

New Law Allows Men To Challenge Paternity in North Carolina

CPT Laurence Purdy

What if a man is not actually the father of a particular child? Is he stuck paying child support for a child not his own? No, according to a new law in North Carolina. This article describes three situations in which a man can now challenge and overturn an earlier admission or court finding of paternity.

Suppose an unwed man voluntarily agrees to put his name on the birth certificate by signing an Affidavit of Parentage. Previously, dad could change his mind – “rescind” – only up to 60 days from signing or until a court issues an order of paternity or child support, whichever came first.

Dad still has this option. Now, though, a man who signs an Affidavit can get that Affidavit cancelled – “set aside” – even after 60 days. He must allege fraud, duress, mutual mistake, or excusable neglect, and a genetic (DNA) test must show that he is not the father. If the parties do not agree to get genetic tests voluntarily, the court can order mom, dad, and child to be tested upon dad’s allegation of one of the four bases for setting aside.

Suppose instead dad did not sign an Affidavit but was adjudged the father during a court proceeding. Further, suppose the current situation does NOT involve child support. As with the Affidavit situation, the new North Carolina law lets dad ask a court to set aside an order of paternity, and in much the same way. Dad alleges fraud, duress, mutual mistake, or excusable neglect; the parties either agree to genetic testing or the court orders testing; and, if the tests show the man is not the father, the court will set aside an earlier order of paternity.

Finally, suppose there was no Affidavit, but dad either is currently under, or is about to be under, an order to pay child support. Dad can contest paternity in this scenario only within one year of the date he knew or should have known he was not the father. He must ask the court for relief from child support by telling the court 1) why he believes he is not the father; 2) he did not acknowledge paternity (publicly state or act as father) or, if he did, he did so without knowing he was not the father; 3) he has not adopted or legitimated the child and he is not the child’s legal father; and 4) he did not prevent the biological father from asserting his parental rights. Upon such a motion, the court can order genetic testing or the parties can agree to it. If genetic testing shows dad is not the father AND the court accepts the four assertions listed above, then the court will end dad’s support obligation.

This article is just an overview of the new law. For details and for advice regarding your particular situation, please contact the XVIII Airborne Corps and Fort Bragg Legal Assistance Office at 910-396-0396 or 6113. The office is located on the first floor of the soldier support center in Wing D. The Legal Assistance Office is open Monday, Tuesday, and Friday from 0900-1630, on Wednesday from 1300-1630, and on Thursday from 0730-1630. All family law issues, including paternity are handled on Thursdays only. For more information please visit our website at <http://www.bragg.army.mil/DIRECTORATES/OSJA/Pages/LegalAssistance.aspx>.