

Legal Definitions of Fathers

1. “Absent Father” and “Putative Father”

An absent father and a putative father are defined in state regulations in 18 NYCRR 347.2(a) and (b):

(a) An absent parent includes the biological parent, stepparent, or adoptive parent of any child where such parent is reported to be absent from the household. With respect to a child in foster care, an absent parent also includes a biological parent, stepparent, or adoptive parent of any child where such parent was present in the household when the child entered foster care.

(b) A putative father is an individual alleged to be the natural father of any child born out of wedlock.

2. “Consent Father” versus “Notice Father”

If the child was born out of wedlock, then the agency must determine what rights the putative father has regarding the child, in order to determine what action is necessary to free the child legally. The first question that the agency must decide—if the mother is going to surrender her rights or the agency is considering filing to terminate her rights—is: what rights does the father have?

Consent Fathers:

Fathers of children born out of wedlock who are consent fathers have the same rights as mothers and must either surrender the child or have his parental rights involuntarily terminated.

If the child was placed for adoption more than six months after birth, then the father is a consent father as above if he has either:

☐ Paid a reasonable and fair sum, in accordance with his means, for child support and visited the child at least monthly or maintained contact with the custodian of the child when not prevented from doing so,

OR

☐ The father has had regular communication with the child or with the person or agency caring for the child, when physically or financially unable to visit the child or prevented from doing so by the person or authorized agency having lawful custody of the child. A father who openly lived with the child for six months during the year before the child was placed and who during such period held himself out to be the father is deemed to have maintained substantial and continuous contact. [See section 111(1)(d) of the Domestic Relations Law.]

If the child was placed for adoption less than six months after birth, then the father is a consent father as above if he:

- ☐ Manifests a willingness to assume full legal custody of the child. The action by the father to assume full custody must take place within the first six months of the child's placement for adoption. The steps that need to be evaluated include public acknowledgment of paternity, payment of pregnancy and birth related expenses, action taken to establish legal responsibility for the child, and other actions evincing a commitment to the child.

This standard was established by the New York State Court of Appeals in the Matter of Raquel Marie X., 76 N.Y.2d 387,559 N.Y.S. 2d 855 (1990).

If the man in question does not fit in the categories above, then the agency must consider the next possible category: Is he a father entitled to notice of certain legal actions?

Notice Fathers:

If a father falls into any of the following categories, he is entitled to formal legal notice of any procedures regarding the adoption of the child, the termination or surrender of the mother's rights or any procedures involving the voluntary placement of the child in care. The legal notice is specifically outlined in the law. The notice father is offered the opportunity to provide the court with evidence regarding the child's best interests.

- ☐ Any man adjudicated by a NYS court as the father of the child (the "legal father").
- ☐ Any man who was adjudicated as the father in another state AND registered that adjudication with New York State's Putative Father Registry.
- ☐ Any man who has filed intent to claim paternity of the child with the Putative Father Registry (see form LDSS-2724, "Notice of Intent to Claim Paternity of a Child Born Out of Wedlock," available online at www.ocfs.state.ny.us/main/Forms).
- ☐ Any man who is listed on the child's birth certificate as the father.
- ☐ Any man who lived with the child and mother and held himself out to be the child's father at the time that the child went into care or when the legal proceeding is commenced.
- ☐ Any man identified as the father in a written and sworn statement by the mother.
- ☐ Any man who married the mother before the child was six months old and before any surrender or initiation of a proceeding to terminate parental rights.
- ☐ Any man who filed with the Putative Father Registry or filed an instrument acknowledging paternity. [See sections 111-a of the Domestic Relations Law and 384-c of the Social Services Law.]

Note: A person who has been convicted of rape in the first degree involving forcible compulsion, as set forth in section 130.35 of the Penal Law, is not entitled to notice of a proceeding involving the child who was conceived as a result of such rape.