



A National Putative Father Registry

Adoption of a child born to an unwed mother creates a quandary of how best to protect the parental rights of the father and the privacy rights of the mother while simultaneously securing the best interests of the child.¹

policy brief

Over one-third of all births are to unwed parents. Adoption proceedings for these children can be delayed, contested, and disrupted when paternity is in question. Highly publicized court cases, such as Baby Jessica's in which an unwed birth father contested her adoption and then initiated litigation, alerted the general public to this issue. Although state Putative Father Registries resolve paternity issues for in-state adoptions, only federal legislation creating a national registry can expedite permanency for children in interstate adoptions.

What is a Putative Father Registry?

Some 33 state legislatures have enacted Paternity Registries but only 23 avert disrupted adoptions by the late assertion of paternal rights. A Putative Father Registry mandates that unwed fathers mail in a postcard to register their possible claim for paternity rights in a timely manner. Registration insures fathers notification of an adoption petition. These registries assist fathers in asserting paternity and assuming related parental duties *or* foreclose their paternal rights. In operation, fathers register if they believe they have fathered a child. Should the mother make an adoption plan, the registry provides notification to the father of the possible adoption. Thus, the father can participate in the adoption, default on the petition, or pursue his paternal rights at or before the initial adoption hearing. Adoption proceedings can then commence without the possibility of disruption due to late paternity claims. The privacy and safety of the mother is secured because she does not have to identify the possible father nor inform the father of her pregnancy. The privacy of the father is protected in that notice is mailed only to the secure address he has provided the registry. Both mother's and father's privacy are protected in that no names are published in the newspaper.

What does existing law indicate regarding Putative Father Registries?

The Supreme Court has held on three occasions that unwed fathers are constitutionally entitled to notice of adoption proceedings of children with whom they have established relationships. State law entitles unwed fathers to notice if they meet statutory criteria. Thus, unwed fathers' established relationships and/or endeavors to assume parental responsibility provide grounds for notice and opportunities to be heard regarding pending adoptions. Putative Father Registries affect paternal rights to newborns as well as older children. Questions arise as to what constitutes a relationship with a newborn and evidence of assuming paternal responsibilities. To address these issues, and related legal issues, court decisions and state laws provide that:

- Registries are constitutional and do not deny father's due process or equal protection.
- A timely registered unwed father is insured notice at the address he provided the registry.
- Fathers bear the burden of registering in a timely manner. Failure to do so can be viewed as pre-birth abandonment and, therefore, grounds to foreclose the father's rights.

- The period of pregnancy plus a defined number of days after birth is adequate time for unwed fathers to protect paternity rights and to indicate their interest and ability to assume parental responsibilities.
- Notice of pending adoptions is not required for unwed fathers who have not filed or not filed in a timely manner with the Putative Father Registry or otherwise established paternity legally.
- Sexual intercourse serves as notice of possible conception. A lack of knowledge of a pregnancy or birth does not constitute an acceptable reason for failing to register.

These decisions hold that unwed fathers have an inchoate interest in their child that they can transform into a constitutionally protected interest if they assume parental responsibilities. The decisions also indicate that states have an overarching goal to advance the best interest of children, provide children with stable homes, and avoid the disruption of adoption proceedings.

How are interstate adoptions handled?

State Putative Father Registries can alleviate problems in which the adoption petition is filed in the state of conception. However, due to interstate travel, births and adoption proceedings can occur in a state unknown to the unwed father. In such cases, paternity rights can be thwarted even if the father has filed with the Putative Father Registry in the state of conception. When interstate travel occurs and paternity rights are asserted late through litigation, a child's adoptive placement can be disrupted or an earnest father's rights extinguished.

How would a National Putative Father Registry work?

A National Putative Father Registry would address the problems associated with interstate travel. The registry would have the dual purpose of expediting secure adoptive placements and facilitating notice of adoption proceedings to unwed birth fathers in interstate adoptive situations. The registry would also advance the privacy of mothers and fathers; address the safety interests of mothers; facilitate planning for children; clarify the rights of birth fathers; encourage fathers to assume personal parental responsibility; reduce time in foster care; and, save states' money.

What are the elements of uniform state Putative Father Registries?

The development of a National Putative Father Registry is facilitated by uniform state registries. Such registries would include the following elements:

1. Define categories of fathers as presumed, adjudicated, acknowledged, and putative. (A putative father is defined as a man who has had sexual relations with a woman and is therefore on notice that she may become pregnant as a result of those relations.)
2. Establish a time limit for unwed fathers' registration and insure notice of adoption &/or child abuse and neglect actions to timely registered unwed fathers (as well as presumed, adjudicated, or acknowledged fathers).
3. Protect the privacy and safety of mothers by relieving mothers of the responsibility to notify the father of pregnancy or to notify the courts of the identities of possible fathers.
4. Protect the privacy of birth mothers and fathers by not publishing their names in the newspaper.
5. Require unwed fathers to legally establish paternity and assume parental responsibilities during pregnancy and the period immediately following birth in order to protect their paternal rights.
6. Set consequences for the putative father who does not file timely and establish legal paternity.
7. Amend long arm statutes to assert personal jurisdiction over the registered putative fathers.
8. Establish saving provisions to protect the earnest father who is defrauded by a mother.
9. Regulate who can access and search the Putative Father Registry to ensure the privacy of all parties.

¹ For more information on Putative Father Registries and federal and state court decisions, please see the extensive review in *Towards a National Putative Father Registry Database*, 25 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 1031 (2002).

(Beck, M., Scott, J.L., & Ball, K.A., 2007)

For a complete list of references or more information about this topic, contact the Center for Family Policy and Research

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