);
- Workers contact the testing laboratory for further guidance, as needed; and
- Workers consult the CSS agency attorney for a determination of whether or not to continue the pursuit of paternity of the excluded man.

CSS pursues paternity of any other alleged father who is the NCP in an open CSS case.

If an open case for this child exists with another alleged father as the NCP, CSS takes the appropriate actions to pursue paternity:

- Workers review information regarding paternity in the case record. If additional information is needed, contact the CP and take any other appropriate steps to secure information and documents;
- Workers enter or update information as necessary in ACTS; and
- Workers initiate action to establish paternity of the alleged father.

CSS opens a case with a newly identified alleged father.

- Workers obtain the necessary information from the CP and other sources; and
- Workers initiate action to establish paternity of the alleged father.

CSS closes the case with the excluded NCP.

The case is closed if no reason exists to believe that this man might be the child's biological father and no indication exists that he wishes to assume the parental responsibility.

If a Non-Public Assistance (NPA) case in which the NCP is excluded is closed and the CP has not identified another alleged father or is unsure of the identity of the father:

- No new case is opened. Paternity establishment services for the child are ended.
- If the CP requests services to pursue paternity in the future, CSS requires a new application for services and application fee.

If a Public Assistance (PA) case in which the NCP is excluded is closed and the CP has not identified another alleged father or is unsure of the identity of the father:

- Workers create a new case, identifying the alleged father as "UNKNOWN".
- Workers contact the CP to discuss information about any other alleged father for the new case.
- If the CP fails to contact CSS or provide information on a new alleged father and if the case meets all referral criteria for noncooperation, make a noncooperation referral to DSS. However, a CP who responds but cannot provide a name of an alleged father is not considered noncooperative, and a referral is not appropriate.

PATERNITY DISESTABLISHMENT

GENERAL INFORMATION

This topic contains information on the following subjects:

1. An overview of the paternity disestablishment statutes;

PATERNITY DISESTABLISHMENT OVERVIEW

Effective January 1, 2012, North Carolina law provides processes to set aside a paternity determination and grant relief from a child support obligation to a man who is determined not to be the responsible father of a child. This process is in addition to the provisions of NCGS 1A-1, Rule 60.

ACTIONS TO SET ASIDE PATERNITY (NCGS 49-14 or NCGS 110-132) -

A determination of paternity made under NCGS 49-14 (civil order) or NCGS 110-132 (Affidavit of Parentage) can be set aside if:

- The paternity order or Affidavit of Parentage was entered due to fraud, duress, mutual mistake, or excusable neglect; and
- Genetic tests establish that the man who was determined by these actions to be the father of a child is not the biological father of that child.

The burden of proof in an action to set aside a paternity determination belongs to the moving party. If the court finds that a proper motion has been presented, paternity testing is ordered. In accordance with NCGS 8-50.1, the moving party is responsible for the cost of the testing. CSS should not schedule, arrange or participate in any paternity testing until it has been ordered by the court. Based upon the criteria stated above, the setting aside of a paternity determination is at the discretion of the court.

ACTIONS TO SET ASIDE SUPPORT (NCGS 50-13.13) -

Under NCGS 50-13.13, only a father who has been ordered to pay child support can file an action to seek relief from the support obligation. This action can be either a motion in the existing order or a separate action. It must be filed with the court within one (1) year from the date that the movant knew or reasonably should have known that he was not the child's father.

NOTE: A "grace period" authorized in the law extends the initial opportunity to file actions under NCGS 50-13.13 to January 1, 2013, regardless of when the father came to believe he might not be the child's biological father. After that date, the one-year restriction applies.

The requirements for this action are:

- The moving party must verify the motion or claim;
- The motion or claim must state the basis for the belief that the movant is not the father;
- The movant either has not acknowledged paternity or has acknowledged paternity not knowing that he was not the father ("acknowledging paternity" is defined as publicly acknowledging the child as his while married to the child's mother, supporting the child, signing an Affidavit Of Parentage, VSA, or other legal agreement, or admitting paternity in court);
- The movant has not adopted or legitimated the child or fathered the child through artificial insemination; and
- The movant has not prevented the biological father from asserting his parental rights regarding the child.

The court can appoint a *guardian ad litem* for the child, but it is not required to do so. The CSS agency can elect to request this appointment if it would best serve the interest of the child. Responsibility for the cost for the *guardian ad litem* is determined by the court.

If the court finds that good cause exists to believe that the movant is not the child's father, paternity testing must be ordered. The moving party must pay the cost of testing. The court can hold any person who fails to comply with the order for paternity testing in contempt, impose sanctions, or both. CSS should not schedule, arrange, or participate in any paternity testing until it has been ordered by the court.

For CSS cases, support payments must be suspended while the motion is pending. CSS must ensure that all receipts are handled in accordance with the order of the court.

The court can grant relief from (terminate) a child support obligation if:

- Paternity has been set aside under NCGS 49-14 or NCGS 110-132, or
- In this action, the court finds that (1.) paternity testing excludes the movant as the child's biological father; and (2.) the movant either did not acknowledge paternity or did so not knowing that he was not the child's father.

If the movant does not satisfy all requirements, the court must deny the motion and all paternity, support, and custody orders remain in effect.

If the court finds that the movant did not act in good faith, attorney fees are awarded to the prevailing party.

If the court determines that all requirements have been met, an order is entered to terminate the support obligation:

- All unpaid support due prior to the filing of the motion remains owed.
- The CSS case becomes an "Arrears-Only" case and all appropriate enforcement actions are taken to collect the reamining arrearage.