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How to Become a Legal Parent in Washington

And other ways to protect your right to parent

Washington law provides several ways for people raising children together to become legal parents. This publication covers:

1. Legal parentage;
2. Becoming a legal parent;
3. Other options for people who are not legal parents;
4. Parenting after divorce/separation; and
5. Resources

Warning:

State and federal law has changed significantly over the last decade, as have laws in other countries around the world. Therefore, we recommend that you talk to a qualified family law lawyer before you do things like make significant changes in your family relationships, go to court for parental rights, or travel out of the country.

Notes:

- For couples married in another state or another country: Washington State will recognize your marriage no matter where you were married, so long as both spouses are legally consenting individuals of qualifying age. You will have all the rights, benefits, and responsibilities as couples who marry in the state, including who is considered a legal parent.
- The term “spouse” is used for married couples as well as couples in state-registered domestic partnerships.

Legal Parentage

What Does It Mean to Be a Legal Parent?

Being a legal parent means that you have parental rights and responsibilities to your children. Legal parents have the right to custody or visitation (“residential time”) with their children (unless restricted by the courts). Legal parents are also responsible for their children’s care and support, including financial support. In general, they also have the right to make decisions regarding their children’s education, medical care, and upbringing.

Who Is Automatically a Legal Parent?

There are several ways a person can be considered the child’s legal parent automatically. The gender of the person does not matter:

- a. **The person who gives birth** to the child is automatically the child’s legal parent (with certain exceptions in the case of surrogacy).
- b. **The spouse** of the person who gives birth to the child is automatically a legal parent (again, with certain exceptions in the case of surrogacy). The spouse’s name can be listed on the child’s birth certificate.
- c. If the child is born within 300 days of the end of a spousal relationship, which ended because of divorce, annulment, legal separation, declaration of invalidity, or death, **the ex-spouse** of the person who gives birth to the child is automatically a legal parent.
- d. **Someone who signs** an acknowledgment of parentage form at the time the child is born is automatically a legal parent. This option is only available to the person who gives birth to the child, an alleged genetic parent of the child, an intended parent under an assisted reproduction agreement, or a presumed parent (specific presumptions are defined by law).

A person is a legal parent until:

- a. They voluntarily give up these rights (allowed only in certain situations),
- b. A court takes away (“terminates”) a person’s parental rights, **or**
- c. The child turns 18 years old (certain rights and obligations remain after the child turns 18, such as inheritance rights, and obligations if the child is disabled).

Under Washington law, a person who donates sperm or eggs to be used in assisted reproduction (a method of causing pregnancy without sexual intercourse) is not a legal parent of the child.

What If I’m Not a Legal Parent to My Child?

In general, if you are a child’s parent but you don’t have a relationship recognized by law, the legal system will consider you to be a stranger to the child. This means that:

- You do not have any obligation to support and care for the child.

- You do not have any legal right to custody or visitation with the child (with certain exceptions).
- You do not have the right to make major decisions regarding the child, including medical decisions, even in an emergency.
- You will not be eligible to take parental leave when the child is born or paid sick leave when the child is sick.
- You most likely will not be able to include the child on your health insurance or other benefits from your employer.
- Your child will not have any right to inherit from you if you die without a valid Will naming them.
- Your child will not be eligible for your Social Security benefits if you are disabled or die.
- If the legal parent is absent, there may be no one available to make decisions for the child in an emergency.

How Can I Become a Legal Parent If I am Not Automatically?

If you are not automatically a legal parent as described above, there are ways you can become a legal parent after the child is born.

1. **Second-Parent Adoption:** If you go through a legal adoption process you will be the child's legal parent.
2. **Presumption of Parentage:** In Washington, you can become a legal parent, possibly without having to go to court, if certain requirements are met.
3. **De Facto Parentage:** In Washington, you can become a legal parent by asking the court to determine that you are the child's *de facto* parent.
4. **Other legal strategies** to gain rights to your child exist. Talk to an experienced family law lawyer about all of your options.

These options are explained in more detail in the next section, "Becoming a Legal Parent."

Becoming a Legal Parent

Second-Parent Adoption

A second-parent adoption allows a person to adopt their partner's child, giving the child two legal parents. It grants both parents equal parental rights and obligations. This ensures that both parents will continue to have legal rights and obligations to the child even if the parents' relationship ends. It also guarantees the child will continue to have a legal parent if the first legal parent dies or becomes incapacitated.

What Happens In a Second-Parent Adoption?

In addition to the legal paperwork, there are a number of steps that you must take to complete any type of adoption. The court will likely require a "post-placement report," which can be done by a private agency, someone appointed by the court, or by the Department of Children, Youth, and Families. This report evaluates the home environment, family life, health, facilities, and resources of the prospective adoptive parent, as well as the physical and mental condition of the child, and any other factors relating to whether the proposed adoption is advisable. The report will also review the criminal record of the prospective adoptive parent. Overall, this report is designed to evaluate whether the proposed adoption is in the best interest of the child as determined by the court. Again, a family law lawyer, an adoption agency, or both, can assist you in this process.

Finally, a judge needs to approve the adoption. While there is nothing in Washington State law that prohibits second-parent adoptions, unfortunately it is possible that some judges in this state may refuse to grant them. If that happens, please contact Legal Voice at info@legalvoice.org.

What If There Is Already a Second Legal Parent?

If the child already has a second legal parent, you must have that person consent to your second-parent adoption. As part of this process, the other legal parent must agree to give up their own parental rights. If the other legal parent will not agree, the second-parent adoption is "contested." In this case, you will be able to go forward with the second-parent adoption **only if**:

1. You can show that the other parent's refusal to consent is against the best interests of the child, **and**
2. That the other parent has substantially disregarded their parental rights and obligations to the child.

Proceeding with a second-parent adoption is complicated, and we strongly suggest that you contact a qualified family law lawyer to help you with this process. The QLaw

Association has a directory that includes lawyers who practice adoption law or lesbian/gay family law (see Resources at the end of this publication).

What If the Judge or Report Is Biased Against Same-Sex Couples?

While there is nothing in Washington State law that prohibits second-parent adoptions, it is possible that some judges may refuse to grant them to a same-sex couple, or the person who prepares the post-placement report is biased. If that happens, please contact Legal Voice at info@legalvoice.org.

An experienced family law lawyer in your area can help you consider ahead of time the potential biases of the people assigned to your adoption case. If you think you will not be treated fairly, you can ask the court for reassignment.

Presumption of Parentage

Under Washington's Uniform Parentage Act, there are two presumptions that can help you become a legal parent if you are not already:

- a. **Spouse:** If you marry or register as domestic partners with someone who is a child's one and only legal parent (by birth, adoption, or surrogacy agreement), you can be the child's second legal parent, without having to adopt, if you assert parentage (like with an acknowledgement of parentage form) and:
 - You file the assertion with the state registrar of vital statistics;
 - OR**
 - You agreed to be, and are, named on the child's birth certificate.

You can become a presumed parent this way at any time before the child turns 18. After that, only the child can take these actions to make you a presumed parent.
- b. **Holding Out:** Whether or not you are married or in a domestic partnership, you will be the presumed parent of the child if, for the *first four years* of the child's life, you lived with the child and openly held the child out as your own.

Important: Your legal status as a presumed parent can be challenged in court:

- If you are not the child's genetic parent, you never lived with the child, **and** you never held the child out as your own, a challenge can be brought at any time.
- If there is more than one presumed parent, a challenge can be brought at any time.
- In all other situations, a challenge must be brought before the child turns four.

De Facto Parentage

If you are not a presumed, acknowledged, or adoptive parent of the child, you can petition the court for legal parental rights if you can prove that you are a *de facto* parent. If the petition is successful, you will have full parental rights. You do not need to have the other parent's consent to have a court determine that you are a *de facto* parent.

Before the court will recognize you as a *de facto* parent, you must file a *de facto* parentage action with the court and show that all of the following are most likely true:

1. You lived with the child, as a regular member of the child's household, for a significant period of time;
2. You have been a consistent caretaker for the child;
3. You did this caretaking without any expectation of being paid in any way;
4. You held the child out as your own;
5. You established a bonded, dependent, parent-like relationship with the child;
6. The other parent supported your parent-like relationship with the child; and
7. Continuing your relationship with the child is in the child's best interest.

(Note: This option is not available to establish parentage for a child who has turned 18, nor for a child who is deceased.)

The *de facto* parent petition does not deal with custody or visitation. If your petition requesting *de facto* parent or parentage status is granted, you can then petition the court for a parenting plan. See the "Parenting After Divorce/Separation" section on page 9.

Filing a *de facto* parentage action with the court is time-consuming and costly. It is important to talk to an experienced family law lawyer before filing a *de facto* parentage action. See "Legal Help" in the Resources section.

Other Legal Strategies

Recently, courts have considered other legal strategies to grant legal parental rights that are less burdensome than the options described above. The pros and cons may be significant, depending on your situation. Talk to an experienced family law lawyer. See "Legal Help" in the Resources section.

Other Options for People Who Are Not Legal Parents

If you cannot or do not want to become a legal parent as described above, there are other ways to try to protect the relationship between yourself and the child. These options do not provide the same protection as becoming a legal parent, but may be helpful in your particular situation:

Legal Guardianship

The legal parent can nominate you as the child's guardian if the legal parent dies or is incapacitated. This can be done two ways:

1. You can be nominated to be the child's guardian in the legal parent's Will.
2. You can be nominated as the child's guardian by the legal parent in a Nomination of Guardian or as part of a Power of Attorney document.

Note that Nomination of Guardian and Power of Attorney documents are valid when the Legal Parent becomes incapacitated, while a Will is only valid after their death. The legal parent may find it helpful to have a lawyer draft these documents.

Encourage the legal parent to update or create the above documents that nominate you as the child's guardian. Keep a copy of each document.

School and Medical Authorization Forms

The legal parent can provide a letter or fill out a form provided by the child's school stating that you are authorized to make emergency and non-emergency medical decisions for the child, to come to school to visit the child (for assemblies, recitals, etc.) and to pick up the child from school.

The legal parent should also provide the child's doctor and other health care professionals with a letter or form stating that you are authorized to make emergency and non-emergency medical decisions for the child. You can use the one-page form in the publication "A Kinship Caregiver's Guide to Consenting to Health Care" as a guide (see Resources). The letter or form should also state:

- You are permitted to visit the child at the hospital;
- You should be treated as an equal family member for hospital visitation purposes; and
- The document may exceed 6 months duration.

Shared Parenting Agreements

Work with your partner to develop a written shared parenting agreement. Once you have signed the agreement, honor it.

Write up a shared parenting agreement that is agreeable to both of you. Although these agreements are not generally enforceable by a court, they can serve as strong evidence of you and your partner's intention to parent the child together. There is no particular form for such an agreement, but a useful agreement should address several topics:

Define the intended parenting relationship

Your parenting agreement should spell out the nature of your relationship. For example, you could say that even though only one of you is the legal parent, you both consider yourselves to be equal parents to the child.

Guardianship designation

Name the non-legal parent as the person who will become the child's legal guardian if the legal parent is incapacitated or dies. The legal parent can include a guardianship nomination in their Will. While this designation will not be enforceable by law, nominated guardians are often appointed by the court unless there is a compelling reason not to.

Divorce/Separation plan

Address what will happen if you divorce/separate. For example, you can state that you both will remain involved in the care and upbringing of the child and that both of you will have continuing access to the child. Consider clearly outlining an agreement regarding custody and visitation following a break up, including who will have primary custody of the child; when and for how long will the non-custodial parent be able to have visitation with the child; etc.

Financial obligations

Spell out the basic ground rules for financial support. For example, who will be responsible and in what amount for child support, tuition assistance, medical care, and insurance, and how the two of you will pay the child's expenses. You may decide to share all the child's expenses jointly or divide them in some other way.

Resolving disputes

You may also want to include that if there is any dispute about the shared parenting agreement you will first try to resolve it with help from a mediator. (A mediator is a person trained to help people work through a conflict and come to an agreement.)

Parenting After Divorce/Separation

We Are Getting a Divorce. Who Will Get Custody?

Custody is based on a variety of factors. The court will consider the best interests of the child, prioritizing health and safety, and taking into account the child's existing relationship with each parent, among other factors. If you have children with your spouse or domestic partner (biological or by adoption), you must create a parenting plan along with your final divorce orders. Final parenting plans usually specify the following:

- Who will have primary custody;
- The child's residential schedule (a schedule outlining when the child will be with each parent, including a plan for holidays, birthdays, vacations, and other special occasions.);
- Limits on residential time (due to factors like substance abuse, violence, etc.)
- Who will be making decisions regarding the children's education, health care, and religious upbringing (known as "legal custody");
- What the parents will do to attempt to resolve future disputes (before seeking additional court intervention)
- What to do in the event a parent moves ("relocation")

Usually, the court will also issue a child support order to go along with the parenting plan.

If the court discriminates against you because of your sexual orientation or gender identity or expression when determining custody or the parenting plan, contact Legal Voice at info@legalvoice.org.

We Were Never in a Legal Union. What Options Do I Have?

If you are not a legal parent, you have three options to consider:

1. Enter into an agreement with your partner:

If your partner agrees to your continuing custody and/or visitation, it may be easy to continue your parental relationship with the child. As explained above, if you and your partner drafted a shared parenting agreement spelling out the custodial and visitation schedule for your child, financial support arrangements, and any other important parenting issues, you can simply follow the terms of the agreement. You may also want to establish an agreed parentage order and parenting plan and enter it with the Court.

2. **Petition the Court for Status as a *De Facto* Parent:**

If your partner, the legal parent, refuses to allow you to continue your relationship with the child, it can be difficult for you to gain custody or visitation rights.

However, a two-step process may be successful:

- a. First petition the court for status as a *de facto* parent (see page 5). Because this may be a complicated process, we recommend that you work with an experienced family law lawyer to prepare the pleadings and other legal paperwork.
- b. If your petition requesting *de facto* parent status is granted, you can then petition the court for a parenting plan.

3. **File a Nonparental Custody Petition:**

You can include this in a Petition for Status as a *De Facto* Parent if you want custody while the *de facto* parentage case proceeds. That said, the Washington courts will approve nonparental custody **only if** the court finds that the legal parent is unfit, or that placement with the legal parent would result in actual harm to the child's growth and development.

Non-parent custody and *de facto* parentage have very different purposes. A non-parent custody order gives only a temporary and uncertain right to custody. When and if the legal parent becomes fit to care for the child, the non-parent has no right to continue a relationship with the child.

Again, this is a complex process. Working with an experienced family law lawyer is strongly recommended. For more information about nonparental custody, see the Legal Voice booklet *Options for Grandparents and Other Nonparental Caregivers* listed in Resources.

Resources

Related Publications

- *A Kinship Caregiver's Guide to Consenting to Health Care*, by Columbia Legal Services
Online: www.washingtonlawhelp.org/resource/a-kinship-caregivers-guide-to-consenting-to-h
- *Nonparent Custody: Frequently Asked Questions and Answers*, by Northwest Justice Project
Online: www.washingtonlawhelp.org/issues/family-law/non-parents-caring-for-children
- *Options for Grandparents and Other Nonparental Caregivers: A Legal Guide for Washington State* (2017), by Legal Voice (available in Spanish)
By phone: 206-682-9552
By email: info@legalvoice.org
Online: www.legalvoice.org/options-grandparents

Legal Help

- *How to Find a Lawyer and Other Legal Resources in Washington State*, by Legal Voice
By phone: 206-682-9552
By email: info@legalvoice.org
Online: www.legalvoice.org/resources
- QLaw: Offers a directory that includes lawyers who practice adoption law and lesbian/gay family law. Also hosts a monthly legal clinic on the third Thursday of each month from 7:00 p.m. to 9:00 p.m.
Directory: www.q-law.org/directory
Clinic information: [www.qlawfoundation.org/lgbtq-legal-clinic.html](http://www qlawfoundation.org/lgbtq-legal-clinic.html)
Clinic appointments: (206) 235-7235
- Washington LawHelp: Free information on a range of issues, including family law.
Online: www.washingtonlawhelp.org

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 June 2018.

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