

Pregnancy and Divorce



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This publication is for people who are getting a divorce in Washington State while one of the spouses is pregnant. It describes what happens when a spouse is pregnant during the divorce and what can be done to address the issue during the divorce process. This information applies to all marriages and state-registered domestic partnerships.

If you are expecting a child via adoption or surrogacy, this memo is not for you; talk to an experienced family law lawyer about your specific situation.

Disclaimer: This publication gives information only. As with all family law cases, particularly those involving children as well as complicated marriage/pregnancy/divorce timelines, it is strongly recommended that you talk to a lawyer.

Can I Get a Divorce If I Am Pregnant or If My Spouse Is Pregnant?

Yes. You will be able to finalize your divorce in the normal time frame. In Washington State, a judge cannot deny or delay your divorce because one of the spouses is pregnant.

If your divorce is delayed or denied because of pregnancy, contact Legal Voice by email at info@legalvoice.org, or by phone at 206-682-9552, ext. 102.

When Will Pregnancy Be Addressed During the Divorce Process?

Immediately. The form you must file with the court to start a divorce, called the *Petition for Divorce*, asks if you or your spouse is pregnant. The form used to respond to the Petition, called the *Response to Petition about a Marriage*, also asks about pregnancy. The law presumes that the pregnant person's spouse will be the other legal parent of the child, even if the spouse is not the biological parent. It is a good idea to settle on who will be the child's legal parents before the divorce is finalized.

What If the Divorce Is Already Started?

Information and agreements regarding pregnancy and parentage may be added to the proposed divorce order at any time. Once the divorce order is finalized and signed by the judge, you cannot make changes to it easily unless permission to do so was included in the final order. See "Can We Get

a Parenting Plan/Child Support at the Same Time as the Divorce?” at the end of this publication.

Will the Other Spouse Be the Child’s Legal Parent?

Yes. If someone is pregnant during the divorce, the other spouse will automatically be a legal parent once the child is born, even if the child is born after the divorce is finalized, and even if the other spouse is not biologically related to the child.

It is possible to include in the divorce order a ruling that the other spouse will not be a legal parent once the child is born. How to do this is discussed below.

What If We Used Alternative Methods to Become Pregnant?

If alternative methods were used to become pregnant (assisted reproductive technology; sperm donation; etc.), the question of legal parentage may be about one’s intent to parent a child, not who is biologically related to the child. In these situations, the court will give weight to the intent to parent. All options to disestablish parentage, described below, may be used in situation where alternative methods were used to become pregnant.

What If the Spouse Should Not Be Considered the Child’s Other Legal Parent?

If the spouse should not be considered a legal parent, you will need to “disestablish parentage.” That means that you ask the court to order that your spouse is NOT the legal parent. You can do that in your divorce two ways:

1. As Part of the Divorce *Petition* or *Response*

You can use this option even if you do not know who the other legal parent is, or are unable to locate them. You can request that the final divorce order clearly state that the spouse will not be the child’s legal parent. This can go in the part of the divorce order called “Findings of Fact and Conclusions of Law.”

- Are you filing the *Petition for Divorce*? If so, you can write in your petition that you want a disestablishment of parentage included in the court order finalizing your divorce. In the *Petition*, you must write it in the space provided for “Other requests.” This may become a complicated process. It is best to work with a lawyer.
- Are you responding to a divorce? If so, you can write in your *Response to Petition about a Marriage* that you want a disestablishment of parentage included in the court order finalizing your divorce. In the *Response* form, you must write it in the

space provided for “Other requests.” This may become a complicated process. It is best to work with a lawyer.

2. By Filing a *Petition to Disprove Parentage of Presumed Parent*

If you file this petition, you will have to prove that your spouse should not be the legal parent of the child because

- a. You did not live together (cohabitated) at the time the child was conceived, **and**
- b. You did not have sexual intercourse with each other at the time the child was conceived (this will not apply to couples who used alternative methods to get pregnant; see below).

This petition is linked in the Resources section below.

Note: The form that you have to use to file this Petition asks whether or not the other spouse has “held out the child as his/her own.” Because this situation involves pregnancy, not a child, you should write “not applicable” or “NA” next to that question.

If the child was conceived through alternative methods, the court will give weight to the intent to parent the child. Otherwise, genetic testing will normally be used to disprove parentage of the spouse.

For more information about parentage actions, see the Northwest Justice Project publication *Parentage and Parenting Plans for Unmarried Parents in Washington* listed in Resources.

Do I Need a Lawyer to Do This?

You do not have to work with a lawyer to disestablish paternity, but, as with all court actions involving children, it is strongly recommended. If you are not already working with a lawyer for your divorce, consider hiring one at this time.

If you cannot afford a lawyer, you may be able to get legal advice and help filling out forms at a neighborhood clinic, or from a lawyer or legal technician who provides limited services. See the publication *How to Find a Lawyer and Other Legal Resources in Washington State* by Legal Voice, listed in Resources.

If you want to file a *Petition to Decide Parentage*, which will be separate from your divorce, your county prosecutor's office Family Support Division may be able to help you. See the publication *Parentage and Parenting Plans for Unmarried Parents and Filing a Petition to Decide Parentage*, both by the Northwest Justice Project, listed in Resources.

Can We Get a Parenting Plan/Child Support Order With the Divorce?

You cannot get a parenting plan or child support order until the child is born. You can, however, ask the court to include in the final divorce order permission to use your divorce case number again later for the parenting plan/child support orders. It's called "reserving the issue" and can save you time and money. You can do this if:

1. It is known during the divorce that a spouse is pregnant, **and**
2. The other spouse will be a legal parent for the child.

If the issue was not reserved (for example, because the pregnant spouse didn't know about the pregnancy at the time the divorce was finalized) then a *Petition to Establish a Parenting Plan* may be filed after the child is born. Information about parenting plans can be found at www.WashingtonLawHelp.org.

Resources

- Family Law Facilitator Program: Sometimes called "Courthouse Facilitators." Some facilitator programs can review your completed court forms.
Online: www.courts.wa.gov/programs_orgs/; click on "Courthouse Facilitators" under "Programs."
- *Filing a Petition to Decide Parentage*, by Northwest Justice Project
Online: www.washingtonlawhelp.org/issues/family-law/paternityparentage
- *Parentage and Parenting Plans for Unmarried Parents in Washington*, by Northwest Justice Project: For more information about parentage actions.
Online: www.washingtonlawhelp.org/issues/family-law/paternityparentage
- *Petition to Disprove Parentage of Presumed Parent* forms
Online: www.courts.wa.gov/forms/; click on "View the List of All Forms," then find:
 - FL Parentage 355 – *Petition to Disprove Parentage of Presumed Parent*
 - FL Parentage 357 – *Findings and Conclusions on Petition to Disprove Parentage of Presumed Parent*
 - FL Parentage 358 – *Final Order on Petition to Disprove Parentage of Presumed Parent*
- Related publications by Legal Voice
Online: www.legalvoice.org/resources
 - Under "Lawyers & the Legal System":
 - *Family Law Court Records and Your Privacy*
 - *How to Find a Lawyer and Other Legal Resources in Washington State*
 - *Working with a Lawyer*

- Under “Health & Reproductive Rights”
 - *Rape Survivors, Pregnancy, and Raising Children: Know Your Rights in Washington State*
 - *Know Your Reproductive Rights in Washington State*

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of November 2017.

Updated by Sarah Shifley, Sara Ainsworth, David Ward, and Chloë Phalan, 11/16/17.

Acknowledgments to Jessica Andrade, Nona Dhawan, Janice Goh, and June Krumpotick for their efforts on previous versions of this memo.

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