

A. PARENTAGE

Parentage refers to the lawful mother or father of a child. Parentage, or the parent-child relationship, imposes rights, privileges, duties and obligations, including the responsibility to support a minor child of the parent. A lawful parent and child relationship must exist before establishing or enforcing a support obligation. The parent and child relationship extends equally to every child and every parent, regardless of the marital status of the parents or the gender of the parents. Title IV-D services, including parentage establishment, are equally available to the families we serve regardless of the gender of the custodian or noncustodial parent.

B. MATERNITY

A mother-child relationship may be established by:

- Proof of the woman having given birth to the child (natural mother) e.g., the woman's name is on the birth certificate;
- An Adjudication of the woman's maternity;
- Proof of adoption of the child by the woman;
- An adjudication confirming a gestational agreement naming the woman as a parent of the child;
- The consent of the woman to assisted reproduction pursuant to Nevada law which resulted in the birth of the child;
- An un rebutted presumption of the woman's maternity.
 - Insofar as practicable, the provisions of NRS 126 applicable to paternity establishment apply to maternity establishment (NRS 126.231). This includes presumptions based on the child's birth during the legal marriage or domestic partnership of the custodian and noncustodial parent to each other.

Assessing whether a parentage action can be maintained and what is necessary to establish maternity is a complex legal evaluation of the case facts. Case managers must consult with their legal counsel when evaluation a case in which maternity is presumed and has not been previously decided as evidenced by the woman's identification on a post-1997 birth certificate, and adoption decree naming the mother as parent or other court order adjudicating the woman as the child's parent.

C. PATERNITY

A father-child relationship may be established by:

- Proof of adoption of the child by the man;
- By the consent of the man to assisted reproduction pursuant to Nevada law which resulted in the birth of the child;
- By an adjudication confirming the man as a parent of a child born to a gestational carrier;
- The man and the child's natural mother are or were married to each other as explained in NRS 126.051; or
- An adjudication of paternity including a properly executed voluntary paternity acknowledgment.

The laws regarding assisted reproduction and gestational carrier agreements are complex. Case managers must consult with their legal counsel when paternity is alleged based on assisted reproduction.

D. BORN OUT OF WEDLOCK

The federal Office of Child Support Enforcement (OCSE) monitors information about paternity establishment and the marital status of a child's parents at the time of the child's birth. For IV-D program purposes, a child is born out of wedlock (BOW) if the child's parents, regardless of gender, were not married to each other at the time of the child's birth, and have not subsequently married each other, regardless of the marital status of either parent with respect to another.

BOW status (i.e., whether the child was born out of wedlock or born of a marriage) may be determined based on the information the custodian provides on the child support application, Non-Custodial Parent Form, or in an interview with IV-D staff. It is not necessary to obtain additional documentation to establish BOW status unless case specific circumstances indicate verification of the custodian's information is warranted.

When Nevada is the responding jurisdiction in an interstate case, BOW may be determined based on information provided by the initiating jurisdiction in the UIFSA Confidential Information Form. In older interstate cases in which the Transmittal #1 does not contain BOW or paternity establishment information, status may be determined based on documented communication with the initiating jurisdiction.

When determining BOW status, document the reasons for your decision in the case record designating the BOW and Paternity Status summary as a "Type 1" contact entry in NOMADS. In the case of an adopted child, BOW status refers to the adoptive parents. A flow chart to assist in determining BOW status is available in Exhibits 400-01.

E. DOCUMENTATION

For federal audit purposes, a copy of the paternity acknowledgement, court order, post 10/1/97 birth certificate, Bureau of Vital Statistics (BOVS) birth certificate interface, Confidential Information Form with BOW and paternity establishment fields completed, or case notes documenting communication with the initiating jurisdiction must be in the case record to justify that paternity has been established regarding a child who is born out of wedlock. Photocopies of properly completed documents are acceptable.

F. PATERNITY ESTABLISHED DATE

Paternity status and born out of wedlock information must be updated in NOMADS within 10 days of receiving new information and summarized as a "Type 1" contact entry in NOMADS. A paternity establishment status flow chart is shown in Exhibit 400-02.

For IV-D program purposes determine the paternity status established date as follows:

1. If the child is born of a marriage (not born out of wedlock) use the date of birth.

2. If the child is born out of wedlock use the
 - a. Court order file date if paternity is established by court order.
 - b. Acknowledgment signed date if paternity is established by voluntary acknowledgment on or after 10/1/97.
 - c. Date of birth if the father's name is on the post 10/1/97 birth certificate on or after 10/1/97.
 - d. If more than one document establishing paternity is contained in the case record use the date of the document that was executed first.

400.1 CASE CIRCUMSTANCES **REQUIRING** PATERNITY ESTABLISHMENT

Paternity refers to the parental relationship between a child and a male. Seek to establish paternity when:

- A. A child is born out-of-wedlock, paternity has not previously been legally established and the:
 1. Birth certificate (any state or possession of the United States) does not list the name of the father, OR
 2. Birth certificate (any state or possession of the United States) names a father and the birth occurred prior to October 1, 1997; OR
 3. Voluntary Acknowledgment of Paternity (any state or possession of the United States) is signed prior to October 1, 1997; OR
 4. Birth certificate is issued by a foreign country whether a father is named or not.

400.2 CASE CIRCUMSTANCES **NOT REQUIRING** PATERNITY ESTABLISHMENT

Do not seek paternity establishment when:

- A. A child is born out-of-wedlock and the:
 1. Voluntary Acknowledgment of Paternity (any state or possession of the United States) is signed on or after October 1, 1997; OR
 2. Birth certificate (any state or possession of the United States) names a father and the birth occurred on or after October 1, 1997; OR
 3. Issue of paternity has been adjudicated (including cases in which the NCP has been ordered to provide child support but the order does not specifically address paternity).
- B. The child has two legal mothers and no legal father can be established (e.g., two female parents who adopted the child or who are the intended parents of a child resulting from assisted reproduction.)
- C. The child was not born out of wedlock.

400.3 PATERNITY OBJECTIONS

If a case meets the conditions of SEM 400.2 and a paternity issue is raised and challenged with new information, such as another alleged father or allegations of fraud/misrepresentation, considering the best interest of the child, a determination must be made whether to seek a genetic test order. Document the case record regarding how such determination is made.

- 6) DPBH will amend the original birth certificate and send Central Office a verified copy of the birth certificate.
- 7) The verified copy will be scanned into Compass and sent back to the requestor.

B. NON-NEVADA BIRTHS

Amending a child's birth record out-of-state is the responsibility of the custodian or state IV-D agency in the state in which the child was born.

402.2 REQUESTING NEVADA VOLUNTARY PATERNITY
ACKNOWLEDGEMENT (VPA)

Requests need to be reasonable and necessary to carry out the provision of the Child Support Enforcement Program.

A. REQUESTING A CERTIFIED COPY OF A NEVADA VPA

- 1) Complete Request for VPA (form 4019-EC).
- 2) FAX the completed form and copy of the birth certificate (if available) to DWSS Central Office, (775) 684-0702.
- 3) The request will be logged and forwarded to DPBH.
- 4) DPBH will send the requesting office a certified copy of the VPA.

Each office will be billed by DPBH and responsible for remitting payment to DPBH.

If the certified copy of the VPA is filed in the court, it must be done under a sealed file and should not be further disseminated. The document shall be destroyed when no longer needed.

403 PATERNITY ESTABLISHMENT REQUIREMENTS

A. TIME FRAMES

1. Within 20 calendar days of receiving either an application for services or a referral, the case manager must take appropriate action to locate/verify the address and/or employment of the alleged father(s).
2. Within 90 days of locating the alleged father, the enforcing authority must complete service of process to establish paternity and a support order, or document all unsuccessful attempts to serve process.
3. Paternity must be established or the alleged father excluded as a result of genetic tests and/or legal process within one year of successful service of process.

B. GOOD CAUSE

Do not attempt to establish paternity if a good cause determination is pending. See SEM 205.

C. UNBORN CHILDREN

State statute provides that all proceedings must be stayed until after the birth of the child, yet federal regulations at 45 CFR 303.4 (d) require states to establish a support order within 90 days of locating the alleged father. There is no exception for children that are not yet born.

If an applicant requests IV-D services on behalf of a child that is not yet born, provide the applicant with an application and instructions to return the completed application after the birth of the child. Explain to the applicant that legal action cannot commence until after the child is born. According to IV-A program policy, referral of cases in which the only child has yet to be born are postponed until after the birth. An open case, in which the only child has not yet been born, whether received by referral or application, may only be closed pursuant to SEM section 214.1.

D. PATERNITY INTERVIEWS

1. If there is insufficient information regarding the alleged father(s) to proceed or if the alleged father is reported as unknown on the application or referral, the case manager must interview the custodian within 20 calendar days of receiving either the application or referral.
2. The interview required in subsection (1) above may be face-to-face, telephonic or by mail. The case record must be documented with the questions asked in the interview and the custodian's responses. The Paternity Questionnaire (Exhibit 400-5) and the Paternity Cover Letter (Exhibit 400-4) may be used to facilitate a paternity interview.

E. NON-RESIDENT ALLEGED FATHER

If it appears the alleged father does not reside in Nevada, the custodian must complete the federal form, "Paternity Affidavit" (Exhibit 400-6) which is part of the interstate transmittal.

F. NON-COOPERATION BY IV-A CUSTODIAN

When it has been determined the CST has failed to cooperate with IV-D without cause, the case manager must report custodian non-cooperation to IV-A by emailing: IV-DNon-CoopSupport@DWSS.nv.gov (see Exhibit 200-16 for email format), set the COOP indicator on CASD (refer to NOMADS Task Guide for procedures), make a contact entry and continue to provide IV-D services as appropriate. If the CST resolves the non-cooperation issue, the IV-D case manager must notify the IV-A case manager. See SEM 205(B) for notification instructions.

G. VOLUNTARY ACKNOWLEDGMENT

For all cases referred to the IV-D agency or applying for services in which paternity has not been established and paternity is not disputed, the enforcing authority must offer the parents the opportunity to voluntarily acknowledge paternity, by providing the parents with the Declaration of Paternity form, and an explanation of the right and responsibilities of acknowledging paternity (Exhibit 400-9) in accordance with 45 CFR 303.5.

If paternity is not disputed but other aspects of the case are disputed, such as the current monthly obligation and/or medical support, the enforcing authority must offer the parents the opportunity to execute the Declaration of Paternity and not postpone paternity establishment until the disposition of the case.

Federal regulations require that voluntary paternity acknowledgments be signed by both parents, and that the parents' signatures be authenticated. Accordingly, IV-D staff witnessing the signing of acknowledgements must verify the identification of the signing parties.

The Program seeks to promote the use of the Declaration of Paternity and expedite paternity establishment.

H. ALLEGED FATHER EXCLUDED

Within 10 days of learning the only alleged father named by the custodian has been excluded as the child's father by a genetic test or a court or administrative process, the case manager must:

1. Public Assistance Case - Notify the custodian that the alleged father has been excluded and obtain additional information regarding the identity of all possible fathers; or
2. Non-Assistance Case - Notify the alleged father has been excluded and close the case pursuant to SEM 214.1(D). The custodian may submit a new application naming another possible father.

404 MULTIPLE FATHERS NAMED

When the custodian names more than one man as the alleged father, each individual must be served as each one is located. All the alleged fathers must be referenced in the notice to establish paternity pursuant to NRS 425. If only one of the alleged fathers is served and, after being tested is found to be the father, dismiss the action against the other alleged fathers and close the NCP case.

405 DECEASED ALLEGED FATHERS

If an alleged father is deceased, the IV-D case manager must document the circumstances and evaluate the case for closure pursuant to SEM 214.1(C). Normally, the agency only pursues paternity when the mother, alleged father, and child are available to be tested. Since genetic testing can determine a probability of paternity through testing other family members, occasionally another family member will ask the Division of Welfare and Supportive Services to proceed with paternity establishment and request the State to assume the costs of the testing. If this occurs, the case must be referred to the Program Chief in Central Office for approval of the testing. These are extremely unique cases and must be handled on a case-by-case basis depending on the circumstances.

406 ALLEGED FATHER DETERMINED NOT TO BE FATHER AFTER MAKING CHILD SUPPORT PAYMENTS

When an alleged father has made child support payments and is later legally determined not to be the father of a child(ren) for whom the payments were made, reimbursement of child support payments will occur only if the child support order is set aside and the court orders the alleged father be reimbursed.

The Division of Welfare and Supportive Services, Child Support Enforcement, will reimburse the alleged father for monies retained by the State only. Child support payments distributed to the custodial parent will not be reimbursed by the State.

The case manager must determine how the child support was distributed and provide this information to the court and request the court indicate how the prior support payments be reimbursed. The court order should reflect “who” (state program or custodian) reimburses “what” (the dollar amount and/or the period covered) to the alleged father.

407 ALLEGED FATHER RESIDING ON NEVADA INDIAN RESERVATION

A. DETERMINING JURISDICTION

When the alleged father resides on a Nevada Indian reservation the enforcing authority’s attorney must determine if both subject matter and personal jurisdiction can be obtained. The decision of whether a tribal court or state court has exclusive or concurrent jurisdiction in a paternity case is influenced by a number of factors such as whether the mother and alleged father are members of the same tribe, whether one party is an Indian and the other is not, whether a party resides on a reservation or tribal land, whether conception occurred on or off the reservation, whether the mother applied for public assistance from the State and the State IV-D agency is bringing the paternity action, whether there is a tribal forum for a paternity action, and which court is making the initial decision regarding jurisdiction. Additional information regarding tribal and state jurisdiction to establish and enforce child support is available in OCSE-IM-07-03, <http://www.acf.hhs.gov/programs/cse/pol/IM/2007/im-07-03.htm>.

Refer the case to the appropriate state or tribal IV-D agency if an alleged father resides on tribal land outside Nevada. See also SEM 502(C).

B. SUBJECT MATTER JURISDICTION CAN BE ESTABLISHED

If the enforcing authority's attorney determines that a Nevada Court can assert subject matter jurisdiction and the alleged father resides on tribal land, but the enforcing authority does not have an agreement with the tribe regarding service of process, explain to the custodian that due to Nevada's inability to serve process on tribal land, the case can only be monitored to see if the NCP moves off the reservation for service or becomes employed off the reservation. The enforcing authority should refer the CST to the appropriate tribal court for assistance. If a tribal order is obtained, all enforcement tools shall be used which do not require service of process on tribal land. If a tribal order is not obtained, the case must remain open and monitored for opportunities to serve the NCP away from tribal land such as the place of employment and obtain personal jurisdiction over the NCP.

Do not attempt to serve NCPs on tribal land (in person or by mail), unless there is a formal agreement between the enforcing authority and the tribe specifically allowing this action. Prior to finalizing, an agreement must be approved by Central Office and the enforcing authority's legal counsel. Additionally, an agreement established between an enforcing authority and a tribe must include language applying the terms of the agreement to the Nevada Child Support Program as a whole and not just the local office.

Offices may continue to serve the NCP while not on tribal land, such as the place of employment. If there is an existing tribal order, the order must be treated as if it were from another state. Follow Full Faith and Credit procedures in SEM 215.

C. SUBJECT MATTER JURISDICTION CANNOT BE ESTABLISHED

If the enforcing authority's attorney determines subject matter jurisdiction cannot be established explain to the custodian that the IV-D program cannot pursue child support because of lack of subject matter jurisdiction. Refer the custodian to the proper tribal court for assistance.

Cases in which subject matter jurisdiction cannot be established because the NCP resides on tribal land may be closed pursuant to SEM 214.1(A). However, if the custodian obtains a tribal child support order and reapplies for services the case must be reopened.

408 STATUTE OF LIMITATIONS [NRS 126.081]

In Nevada, an action to determine paternity is barred three (3) years after the child reaches the age of majority.

409 INTERSTATE PATERNITY ESTABLISHMENT [CFR 303.7] [NRS 126.091 and 130]

Enforcing authorities must attempt to establish paternity using Nevada's long arm statutes whenever feasible. Upon locating the NCP in another state, the enforcing authority must determine if paternity establishment and obligation enforcement can succeed using a one-state process or if a two-state case must be pursued. The case record must be documented with the decision and the rationale for that decision.

Within 20 days of determining the alleged father is in another state, if long arm jurisdiction is not being used, refer the case to the responding state's central registry.

410 SERVICE OF PROCESS [NRS 126.105 and 425.38822(2)]

“Service of process” means using diligent efforts to deliver legal documents giving notice to an NCP of a legal proceeding. For service of process, diligent effort means using all appropriate mechanisms for serving legal process and repeating such attempts at least once every 30 days when previous attempts have failed, but adequate information exists to attempt service. The case manager must provide the process server with new information that will facilitate serving the obligor within 10 days of the information becoming available to the enforcing authority.

411 LEGAL PROCESS TO DETERMINE PATERNITY

Expedited judicial and administrative procedures pursuant to Nevada Revised Statute 425 must be used by the enforcing authority to establish paternity. If, in a given case, it is not feasible to pursue paternity establishment under NRS 425, then the enforcing authority must document the reasons in the case record.

412 PAYMENT OF COSTS RELATED TO PATERNITY ACTION

The costs of court-appointment counsel are not eligible for federal financial participation (FFP).

The state may not be assessed any costs related to a paternity action when it is a party to the action.

413 GENETIC TESTING

The responding state must pay the cost of genetic testing. The costs for genetic testing are reimbursed at the current FFP rate. The State of Nevada will assume 100% of the costs for all IV-D cases (public assistance and non-public assistance).

The state is limited to the amount budgeted for any fiscal year. If costs for genetic testing exceed the amount budgeted, it is the responsibility of the county to pay the balance of the costs not eligible for FFP reimbursement. If this situation occurs, the state will notify the counties in advance the state will be unable to assume the costs for the balance of the fiscal year.

A. RECOUPMENT OF COSTS FOR GENETIC TESTING

When the alleged father is declared to be the legal father of the child, the enforcing authority must request the court order the father to repay the costs of the genetic testing. These costs must be reduced to judgment, with payments to begin as soon as any judgment on arrears is paid in full.

B. CONTESTED GENETIC TEST RESULTS

If genetic test results are contested and an additional test is ordered, the enforcing authority must request the court orders the party contesting the results to pay the costs of the additional tests directly to the genetic testing laboratory.

C. AUTHORIZED GENETIC TESTING

When an enforcing authority stipulates or otherwise authorizes genetic testing without a determinative order and case circumstances fall under SEM 400.2, costs for such testing shall be paid by the enforcing authority.

D. LABORATORIES FOR GENETIC TESTING

States are required to use genetic testing laboratories approved by the federal Office of Child Support Enforcement (OCSE). Nevada contracts with the following approved laboratory:

Laboratory Corporation of America (Lab Corp.)
P.O. Box 2200
Burlington, NC 27216
800-334-5161

E. BUCCAL SWAB PROGRAM

Nevada Revised Statute 126.121 allows properly trained staff designated by enforcing authorities to collect genetic test specimens. Additionally, child support staff responsible for collecting specimens must be certified by LabCorp, the State's genetic test vendor. To improve program performance and expedite paternity establishment, at least one staff member in each enforcing authority office must be certified to collect specimens.

Training and certification in specimen collection must be arranged by calling the LabCorp Account Specialist at 800-742-3944, Option 1 Extension 67512. The LabCorp representative will provide the necessary training materials to child support staff requesting certification. LabCorp will provide staff with certificates upon successful completion of the training. Enforcing authorities must keep a record of staff certified to collect specimens.

F. FAILURE TO COOPERATE WITH GENETIC TESTING

Parties who fail to attend two genetic testing appointments that have been scheduled by the enforcing authority will be subject to:

CST: PA case- case manager will notify IVA of non-cooperation.

NA case- case manager will begin closure for non-cooperation. Reference SEM 214.1 (L).

NCP: Seek a Default Order to establish paternity.

414 SERVICE MEMBER'S CIVIL RELIEF ACT

The Servicemember's Civil Relief Act (SCRA) permits temporary stays of civil judicial and/or administrative proceedings whenever military service prevents a plaintiff or defendant in military service from asserting or protecting a right. Courts must grant a service member's request for a stay of proceedings under SCRA, unless the member's military service does not materially affect the member's defense.

Department of Defense regulations provide a service member must be granted leave to attend paternity establishment or child support obligation hearings, unless the member is deployed in a contingency operation or exigencies of military service require denial of such a request.

The SCRA is a necessary protective device for military service members during a time of conflict or training. It is not a shelter from facing legal and family responsibilities. Whenever a service member requests a stay, inquire about the reasons for the delay. If the service member is requesting a stay because the member does not have sufficient accrued leave or the resources to travel, then it may be possible to conduct a telephone hearing instead.

Additional information regarding the SCRA and child support proceedings involving military personnel is available in the OCSE publications available at:

<http://www.acf.hhs.gov/programs/cse/fct/militaryguide2000.htm>; and
http://www.acf.hhs.gov/programs/cse/newhire/employer/publication/military_quick_guide.pdf