

Pregnancy and divorce

Author

Northwest Justice Project

Last Review Date

April 1, 2025

For people getting a divorce in Washington State while one spouse is pregnant.

If you're expecting a child through adoption or surrogacy, you should talk to an experienced family law lawyer.

If a judge or commissioner tries to delay or deny your divorce because of pregnancy, contact Legal Voice at info@legalvoice.org (<mailto:info@legalvoice.org>).

Why does it matter if a spouse is pregnant?

Washington state law presumes the pregnant person's spouse is the child's other legal parent if the child is born during the marriage or within **300 days** after divorce. This is true **even if they aren't the biological parent**. If you don't want the spouse to be a legal parent, you should deal with this before the divorce is final.

The process and law are the same if you're in a state-registered domestic partnership.

You can still finalize your divorce in the same time that it would take if there was no pregnancy, but you must address the pregnancy right away in the process. If you're divorced before the child is born, you may have to come back to court later to get a parenting plan or child support.

What if we already started the divorce and then one of us got pregnant?

If your divorce is still in process, you can add information and agreements about pregnancy and parentage to your proposed divorce order at any time.

If the judge has already signed your final divorce orders, you may have to file a new case for parenting and support unless the final order includes permission to come back to court in the divorce case (called “reserving the issue”).

Will the other spouse be the child’s legal parent?

Usually, yes. If one spouse is pregnant during the divorce, the other can automatically be a legal parent once the child is born, even if the child is born after the divorce is final, and even if the other spouse isn’t biologically related to the child.

But if needed, you can include in the divorce order a ruling that the other spouse **won’t** be a legal parent once the child is born.

What if the spouse shouldn’t be the child’s other legal parent?

If both spouses and the child’s other genetic parent agree, you all can sign and file paperwork sorting out the child’s legal parentage without having to go to court. Read our Parentage guide to learn more.

If you can’t get everyone to agree, you must ask the judge to order this. This is called “**disestablishing parentage**.” There are 2 ways to disestablish parentage when you’re getting divorced:

1. **()As part of the Divorce Petition or Response** - You can ask for your final divorce orders to clearly state that the spouse won’t be the child’s legal parent. You can do this even if you don’t know who the other legal parent is, or where to find them. But this can complicate the divorce process. Try to get legal help.
2. **By filing a Petition to Decide Parentage** – You’d file this as a separate case from your divorce.

Answer a few questions on **Get Family and Safety Forms** to get the right forms for your situation.

You must prove that you and your spouse didn’t live together or have sexual intercourse at the time the child was conceived. The judge can order you to do

genetic testing to disprove a spouse's parentage. Read our Parentage guide to learn more.

Do I need a lawyer to do this?

No, but it would help. If you're not already working with a lawyer for your divorce, think about hiring one (<https://wsba.org/for-the-public/find-legal-help>). If you can't afford a lawyer, you might be eligible for free or reduced cost help.

If you want to file a Petition to Decide Parentage, separate from your divorce, your county prosecutor's office Family Support Division (<https://waprosecutors.org/prosecutordirectory/>) might be able to help you.

Can we get a parenting plan and child support order with the divorce?

Not until the child is born. But you can ask the judge to include in the final divorce order permission to use your divorce case number again later for the parenting plan and child support orders. This is called “**reserving the issue**.” It can save you time and money. You can do this if you know during the divorce that one spouse is pregnant, and the other will be a legal parent for the child.

If you just want child support (not a parenting plan), you can ask the Division of Child Support to help set support (<http://www.dshs.wa.gov/esa/division-child-support>). This can be quicker and easier than going to court.

There are no specific forms for getting a parenting plan or child support in your divorce case **after** it has been finalized. Usually, you can use the generic form **Motion for Order for:** _____ (FL All Family 181) to explain the situation and ask for what you need.

Example: I (or my spouse) was pregnant when our divorce was finalized on (date). The judge reserved on parenting and support issues for the new baby. The baby was born on (date). We now need a parenting plan and child support.

The parenting plan I'm proposing is in the child's best interest because... (explain and file supporting declarations if needed).

The child support I'm proposing is appropriate because... (explain and file a Financial Declaration and proof of income).

You also must propose a Parenting Plan and Child Support Worksheets. To file, serve, and schedule a hearing on your motion, follow the same steps you would to ask for temporary orders.

Even if you didn't ask to reserve the issue (for example, because the pregnant spouse didn't realize they were pregnant at the time the divorce was finalized), you can still file a Summons and Petition for Parenting Plan and/or Child Support later, after the child is born. This will be a new case with a new case number. The clerk will charge a filing fee unless you request a fee waiver and a judge approves it.

Answer a few questions on **Get Family and Safety Forms** to get the right forms for your situation.

WashingtonLawHelp.org gives general information. It is not legal advice. Find organizations that provide free legal help on our Get legal help page.