PATERNITY & PRESUMPTION OF LEGITIMACY BY STATE

STATE	statute / law	standing of biol. father	constitutional	best interests	estoppel
Alabama	UPA	no - so long as presumed father has not disclaimed status[1]	yes		
Alaska					
Arizona	marital presumption rebuttable by C & C E, paternity statute	yes	n/a	yes[2]	
Arkansas	paternity act; statutory legitimacy presumptions	yes[3]	n/a		
California	UPA	no - unless qualifies as presumed father & H's presumption not conclusive	yes - where biological rel. only[4]	yes - ct weighs presumptions where 2 competing, extant father-child rel. to be preserved at cost of biol. ties[5]	
Colorado	UPA	yes	n/a	yes - best interests of child controls where competing presumptions[6]	

[1]Ex parte Presse, 554 So. 2d 406 (Ala. 1989); Ex parte C.A.P., 683 So. 2d 1010 (Ala. 1996).

[2]Ban v. Quigley, 812 P.2d 1014 (Ariz. Ct. App. 1991); R.A.J. v. L.B.V., 817 P.2d 37 (Ariz. Ct. App. 1991).

[3]Willmon v. Hunter, 761 S.W.2d 924 (Ark. 1988) (statutory legitimacy presumptions do not preclude a party from litigating paternity).

[4]Dawn D. v. Superior Ct., 952 P.2d 1139 (Cal. 1998).

[5]Steven W. v. Matthew S., 39 Cal. Rptr. 2d 535 (Cal. Ct. App. 1995) (is the preservation of ties developed in context of family that state has interest in protecting) see also Bridget R.; In re. Marriage of Freeman, 53 Cal. Rptr. 2d 439 (Cal. Ct. App. 1996) (state has well-recognized interest in preserving and protecting the dignity of parental relationships, especially when a marriage is being dissolved and instability is being introduced into a child's life).

[6]N.A.H. & A.H. v. S.L.S., 9 P.3d 354 (Colo. 2000) (H & W opposed b/f's petition to est. paternity; HELD, Tct reversed b/c failed to adequately consider b/i in resolving competing presumptions in policy & logic analysis; emphasized importance of outcome of paternity proceeding, only one legal father; best interests standard (less restrictive than endangerment) appropriate given b/f's interest in establishing paternity; inquiry fact intensive, factors left to Tct's discretion.

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Connecticut					
Delaware					
Florida	Paternity Act, case law holding H = legal father	No - no COA under paternity act where paternity "otherwise" established unless b/f claims developed rel.[7]	Legal father's due process rights must be considered prior to altering relationship[8]	yes - precedes rebuttal of presumption, purpose to protect child's legitimacy & legal father' rel., requires clear & convincing E[9]	
Georgia	case law presumption of legitimacy, paternity act	No - purpose of statutes to provide for establishment of paternity, not delegitimation where legal father persists[10]		not in child's best interests to be rendered illegitimate	yes - public policy will not permit mother and p/f to enlist aid of courts to disturb ties existing bet child and legal father
Hawaii					
Idaho					
Illinois	Parentage Act (w/2yr statute of				

[7]G.F.C. v. S.G. and D.G., 686 So. 2d 1382 (Fla. Ct. App. 1997) (child born to M & H, who were still married, b/f trying to establish paternity over objection of M & H; if "best interests" sufficient to establish b/f as legal father, husband's parental rights would be terminated w/o allegation that he failed in anyway to fulfill his responsibilities as a father, more is required) ; I.A. v. H.H., 710 So. 2d 162 (Fla. Ct. App. 1998).

[8]Achumba v. Neustein, 793 So. 2d 1013 (Fla. Ct. App. 2001).

[9]Dep't of Health & Rehabilitative Services v. Privette, 617 So. 2d 305 (Fla. 1993) (must be clear and compelling reason based primarily on child's best interest to overcome the presumption of legitimacy even after the legal father is proven not to be the biological father. This is at least the equivalent of the burden of proof required that would exist in proceedings to terminate the legal father's parental rights).

[10]Ghrist v. Fricks, 465 S.E.2d 501 (Ga. Ct. App. 1995) (child born Dec 1988 to M & H, who separated Aug 1990, M notified b/f of pregnancy shortly after discovery, M & H agreed in divorce decree child issue of marriage, Feb 1991 M & b/f married, had blood tests performed, brought paternity action to relieve H of parental rights; HELD M collaterally estopped, b/f in privity, no statute to disestablish paternity, presumed legitimacy may be challenged, but not appropriate where legal father persists in relationship, petition should have been dismissed. Any inconvenience to M & b/f resulting fm own fraudulent misconduct, parental rights of H to be immediately reinstated); Grice v. Detwiler, 488 S.E.2d 755 (Ga. Ct. App. 1997); see also Davis v. LaBrec, (Ga. 2001) (child born 1995, LaBrec became legal father July 1996 when obtained court order legitimating child, July 1996 initiated custody proceeding against M, Aug 1997 b/f – established by tests – initiated complaint to est. paternity; Tct declared child b/f's legitimate son, CtApp reversed directing Tct to apply best interests standard. HELD, best interests standard controls determination whether to grant b/f's petition to legitimate, not parental fitness standard. LaBrec child's legal father, parent/child rel. developed since birth w/o state action.

[11]In re. Marriage of Slayton, 685 N.E.2d 1038 (Ill. 1997) (child born May 1989 to H & M, M petitioned for divorce

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	limitation)[11]				
Indiana	Paternity Act	Yes - w/o regard to mother's marital status, child is born out of wedlock[12]	n/a	not considered	
Iowa	Paternity Act	No	No - statute must provide procedural mechanism for claims to be brought (with dissent adopting Scalia plurality[13]		
Kansas*	UPA	Yes	parent has int. in maintaining familial rel. w/child; child has same int.[14]; b/f no DP rts under plurality & none where did not timely preserve his rights; if had a right, must be balanced	Yes - determination of b/i must precede consideration of DNA evidence[16]	

Feb 1991 alleging no children born of marriage, Mar 1991 b/f filed paternity action, M & b/f married Apr 1992, Apr 1994 tct granted SJ to Kara on issue of paternity, M & b/f filed stipulated request to grant Kara custody, tct said H no standing to contest, visitation order w/Tom expired Jan 1995; HELD, H entitled to reasonable visitation, "endangerment" standard applicable to biological noncustodial parent applies to H, constitutional arguments of W & b/f waived; long-recognized rights of presumed fathers can hardly be said to offend the United States Constitution.

[12]K.S. v. R.S., 669 N.E.2d 399 (Ind. 1996).

[13]Callendar v. Skiles, 591 N.W.2d 182 (Iowa 1999) (M & H still married, b/f brought paternity action 6 months after child's birth; court emphasizes that constitutional rights may be waived by failure to timely assert and that court could balance interests to deny b/f's claim, but must give him an opp to be heard).

[14]Ferguson v. Winston, 996 P.2d 841 (Kan. 2000) (child an adult, his due process rights violated by parentage being determined w/o opportunity to be heard).

[15]In re. D.B.S., 888 P.2d 875 (Kan. Ct. App. 1995) (child born 1986 & older brother to H & M, divorced 1990, p/f & M began living together 1992, paternity action filed by p/f 1993, developed "parent-like" rel. with child; tct denied p/f request for blood tests after Ross hearing; p/f surrendered whatever constitutional opportunity he may have had to develop a

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			against State's[15]		
Kentucky					
Louisiana	common law dual paternity[17]				
Maine					
Maryland	paternity act & probate statute	yes	n/a	yes - good cause must be shown to order blood tests, interests must be balanced, most important = b/i of child[18]	
Massachusetts		Yes - b/f with rel. may establish paternity[19]		yes - b/i must be considered in resolving competing presumptions	
Michigan	Paternity Act	no - unless prior adjudication that child not issue of marriage[20]	yes - where biological rel. only or no legal custody[21]		

protected rel. with child, once surrendered cannot later reclaim by developing stepfather relationship after 4 years of providing no parental contact or support; child's present relationships are healthy & stable, child unconcerned re. his parentage, blood test would threaten relationships that have supported him fm birth & promise to support him in future; movant's motives are suspect, no health or financial benefits to child).

[16]In re. Marriage of Ross, 783 P.2d 331 (Kan. 1989) (mother asserted H not father, b/f & H objected to Tct's determination of b/f's paternity; child's interests must be protected by the state where family unit dissolves, child placed in jeopardy by parent's attempt to score by replacing legally presumed father with b/f; shifting of paternity fm presume father to b/f could easily be detrimental to emotional and physical well-being of child; determination of paternity reversed, custody & c/s orders reinstated).

[17]T.D. v. M.M.M., 730 So. 2d 873 (La. 1999).

[18]Turner v. Whisted, 607 A.2d 935 (Md. Ct. App. 1992); see also Monroe v. Monroe, 621 A.2d 898 (Md. Ct. App. 1993) (where mother seeks to disestablish acknowledged father--not presumed b/c not married at time of birth–TCt erred in ordering blood tests and admitting into E over objection; however, since "cat out of the bag" custody to proceed on analysis of whether child has established rel. with "third party" sufficient to constitute exceptional circumstances rebutting presumption of custody in biological parent).

[19]C.C. v. A.B., 550 N.E.2d 365 (Mass. 1990).

[20]Girard v. Wagenmaker, 470 N.W.2d 372 (Mich. 1991); McHone v. Sosnowski, 609 N.W.2d 844 (Mich. Ct. App. 2000).

[21]Hauser v. Reilly, 536 N.W.2d 865 (Mich. Ct. App. 1995); McHone v. Sosnowski, 609 N.W. 2d 844 (Mich. Ct. App. 1999).

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Minnesota	UPA	yes	yes	not dispositive, policy & logic controls, policy of not impairing blood relations[22]	yes[23]
Mississippi	Paternity Act	Yes[24]	n/a	No	
Missouri					
Montana	UPA	yes	n/a	yes [25]	
Nebraska					
Nevada					
New Hampshire	Common law & statutory presumption of legitimacy	no analysis of standing to rebut, concessions of M & H held to be C & C E sufficient to rebut[26]	n/a		
New Jersey*	UPA	yes	n/a	yes - must be proved by C & C E for action to proceed where conflict w/presumption[27]	
New Mexico					
New York*	presumption of legitimacy by case law; Paternity Act	yes			yes - father/child relationship of presumed fathers

[22] In re. B.J.H. and A.J.S., 573 N.W.2d 99 (Minn. Ct. App. 1998).

[23] Markert v. Behm, 394 N.W.2d 239 (Minn. Ct. App. 1986).

[24] Rafferty v. Perkins, 757 So. 2d 992 (Miss. 2000).

[25] In re. Paternity of "Adam", 903 P.2d 207 (Mont. 1995).

[26] Bodwell v. Brooks, 686 A.2d 1179 (N.H. 1996) (M back and forth between b/f & H, finally with H; H's request to adopt dual paternity denied; H's legal status = stepfather upon rebuttal of presumption; Tct's conclusion that H lacked standing to assert legal rights in child reversed, had standing as step-parent in loco parentis; custody action to proceed based on best interests of child, including "stepfather", mother and biological father).

[27] D.O. v. R.B., T.B. and B.B., 722 A.2d 136 (N.J. Super. Ct. 1997); M.F. v. N.H., 599 A.2d 1297 (N.J. Super. Ct. 1991).

[28] Richard W. v. Roberta Y., 658 N.Y.S.2d 506 (N.Y. 1997)(b/f to assert paternity where believed he was father as

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					protected[28]
North Carolina					
North Dakota	UPA; statutory presumption of legitimacy	No - presumption can only be rebutted by H or W; not presumed father under UPA (no blood tests yet done)[29]	Yes - p/f had no "strong" E of biol. rel. & no parent-child rel. w/child		
Ohio	UPA	Yes - presumption of H can be rebutted w/o regard to marital status of M	? - motion to dismiss of H & W denied, inc. const. @, w/o analysis, but granted in earlier case[30]	No	
Oklahoma	Statutory presumption of paternity; Paternity Act	No - must first rebut presumption, can only be done by H or W	Yes - under reasoning of plurality decision[31]		
Oregon					
Pennsylvania	Case law re. presumption of paternity; Paternity Act	No - Irrebuttable where marriage intact, policy = protection of	Yes - overriding social policy, inc. stability for child[33]		Yes - Analyze only where presumption does not apply

soon as he was informed of W's pregnancy Aug. 1992, did not file paternity action until Aug. 1993, child 4 months old, acquiesced in H's open and obvious assumption of role of father; both H and W resisted b/f's petition; H believed he was father & took actions in reliance on that belief; b/f married to another woman, did not demonstrate benefit to child other than knowing true father); Boyles v. Boyles, 466 N.Y.S.2d 762, 766 (N.Y. App. Div. 1983).

[29]B.H. v. K.D., 506 N.W.2d 368 (N.D. 1993) (H & W married, opposed p/f's paternity petition & request for blood tests; tct ordered blood tests & sct reversed order on analysis of extraordinary relief; one must have standing to commence an action, cannot commence w/o standing hoping will later materialize, blood tests must have been in existence when action commenced).

[30]Patrick T. v. Michelle L., Ohio Ct. App. 2000; Merkel v. Doe, 635 N.E.2d 70 (Ohio Ct. C. Pl. 1993) (emphasis on unitary family where H & W resisting petition of b/f w/o established relationship w/child, holding UPA granting b/f standing to pursue paternity COA unconstitutional infringement on liberty interests of family).

[31]David V.R. v. Wanda J.D., 907 P.2d 1025 (Okla. 1995) (H & W had been divorced 2 years when putative father commenced his paternity action, child 3 ½ years old; 2-year limitation on paternity actions also applied to bar putative father, though he was deprived of knowledge of his paternity until limitation period elapsed).

[32]Strauser v. Stahr, 726 A.2d 1052 (Pa. 1999); Sekol v. Delsantro, 763 A.2d 405 (Pa. Super. Ct. 2000) (refusing to apply marital presumption of paternity where marriage no longer intact).

[33]Amrhein v. Cozad, 714 A.2d 409 (Penn. 1998).

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		intact family[32]			or is rebutted
Rhode Island					
South Carolina					
South Dakota					
Tennessee	Paternity statute (subsequently repealed)	No - no COA to establish paternity in child not born out of wedlock	Yes - DP: adopting Scalia plurality, EP: state's rational int. in preserving integrity of family		
Texas	Legitimacy statute; Paternity Act	No	No - where b/f promptly asserts, marital status of mother not controlling[34]	No	
Utah					
Vermont					
Virginia					
Washington*	UPA	Yes	n/a	Yes - paramount, inc. continuity of est. relationships[35], public policy int. in protecting marital family inc. protecting parent-child rel.[36]	Yes - but must induce reliance, i.e., change in behavior of H
West Virginia					
Wisconsin	Paternity Act	No - unless determined to be in b/i of child	Yes - under both plurality & dissent in Michael H.	Yes - determination must precede paternity action or blood test[37]	

[34] In re. J.W.T., 872 S.W.2d 189 (Texas 1994).

[35] McDaniels v. Carlson, 728 P.2d 254 (Wash. 1987).

[36] In re. Marriage of Wendy M., 962 P.2d 130 (Wash. Ct. App. 1998) (public policy interest in protecting marital family includes protecting parent-child relationship even after collapse of marriage).

[37] In re. Paternity of C.A.S., 468 N.W.2d 719 (Wis. 1991) (involved intact family, evidence presented by experts both for and against allowing paternity action to proceed, tct found against experts more credible).

[38] A v. X.Y. and Z, 641 P.2d 1222 (Wyo. 1982) (p/f had no standing to establish paternity of child born in wedlock to

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Wyoming	UPA	No[38]	Yes		

mother and H b/c not a presumed father, no denial of EP or DP rights w/emphasis on protection of family unit and legitimacy of child).