

Establishing Paternity

Office of the Staff Judge Advocate

LEGAL ASSISTANCE

I Corps (Fwd) and U.S. Army Japan

Establishing paternity means that a legal decision is made that a certain man is the father of a particular child. Once paternity is established, a child gains legal rights and privileges. Among these may be rights to inheritance, rights to the father's medical and life insurance benefits, and to social security and possibly veterans' benefits. The child also has a chance to develop a relationship with the father, and to develop a sense of identity and connection to the "other half" of his or her family. It may be important for the health of the child for doctors to have knowledge of the father's medical history.

How is Paternity Determined?

Paternity can be established any time up to the child's 18th birthday. In many states, the husband is determined to be the father of a child born while the parents are married. Many fathers voluntarily acknowledge paternity. If a purported father denies paternity, a judge may order a blood or genetic test and make a ruling on the basis of testimony and test results. The results can be used to establish paternity, or to show that a man is not the father of a particular child. If the father accepts that he is, in fact, the father, a legal document certifying his paternity is prepared.

Where Do I Get a Paternity Test?

You can get a paternity test from professional laboratories that provide this service. Several labs advertise through the Internet, and many states' child support enforcement agencies have contracts with labs and will tell you which lab must be used. The base hospital at Camp Zama does NOT conduct paternity tests. The hospital will, however, take samples required by the paternity testing labs from the U.S. to do the testing. Have the lab or child support agency send the test kit to:

Commander U.S. Army
MEDDAC-Japan
Unit 45011
APO AP 96338-5011

After requesting the kit, call the base hospital to let the staff know that a test kit is coming. They will need to know who to contact when it arrives. After a sample is taken and the package is sealed, mail the sample back to the lab. Japanese law prohibits the mailing of bio-hazardous material through regular mail, so you will need to send the package through a commercial carrier.

The Child Support Enforcement Program

The Child Support Enforcement (CSE) Program is a federal, state, and local effort to establish paternity and to collect child support from parents who are legally obligated to pay. State enforcement programs locate absent parents, establish paternity when necessary, establish and enforce support orders, and collect child support payments. The CSE program is usually administered through state and county social services departments. The state where the mother and child reside is usually the most appropriate forum to handle the paternity case.

If a state does not have jurisdiction over the alleged father, the mother may not be able to get a court order for child support. However, if the alleged father is finally determined to be the father by a court, and the court requires the payment of back-child-support, the military member father may have to pay for back-support without the benefit of with-dependent-rate BAQ. Therefore, it may be advisable for a father to consent to the jurisdiction of a court early in the paternity process, so that the member can claim the child as a dependent and use the with-dependent-rate BAQ to assist in child support.

What is Army Policy Regarding Paternity?

Army members are expected to provide adequate financial support to family members. In the case of paternity, support is required where:

- Valid proof of paternity has been established through a court order, or
- An Army member voluntarily acknowledges paternity.

A service member has no legal obligation to provide financial support to a child born out of wedlock unless the mother gets a court order that identifies him as the father and directs payment of financial support.

A service member may voluntarily admit paternity and agree to provide financial support. However, the alleged father must be aware that by voluntarily accepting paternity, he will be financially liable for the child until that child turns 18 or older (depending on state law). An alleged father should see an attorney before making a voluntary admission of paternity.

If the service member is receiving BAQ at the with-dependent rate based solely on the voluntary admission of paternity, and fails to provide such financial support, the appropriate finance and accounting office will be informed, resulting in termination of BAQ entitlement at the with-

dependent rate. Additionally, the Army will recoup the with-dependent rate BAQ received by the member during periods of non-support.

In the absence of a court order or voluntary admission, the Army will not require the service member to support a child born out of wedlock. Requests for assistance should then be referred to the child support enforcement agency in the state where the child resides or to a civilian attorney.

What About Garnishment and Allotment?

There are two primary methods of involuntarily collecting military pay from a military member for child support based on a court order:

1. *Garnishment of Military Pay*: Federal law authorizes the garnishment of pay of members to enforce child support orders in accordance with state law. Many states will automatically require payment by garnishment in the child support order. Unless state law specifies a lesser amount, federal law provides a limit of fifty percent of the member's aggregate disposable earnings for any workweek if the member is currently support a second family (spouse or child) and sixty percent if the member is not supporting a second family.

2. *Statutory Allotments for Child Support*: Federal law authorizes allotments from military pay to satisfy child support obligations. Statutory allotments may be initiated when child support payments are at least two months outstanding. The allotment is initiated by furnishing DFAS-Cleveland with a written notice from a court or state agency administering the child support program under Title IV-D of the Social Security Act. Allotment cannot exceed fifty percent of a member's pay and allowances if the member is supporting a second family. If the member is not supporting a second family, the allotment may not exceed sixty percent. After DFAS receives the request, DFAS notifies the member's commander. The commander will then notify the member. The member will have thirty days to cure the outstanding child support payments or the DFAS will implement to the allotment.

For More Information access the Department of Health and Human Services home page at www.acf.dhhs.gov

Establishing Paternity is distributed by the Camp Zama Legal Assistance Office, located in Building 101, Room CE209. Our office hours are 08:30 to 12:00 and 13:00 to 16:30 Monday through Friday, except Thursday 13:00 to 15:00. You may call us for an appointment at DSN 263-4698/commercial 046-407-4698.