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No Minor Matter: Developing a Coherent Policy on Paternity Establishment for Children Born to Underage Parents

By Paula Roberts

Introduction

Each year, about one-third of all the babies born in the United States are born to unmarried parents. To ensure that these babies obtain the fiscal, emotional, and familial support of both parents, their paternity should be established. The earlier this formal relationship is established, the more likely it is that the baby will have a lasting and supportive relationship with his or her father. Indeed, recent social science research emphasizes the importance of father-child relationships in the development of healthy, stable children.

There are three ways for unmarried parents to establish paternity: (1) the parents could marry, (2) both parents could sign a voluntary paternity acknowledgment, and (3) either parent could file a law suit to establish the baby's paternity. In the last decade, there have been major legislative and judicial efforts to streamline paternity establishment procedures. In 1993, Congress required every state to offer in-hospital paternity acknowledgment programs so that parents could establish their children's paternity at birth. In 1996, Congress enacted reforms to strengthen the contested paternity process. And, more recently, the Bush Administration has promoted efforts to encourage unmarried parents to consider marrying.

However, there is a group of babies for whom paternity establishment is a more complicated issue. These are the roughly 150,000 babies born each year to unwed parents at least one of whom is a minor. As minors, they are not free to marry or bring a law suit without the permission of their parents. In many states, they must also obtain their parent's permission to sign a voluntary acknowledgment of paternity.

Custody, visitation, and support obligations are serious issues. It is certainly reasonable to want to protect minor parents from entering these obligations without careful thought or consideration. For example, immature youngsters might enter an ill-advised marriage; a young man might sign an acknowledgment of a child who is not his genetic offspring; or a young woman might sue to establish paternity when there are issues of abuse and she and the baby may be better off if paternity is not established. It is also critically important to the baby that his or her actual genetic parentage is properly determined. Otherwise, there might be a later proceeding to disestablish paternity when the child has grown fond of the father, established relationships with the father's extended family, and come to rely on him for financial support.

About the Author

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ABOUT THIS BRIEF

This policy brief, the second in a series on childbearing and reproductive health, summarizes a report of the same title by Paula Roberts. The report includes a full discussion of the issues highlighted here, complete references, and tables on state laws related to age of majority, age of sexual consent, marriage by minors, and grandparent liability for child support on behalf of minor children.

Thus, some protections for minor parents and their offspring are appropriate to make sure that the proper result is achieved.

At the same time, social science research suggests that if paternity is not established within two years of a baby's birth, it becomes very difficult to establish. The likelihood of marriage diminishes. Indeed, the parents may no longer be involved with one another and often lose contact. This also makes it hard to serve the father with court papers, bring him in for genetic testing, or present him with an acknowledgment form to sign.

States need to develop consistent laws and policies to address this problem. The potential rights, limitations, and obligations of the minor parents, their babies, and the grandparents all need to be considered in developing thoughtful approaches to this issue.

What Are Current State Laws?

Society has long recognized that children need special legal protection. Until they reach a certain age, they generally lack the experience and rationality to marry, bring law suits, or enter contracts without an adult to guide them. For this reason, children below a certain age are considered to be "minors." Until they reach "majority," they must have a parent or guardian to approve their entry into legal obligations.

There is no national definition of the age of majority. This is a matter of state law, and either state statutes or case law set the age. Once a child reaches the age of 18, he or she is considered to be an adult in all but two states (where the age of majority is 19). Before reaching that age, a child must have parental permission to take legal action. In addition, minors are restricted from certain other rights. States also have laws governing the age at which a minor is deemed to be able to freely consent to sexual relations. In most states, the age is younger than 18. If a teen is under a specific age, then sexual relations with him or her is a crime, even if the partner believed the relationship to be consensual. These types of crimes are commonly called statutory rape. While there is no apparent consensus on a proper age for sexual consent, most states distinguish younger teens (under 15) from middle teens (15- to 17-year-olds) in this regard.

Like adults, minors can establish their babies' paternity in one of three ways: marriage, litigation, or voluntary acknowledgment. However, their ability to use any of these methods is constrained by law. In no state may a minor marry or bring suit without either parental consent or court approval or both. A few states allow minors to establish paternity through the voluntary acknowledgment process without parental approval, but only five states make the laws equally applicable to adults and minors. Three states allow voluntary acknowledgment but require parental approval, and four allow voluntary acknowledgment without parental approval but give the minor extra time to rescind the document (see Table 1, p. 3). However, most states do not have laws directly addressing voluntary establishment by minors.

What Does Research on Teens, Sex, and Babies Tell Us?

Recent social science research and data help define the scope of the problem of paternity establishment among minors, the relationship between paternity establishment and statutory rape laws, and the need for adequate protections for minors who are victims of domestic violence. In terms of policy development, social science research suggests:

- About 20 percent of both boys and girls have their first sexual experience before they turn 15. By age 17, more than half of teens have had sexual intercourse. Most continue to have at least sporadic sexual relationships after their first sexual experience. Those who remain sexually active and do not use contraception (or experience contraceptive failure) are more likely to experience a pregnancy and birth. As a result, state paternity establishment policy must take into account the fact that it will affect a significant number of minor mothers and fathers.
- If the minor parent seeking to establish paternity is a boy, it is likely that the mother is also a minor. However, if the minor

TABLE 1: STATES WITH LAWS ON MINOR PARENT PATERNITY ESTABLISHMENT THROUGH VOLUNTARY ACKNOWLEDGMENT

STATE	CITATION	DESCRIPTION
California	Cal. Fam. Code § 7577 (2002)	Minor parents are allowed to sign a voluntary acknowledgment. However, a minor signatory can rescind the acknowledgment at any time up to 60 days after that parent reaches the age of 18 or becomes emancipated, whichever comes first. For that reason, the acknowledgment does not establish paternity until 60 days after both parents have reached age 18 or become emancipated, whichever occurs first. Before that, it creates a rebuttable presumption of paternity and is admissible as evidence in a civil paternity action. It is not, however, admissible in a criminal action for statutory rape.
Connecticut	Conn. Gen. Stat. § 46b-172 (2002)	Minors may sign voluntary acknowledgments, and these acknowledgments are binding on them.
Delaware	Del. Code Ann. § 804(c)(3) (2003)	Minor parents are allowed to sign a voluntary acknowledgment. However, a minor signatory can rescind the acknowledgment at any time up to 60 days after that parent reaches age 18. For that reason, the acknowledgment does not establish paternity until 60 days after both parents have reached age 18.
Illinois	Ill. Comp. Stat. 45/5(b) (2002)	Minor parents are allowed to sign a voluntary acknowledgment. However, a minor signatory can rescind the acknowledgment at any time up to 6 months after that parent reaches the age of majority or is emancipated.
Kansas	Kan. Stat. Ann. § 38-1138(b)(1) (2002)	Minor parents are allowed to sign a voluntary acknowledgment. However, a minor signatory has up to one year after his/her 18th birthday to file a request with a court to vacate the acknowledgment. If the baby whose paternity was established by the acknowledgment is under one year of age, the vacation is automatic. If the baby is over age one, the court must first consider that child's best interest.
Kentucky	Ky. Rev. Stat. Ann. § 213.046(3) (2003)	Minor, unmarried parents may not be approached in the hospital about paternity establishment. Rather, paternity establishment must proceed under the state's contested case statute.
Massachusetts	Mass. Gen. Laws ch. 209, § 11(a) (2002)	Minor parents are allowed to sign a voluntary acknowledgment, and the acknowledgment is binding on them as if they were adults.
Minnesota	Minn. Stat. § 257.75 (4) (2002)	Minor parents may execute a paternity acknowledgment. The acknowledgment creates a presumption of paternity.
Montana	Mont. Code Ann. § 40-6-105 (2002)	Minor parents are allowed to sign a voluntary acknowledgment, and the acknowledgment is binding on them as if they were adults.
New Hampshire	N.H. Rev. Stat. Ann. § 126:6-a (2002)	Minor parents are allowed to sign a voluntary acknowledgment, but must be told of any rights they have by virtue of their minority status.
Ohio	Ohio Rev. Code Ann. § 3119.962 (2003)	Minor parents are allowed to sign a voluntary acknowledgment. If a support order is then entered, male minor parents may challenge the acknowledgment based on genetic test results on the same basis as Ohio law allows other male parents to raise such a challenge.
Tennessee	Tenn. Code Ann. § 68-3-305(b)(2)(B) (2002)	Minor parents are allowed to sign a voluntary acknowledgment, and the acknowledgment is binding on them as if they were adults—*if* a parent or legal guardian is present and consents to the completion of the acknowledgment.
Washington	Wash. Rev. Code § 26.26.315 (2003)	Minor parents are allowed to sign a voluntary acknowledgment, and the acknowledgment is binding on them as if they were adults.
Wisconsin	Wis. Stat. § 69.15(3)(b)(3) and § 767.62(3)(b) (2002)	Minor parents are allowed to sign a voluntary acknowledgment, and the acknowledgment is the basis of their baby's birth certificate *if a parent or legal guardian co-signs the acknowledgment.* If a support action is then brought, the court must appoint a guardian ad litem for the minor unless he/she is already represented by an attorney.
Wyoming	Wy. Stat. Ann. § 14-2-102(c) (2002)	Minor parents are allowed to sign a voluntary acknowledgment *if a legal guardian co-signs the acknowledgment.*

parent seeking to establish paternity is a girl, there is a significant likelihood that the father is not a minor. The younger the girl the more likely it is that the father is significantly older. In any case, statutory rape issues may arise in the paternity establishment process, and state policy in that regard needs to be addressed.

- A significant amount of both physical and verbal abuse goes on in teen sexual relationships. Sensitivity to domestic violence concerns is warranted in this population just as much as—if not more than—it is for older parents.
- Intrafamily sexual abuse must also be taken into account. A father, brother, grandfather, uncle, or cousin may be the baby's biological father. The biological father may also be the teen mother's step-father or another adult male living in the household. In these cases, rather than seeking to facilitate paternity establishment, states need to provide avenues for the minor and her baby to escape an intolerable living situation.
- It is important to note that *the bulk of teens who become parents are not minors.* Two-thirds of the babies born to teen mothers are born to 18- or 19-year-olds. Nonetheless, in every state, hundreds or thousands of babies are born each year to couples in which at least one of whom (usually the mother) is a minor. In 2002, for example, there were 18,123 births to minors in California, 8,519 in Florida, 4,997 in North Carolina, and 19,775 in Texas (see Table 2, p. 5).

Recommendations for States

Babies born to unmarried minors should have their paternity established so that they can obtain the emotional, social, and financial support they need. Like adults, minors can establish paternity in three ways: marriage, paternity suit, or voluntary acknowledgment. In the majority of cases, using one of these options is in the baby's best interest, and the existing systems should be strengthened so that these infants do have their paternity determined as quickly and accurately as possible. In this regard, streamlining the processes to give at least some minors more control seems warranted. On the other hand, given the vulnerability of many young mothers and fathers, there is a need for adult oversight to help them choose the most appropriate route for paternity establishment—including the choice not to establish paternity in cases of rape or incest and where domestic violence is an issue. Recommendations for states interested in improving each of these avenues are discussed below.

These recommendations are structured to differentiate "young teens" (age 14 or 15 and under), "middle teens" (age 16 and 17), and "older teens" who are legal adults (generally 18- and 19-year-olds). The social science research suggests that states develop more rigorous constraints on the youngest group and a more open set of options for the middle group than is now contained in the laws of most states.

While these age differentiations are somewhat arbitrary, they do reflect a consensus in both state law and social science research that it is rational to distinguish within the group commonly referred to as "teens." The younger the teen the more vulnerable he or she is and the more likely that he or she will need some adult guidance on the proper course of action. Existing state laws on the age of majority, the age of sexual consent, and the age of marriage generally reflect this kind of age differentiation.

These recommendations also take into account that minors and their parents may disagree about the right course of action. For instance, parents might pressure the couple to marry when that is not their desire or withhold permission when the minors believe this to be the right thing to do. Or, grandparent liability laws may make paternal grandparents loath to allow paternity establishment because they will then be responsible for the child support owed by their minor child. Similarly, grandparents may be reluctant to sue or allow a voluntary acknowledgment in circumstances where the couple's relationship violated the state's statutory rape law. These issues need to be taken into account in developing policy.

TABLE 2: NUMBER OF BIRTHS TO MINOR MOTHERS IN 2002, BY STATE

STATE	UNDER AGE 15	AGE 15–17
Alabama	185	2,975
Alaska	15	302
Arizona	198	4,096
Arkansas	109	1,799
California	809	17,314
Colorado	112	2,342
Connecticut	63	1,004
Delaware	28	438
District of Columbia	37	347
Florida	507	8,012
Georgia	392	5,753
Hawaii	24	480
Idaho	21	602
Illinois	342	6,625
Indiana	133	3,037
Iowa	34	1,049
Kansas	45	1,369
Kentucky	91	2,110
Louisiana	222	3,434
Maine	4	321
Maryland	161	2,307
Massachusetts	78	1,628
Michigan	219	4,627
Minnesota	70	1,583
Mississippi	196	2,542
Missouri	119	2,819
Montana	11	382
Nebraska	25	760
Nevada	63	1,222
New Hampshire	7	264
New Jersey	143	2,553
New Mexico	79	1,650
New York	328	6,532
North Carolina	269	4,728
North Dakota	5	174
Ohio	277	5,253
Oklahoma	105	2,325
Oregon	66	1,477
Pennsylvania	262	4,384
Rhode Island	21	424
South Carolina	182	2,624
South Dakota	15	337
Tennessee	215	3,417
Texas	1,074	18,701
Utah	31	1,089
Vermont	4	135
Virginia	158	2,914
Washington	111	2,253
West Virginia	29	784
Wisconsin	80	2,170
Wyoming	7	220

Source: Child Trends, FACTS AT A GLANCE (2003), Table 1, p. 3.

Marriage

States that have not set a minimum age for marriage, and those that have not provided court oversight for marriages involving very young minors, should do so. As noted above, sexually active girls 14 and under may be particularly vulnerable to coercion and violence by a partner. They are also likely to have a significantly older partner who may appear to the girl's family to be a good marital prospect even though she does not wish to marry. These girls need protection from forced marriage.

Even if the mother is not a young teen, there is a need to be alert to the possibility that incest or rape has led to the pregnancy. In these circumstances, criminal prosecution—not marriage—should be pursued. Yet the minor mother might be coerced by her family to marry someone in order to hide the incest. She might also be pressured by any abusive partner to marry in order to avoid a rape charge. Finally, the pregnancy might have been the result of statutory rape. In this case, the family of the statutory rapist may push him (or possibly her) to marry in order to avoid prosecution. Judicial oversight seems particularly appropriate to make sure that the decision to marry is indeed free of coercion and not a way to avoid prosecution for otherwise criminal conduct. Therefore, states should consider enacting statutes:

- Allowing marriage without parental approval by teens who have reached the state's age of majority.
- Allowing minors aged 16 and 17 to marry if they have parental consent *and* court permission. In addition, those who cannot obtain parental consent should be allowed to go to court and make their case. If convinced that marriage is in the couple's best interest, the court should be able to bypass parental consent.
- Prohibiting marriage when one or both potential spouses is aged 15 or under.

Paternity Suits

In all states, a minor who wishes to sue for paternity establishment must obtain parental permission. Given that the minor and the minor's parents may have serious conflicts over the wisdom of a law suit, it would seem appropriate to let minors 16 and above proceed even if they cannot obtain parental consent. In this situation, however, some adult should be involved to protect the minor's best interests as well as that of the baby. States should consider enacting statutes that:

- Allow those over the age of majority to sue without parental involvement.
- Allow minors aged 16 and 17 to bring suit with or without parental consent. However, if parental consent is not obtained, then the court should appoint a guardian ad litem for any minor parent involved in the proceeding as well as for the baby whose paternity is to be determined.
- Allow minors 15 and under to bring a paternity suit only with parental consent.

Voluntary Acknowledgments

The laws in 36 states are silent on the issue of voluntary paternity acknowledgment by minors. In those states, it is quite possible that practice varies widely. Some hospitals and birth records agencies may allow minors to enter acknowledgments, some may refuse, and still others may require the consent of a parent or guardian. This, in turn, can lead to a situation in which paternity is not established even when the minors and their parents wish to have this done. It can also lead to a situation in which minor parents think they have validly established paternity, but they have not actually done so. This is not good for minors or their babies. It also raises serious potential problems in interstate cases. One state should not have to guess what the law or practice is in another state.

In states that are silent on the issue, as well as in the five states that specifically allow minors to sign acknowledgments without parental consent, another concern is that an unadvised minor may enter a paternity acknowledgment without really being sure of what he or she is doing. For example, a young man who does not understand the significance of an acknowledgment might sign one to help out a friend, knowing he is not the biological father. Or a

young man who has had a sexual relationship with the mother might simply take her word that he is the father.

One way to address this problem would be to require genetic testing before allowing minors to sign a paternity acknowledgment. Special outreach efforts to this population to let them know that testing is available and that they can apply for child support services from the state and obtain such tests at no cost is another possible approach. Another option is to allow minors to sign voluntary acknowledgments but allow them to rescind the acknowledgment if they do so within 60 days of their 18th birthdays.

In deciding what approach to take, states might want to consider two related laws as well. A state that has both a requirement of parental permission for a minor to acknowledge paternity and a grandparent liability statute may find that grandparents are reluctant to grant their minor children permission to enter into a voluntary paternity acknowledgment. Either states should reconsider these laws or allow at least middle teens to sign without parental permission.

Relationships involving very young mothers have a high probability of violating the state's statutory rape laws. In those cases, the parents may hesitate to voluntarily acknowledge paternity as the acknowledgment is an admission of the crime. Even if they wish to sign an acknowledgment, their parents or guardians may be unwilling to allow them to do so. This is a complex issue. Most states would not be comfortable abolishing their statutory rape laws, particularly ones that protect very young teens. One possibility is to leave the statutory rape laws alone but make voluntary paternity acknowledgments inadmissible in criminal proceedings. This would allow the parents to establish paternity without fear that the documentation would come back to haunt them.

Thus, states should consider enacting laws:

- Allowing those over age 18 to sign voluntary paternity acknowledgments under the same conditions as any other adult.
- Allowing 16- and 17-year-olds to sign voluntary acknowledgment without parental consent.
- Allowing those 15 and under to sign acknowledgments but only with parental consent.
- Requiring the completion of genetic tests before accepting an acknowledgment in any case involving at least one minor parent. Alternatively, giving the minor 60 days from his or her 18th birthday to rescind the acknowledgment. In the interim, the voluntary acknowledgment would be evidence of paternity, but not dispositive on the issue.
- Making voluntary acknowledgments inadmissible as evidence in criminal proceedings.

Conclusion

In conjunction with these policies related to paternity establishment, states may also want to develop methods for providing services to minors and their babies when it becomes apparent that criminal conduct has occurred. If there are issues of rape or incest, states need to work with the mother to protect her and her baby from further abuse. This may include housing services, second-chance homes, and the like, as well as health care and counseling. Protocols should also include referral to law enforcement in appropriate cases.

States might also consider adopting special child support rules for minor parents when paternity establishment leads to a support order. If the goal is to encourage early paternity establishment in appropriate cases, removing the fear of a substantial support order might be effective in encouraging low-income non-custodial parents to step forward and become involved in their children's lives. These parents might also be offered parenting classes, credit for providing child care so the other parent can work or go to school, or a minimum order while successfully attending school. This would also prevent the need to drop out of school, making it possible for the non-custodial parent to be a better provider in the long run.

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The Center for Law and Social Policy (CLASP), a national nonprofit organization founded in 1968, conducts research, legal and policy analysis, technical assistance, and advocacy on issues related to economic security for low-income families with children.

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