



Question:

How do [paternity laws](#) handle my unique situation? My ex-wife found out just days after our [divorce](#) was finalized that she was pregnant with another man's child, so the child was technically conceived while we were still married but it is not mine.

She has not had the baby yet and is scheduled to marry the biological father in a few months.

Do paternity laws address who is considered the father of this child since it was conceived while she was still married, but it is another man's child?

Answer:

I am unable to give you [legal advice on divorce](#) . I can give general divorce help for men, though, my knowledge is based on Michigan paternity laws where I am licensed to practice. Readers from other states must consult a family law attorney in their state for the correct answer. More importantly, all readers should consult with a family law attorney about options specific to their family circumstances.

The short answer to this question, under current Michigan law, is that the ex-husband is the legal father of the child because the child was born *or conceived* during the marriage. Under Michigan law, the father is the husband if the child was born or conceived during the marriage, even if the child is born after the husband and wife divorce.

Interestingly, under Michigan law it makes no difference whether the biological father acknowledges paternity or has a DNA test – if the husband wants to be the legal father, then he

is the father, and the biological father does not have standing (that is, the right to sue) to contest his decision. That is the current paternity law in Michigan, and our legislature as of March 2012 is looking into changes to avoid this odd result, but it is the current law.

MensRights.com:

[Bill Would Give Rights To Unwed Biological Fathers](#)

The longer answer is, there are things that must be done to make the biological father the legal father.

One option is to amend the divorce judgment to specifically exclude the child as a child "of the marriage." This must be done, however, within one year of the date of the judgment and should be based on mutual mistake.

If the ex-husband is on board with the plan, it could be a short hearing. However, the judge is required to take testimony to determine that the ex-husband is not the father, and some judges go even farther and have the actual father testify and accept responsibility.

If the actual parents are not married before the child is born, then the biological father should also sign the birth certificate and acknowledge paternity so that he creates a presumption of parental rights (the ability to make decisions, to parent, etc.) and the duty to support.

The most important thing to do, however, remains speaking to a mens divorce attorney immediately. Something needs to be done to correct the divorce judgment or the ex-husband could be treated as the legal father forever, with a corresponding duty for child support, even though he is not the biological father.

Remember, I am unable to provide you with anything more than [divorce tips for men](#) , so please consult with a divorce lawyer in your jurisdiction about paternity laws.

To arrange an initial consultation to discuss divorce rights for men with a Cordell & Cordell attorney, including [Ann Arbor, Michigan Divorce Lawyer](#) Jennifer Paine, [contact Cordell & Cordell](#)