

# **BABY DADDY DILEMMA**

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“Baby Daddy.” We hear the phrase on the radio, movies and internet on a weekly basis. The comment tends to bring a laugh, commonly referring to the father of the child with whom the mother is not married and does not have a romantic relationship. Despite its humorous connotation, the ramifications of being named “baby daddy” are serious and should not be laughed at or ignored. In fact, the effect of being named “baby daddy” when you are in fact NOT the biological father is becoming an increasingly serious problem in every ethnicity, economic and social class in America. It is imperative a man labeled as the “baby daddy” does his research, knows and protects his rights.

There are several ways a man can be held to be the legal father of a child. These rules may vary from state to state so it is always prudent to seek advice from your local family law practitioner.

Let’s assume you had sexual relations with a woman. She may be your girlfriend, wife, “friend with benefits” or a one night stand. She has now tracked you down with a call, text or Facebook message advising – surprise, you are going to be a father! Before you have a panic attack or start planning to call him “junior,” it is best to follow these steps to protect yourself.

1. ***Do the math.*** Get a calendar and find the last date you had intercourse with the woman. Despite what a mother may claim, a full term baby is 38 to 40 weeks, not much longer. If you had sex at a Halloween party on October 31, 2008, and the baby is born August 31, 2009, you are not the father.
2. ***Investigate.*** Ask the mother if there is a possibility another man is the father of the child. Be prepared for the woman to be hurt and surprised when you ask this question. Do not make any negative statements if she advises there is a possibility it is another man’s child, or several other men. Bring a witness to the conversation and document it in writing. Put your notes in a file and a safe place you will be able to find later. Find out if she may have been sexually intimate with anyone else around the date of conception. Talk to her friends or roommate, search Facebook or MySpace and do your research. Gather names and phone numbers. Speak to any other possible candidates and compare stories. Be sure to document these conversations and save your notes as you may not remember the details later when it is important.
3. ***Talk to the doctor.*** If you have a relationship with the woman, ask to attend a pre-natal visit for moral support. While you are there ask the doctor about the suspected due date and conception date. Look at the ultrasound picture as the expected due date is often on the screen. You will not be able to confirm the baby is biologically yours until after the birth. It is important to be involved in these appointments to ensure the mother is receiving the best prenatal care for your possible baby.
4. ***Avoid Peer Pressure.*** If you attend the birth or visit her at the hospital do not be pressured by the hospital personnel, family members or the mother to sign any legal documents or place your name on the birth certificate.
  - a. After the birth the alleged father is given a document to sign called an “Acknowledgment of Paternity” or “Affidavit of Parentage.” This form is often thrust upon a man at the

“golden moment,” typically the first time the man is handed the new born baby. The mother coos, “Oh the baby looks just like you.” The man shakes his head since he believes the baby looks a little like an alien. Despite the attachment you may begin feeling for this child, do not sign the form. In signing a man gives up his legal rights to contest the parenthood and will be ordered to support this baby, even if it’s not his. Signing acknowledges you are the father, but gives custody to the mother. If a child support case is initiated this form will be relied on to require you to pay support.

5. **Request a DNA Test.** Politely insist a DNA test as soon after the birth as possible. Ask for the test to be conducted at the hospital. The test is easy, quick and painless. Paying support for a child who is not your biological offspring will be more painful. A simple swab test is performed on the mother, baby and any number of possible fathers. The saliva is tested and a result can be released between four days and two weeks. By requesting this test at the outset you will save yourself, the mother and child years of anguish by determining whether or not you are the father.
6. **A Sigh of Relief and a Wake Up Call.** When you receive the test results and you are not the father, DO NOT BE A JERK. Send a gift to the baby and keep a copy of the test in your records. In a couple of months check court records at your county court to verify your name is not listed as the father. These are public records and can be easily accessed. Be thankful you are not the father. Make a vow to always wear a condom and never have unprotected sex again until you are ready to be a father. A woman may claim she is unable to become pregnant due to a medical condition or is on birth control, but she may not be truthful and is certainly not God. A woman may also claim upon becoming pregnant she will “take care of it.” Do not trust her, receive independent confirmation and protect yourself before it is too late.
7. **Congratulations, You Are A Daddy!** If the DNA test determines that you are the father, DO NOT BE A JERK. Sit down with the mother and make amends, she will have hurt feelings you requested the DNA test and you will need to reassure her it was the best decision to be sure you are the father of the baby.
  - Know Your Rights:**
    - a. Consult with an attorney who specializes in family law to find out your rights and obligations.
    - b. Try to work out an appropriate arrangement with the mother regarding child custody, parenting time and child support.
    - c. Put this agreement in writing with the Mother and both sign and date the agreement.
    - d. Consider filing in the court to establish your rights to your child. You and the Mother can provide your agreement to the Court in a consent order.
8. **Protect Your Rights.** If the mother files a paternity action on her own or through the prosecuting attorney you will be served with a Complaint for Paternity. Hire an attorney and learn about your rights. This pleading must be answered in a formal answer. Do not ignore this. If you ignore it a Default Judgment will be entered without input from you regarding custody, parenting time and child support. It will not go away if you don’t answer. If you are given notice of an actual court hearing you should hire an attorney and have them appear in court on the date set for hearing.

9. ***When The “Baby Mama Is Married...To Someone Else.*** If you are the “other man” you will have difficulty establishing any rights to your child if the husband and wife remained married. The husband will be considered the father under the law with little opportunity for you to challenge his standing. Some courts are more willing to permit the biological father access to a child born to a “married couple” but the opportunity is rare. As shocking as it is to believe, some men have been tricked into becoming an unpaid sperm donor by a married couple. When the husband is shooting blanks and the wife is hell bent on having a baby, people resort to desperate measures. **WARNING: Do not impregnate married women.**

***When She Said You Were The Baby Daddy and You Are Not.*** The above steps apply when you know about these precautions prior to the baby being born. Many men trust the woman they had a relationship with and look forward to welcoming a child into their life. In this excitement and trust many men sign the Acknowledgement of Paternity at the hospital without a DNA test being performed. The man may find out years later, often after supporting and becoming emotionally bonded to this child, they are not the biological father. Fortunately, men have some protection under the law in these situations whether they wish to continue or end the relationship.

- ***When You Are a Married Man.*** If you are married and have been advised by your wife you are not the father of your child, you can only challenge the paternity during a divorce action. This may arise when the woman advises her husband he cannot have custody of their child because he is not the biological father or during a medical emergency when it is determined the man is not a biological match. If you are considering filing for divorce it is important to advise the divorce attorney at the outset you are not the father of this child. The court will require this statement to be specifically pled in your divorce pleadings. If a man discovers the child he has been rearing and supporting is not his biological child he has protection under the law. The doctrine of the “equitable parent” provides the man the opportunity to continue to support a child and have a relationship, even if he is not the biological father.
- ***Revocation of Acknowledgement of Paternity.*** If the man and woman were never married a man may seek revocation of the acknowledgement of paternity. This can only be done by establishing one of the following circumstances: fraud, misrepresentation, misconduct, mistake of fact, newly discovered evidence that could not have been discovered at the time of the signing of the acknowledgement or duress in the signing of the acknowledgement. The man must file a notarized pleading with an affidavit stating a factual basis for the revocation. For example, this could include a statement that the mother knew the man was not the father or another possible father has been discovered. Motions for revocation of paternity are challenging and require the pleading of specific allegations. The court is often reluctant to revoke paternity because public policy does not want to leave a child without a father. The court may even still require you to pay child support or refuse to permit your name to be removed from the birth certificate in order to uphold public policy.
- ***Paying for Someone Else’s Child.*** It is unconscionable and inequitable to require a man to continue to pay for a child that is not his. Once it is established the child is not your biological offspring and paternity has been revoked, a motion should be filed to have child support payments cancelled or reduced. If you are in arrears in child support it will be near impossible to have the arrears cancelled, even when paternity is revoked.

An innovative plan explored in other countries to recoup the repayment of wrongfully paid child support is for the man to file a civil action against the woman for fraud. American men need to consider this option and consult with the appropriate attorney.

- ***Getting Away With It.*** Unfortunately, the prosecuting attorneys will not prosecute these women criminally for fraud. The women often claim they needed the money because there were expenses associated with raising the child and they didn't really "know" he wasn't the father. This is akin to a bank robber saying he should be able to keep some of the proceeds of the heist as he had expenses for the mask and get away car. It is unconscionable for these women to perpetuate a fraud without recourse. It is even more unfortunate when an innocent child is left with a dishonest mother and no father as a result of their mother's fraud.

Welcoming a child into your life should be a great joy for both parents. The father should be actively involved and support his child both emotionally and financially. It is unfortunate some women choose to make this situation a nightmare by falsely naming men as the father or refusing to permit DNA testing until court intervention. It is equally disappointing many men do not provide emotional and monetary support for their children. Many of these problems could be avoided by a simple DNA test conducted on all newborn children prior to release from the hospital and issuance of a birth certificate. It is important to educate our sons, brothers, cousins and friends that being named the "baby daddy" is no laughing matter.



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