

## IC 16-37-2

### Chapter 2. Certification of Births

#### IC 16-37-2-1

##### "Person in attendance at birth"

Sec. 1. As used in this chapter, "person in attendance at birth" means one (1) of the following:

- (1) A licensed attending physician.
- (2) A certified direct entry midwife or a certified nurse midwife.
- (3) Another individual who:
  - (A) holds a license of the type designated by the governing board of a hospital, after consultation with the hospital's medical staff, to attend births at the hospital; and
  - (B) is in attendance at the birth.

*As added by P.L.2-1993, SEC.20. Amended by P.L.148-1996, SEC.2; P.L.232-2013, SEC.3.*

#### IC 16-37-2-2

##### Birth certificate and paternity affidavit; persons responsible for filing or preparation; release of paternity affidavit

Sec. 2. (a) A person in attendance at a live birth shall do the following:

- (1) File with the local health officer the following:
  - (A) A certificate of birth.
  - (B) Any paternity affidavit executed under section 2.1(c)(1) of this chapter.

However, beginning January 1, 2011, the person in attendance at a live birth shall use the Indiana birth registration system established under IC 16-37-1-3.1 to electronically file a birth certificate or paternity affidavit under this subdivision.

- (2) Advise the mother of a child born out of wedlock of:
  - (A) the availability of paternity affidavits under section 2.1 of this chapter; and
  - (B) the existence of the putative father registry established by IC 31-19-5-2.

(b) If there was no person in attendance at the birth, one (1) of the parents shall file with the local health officer the following:

- (1) A certificate of birth.
- (2) Any paternity affidavit executed under section 2.1 of this chapter.

(c) If:

- (1) no person was in attendance at the birth and neither parent is able to prepare the certificate; or
- (2) the local health officer does not receive a certificate of birth;

the local health officer shall prepare a certificate of birth from information secured from any person who has knowledge of the birth.

(d) A local health department shall inform the Title IV-D agency

(as defined in IC 31-9-2-130) regarding each paternity affidavit executed under section 2.1 of this chapter that the local health department receives under this section.

(e) A paternity affidavit executed under section 2.1(c)(1) of this chapter shall be filed with the local health officer not more than five (5) days after the child's birth.

(f) An attorney or agency that arranges an adoption may at any time request that the state department search its records to determine whether a man executed a paternity affidavit under section 2.1 of this chapter in relation to a child who is or may be the subject of an adoption that the attorney or agency is arranging.

(g) Not more than ten (10) days after receiving a request from an attorney or agency under subsection (f), the state department shall submit an affidavit to the attorney or agency verifying whether a paternity affidavit has been filed under this section. If a paternity affidavit has been filed regarding a child who is the subject of a request under subsection (f), the state department shall release a copy of the paternity affidavit to the requesting attorney or agency.

*As added by P.L.2-1993, SEC.20. Amended by P.L.100-1994, SEC.2; P.L.46-1995, SEC.62; P.L.133-1995, SEC.13; P.L.1-1997, SEC.92; P.L.257-1997(ss), SEC.30; P.L.61-2009, SEC.7.*

#### **IC 16-37-2-2.1**

#### **Paternity affidavits; requirements; forms; joint legal custody agreement; penalty; effect of paternity affidavit; genetic test; opportunity to consult**

Sec. 2.1. (a) A paternity affidavit may be executed as provided in this section through:

- (1) a hospital; or
- (2) a local health department.

(b) Immediately before or after the birth of a child who is born out of wedlock, a person who attends or plans to attend the birth, including personnel of all public or private birthing hospitals, shall:

- (1) provide an opportunity for:
  - (A) the child's mother; and
  - (B) a man who reasonably appears to be the child's biological father;

to execute an affidavit acknowledging paternity of the child; and

- (2) verbally explain to the individuals listed in subdivision (1) the legal effects of an executed paternity affidavit as described in subsection (j).

(c) A paternity affidavit must be executed on a form provided by the state department. The paternity affidavit is valid only if the affidavit is executed as follows:

- (1) If executed through a hospital, the paternity affidavit must be completed not more than seventy-two (72) hours after the child's birth.

(2) If executed through a local health department, the paternity affidavit must be completed before the child has reached the age of emancipation.

(d) A paternity affidavit is not valid if it is executed after the mother of the child has executed a consent to adoption of the child and a petition to adopt the child has been filed.

(e) A paternity affidavit form executed under this section must contain the following:

(1) The mother's:

- (A) full name;
- (B) Social Security number;
- (C) date of birth; and
- (D) address.

(2) The father's:

- (A) full name;
- (B) Social Security number;
- (C) date of birth; and
- (D) address.

(3) The child's:

- (A) full name;
- (B) date of birth; and
- (C) birthplace.

(4) A brief explanation of the legal significance of signing a voluntary paternity affidavit.

(5) A statement signed by both parents indicating that:

- (A) they understand that signing a paternity acknowledgment affidavit is voluntary;
- (B) they understand:
  - (i) their rights and responsibilities under the affidavit;
  - (ii) the alternatives to signing the affidavit; and
  - (iii) the consequences of signing the affidavit; and
- (C) they have been informed of the alternatives to signing the affidavit.

(6) Separate signature lines for the mother and father.

(7) Separate signature lines for the witness or notary indicating that the witness or notary observed the father or mother signing the affidavit.

(f) Before a paternity affidavit is signed, both the mother and father must be informed of the alternatives to signing the affidavit.

(g) A paternity affidavit executed under this section must contain or be attached to all of the following:

(1) The mother's sworn statement asserting that a person described in subsection (b)(1)(B) is the child's biological father.

(2) A statement by a person identified as the father under subdivision (1) attesting to a belief that he is the child's biological father.

(3) Written information furnished by the child support bureau of the department of child services:

- (A) explaining the effect of an executed paternity affidavit as described in subsection (j); and
  - (B) describing the availability of child support enforcement services.
- (4) The Social Security number of each parent.
- (h) A paternity affidavit executed under this section must contain all of the following:
- (1) A statement:
    - (A) that, if the mother and the person described in subsection (g)(2) check the box located next to this statement and sign on the signature lines described in subdivision (2), the mother and the person described in subsection (g)(2) agree to share joint legal custody of the child; and
    - (B) that joint legal custody means that the persons sharing joint legal custody:
      - (i) share authority and responsibility for the major decisions concerning the child's upbringing, including the child's education, health care, and religious training; and
      - (ii) have equal access to the child's school and medical records.
  - (2) Two (2) signature lines located below the statements described in subdivision (1).
  - (3) A statement that, if the mother and the person described in subsection (g)(2) do not agree to share joint legal custody, the mother has sole legal custody unless another determination is made by a court in a proceeding under IC 31-14.
  - (4) A statement that even if the mother and the person described in subsection (g)(2) share joint legal custody, the mother has primary physical custody of the child unless another determination is made by a court in a proceeding under IC 31-14.
  - (5) A statement that, if the mother and the person described in subsection (g)(2) agree to share joint legal custody as described under subdivision (1)(A), the agreement to share joint legal custody is void unless the result of a genetic test performed by an accredited laboratory:
    - (A) indicates that the person described in subsection (g)(2) is the child's biological father; and
    - (B) is submitted to a local health officer not later than sixty (60) days after the child's birth.
  - (6) A statement with signature lines that affirms that an individual described in subsection (t) has had an opportunity to consult with an adult chosen by the individual.
- (i) A woman who knowingly or intentionally falsely names a man as the child's biological father under this section commits a Class A misdemeanor.
- (j) A paternity affidavit executed under this section:
- (1) establishes paternity;

(2) gives rise to parental rights and responsibilities of the person described in subsection (g)(2), including:

(A) the right of the child's mother or the Title IV-D agency to obtain a child support order against the person, which may include an order requiring the provision of health insurance coverage; and

(B) parenting time in accordance with the parenting time guidelines adopted by the Indiana supreme court, unless another determination is made by a court in a proceeding under IC 31-14-14; and

(3) may be filed with a court by the department of child services.

However, if a paternity affidavit is executed under this section, unless another determination is made by a court in a proceeding under IC 31-14 or the child's mother and the person described in subsection (g)(2) agree to share joint legal custody of the child as described in subsection (h), the child's mother has sole legal and primary physical custody of the child.

(k) Notwithstanding any other law, a man who is a party to a paternity affidavit executed under this section may, within sixty (60) days of the date that a paternity affidavit is executed under this section, file an action in a court with jurisdiction over paternity to request an order for a genetic test.

(l) A paternity affidavit that is properly executed under this section may not be rescinded more than sixty (60) days after the paternity affidavit is executed unless a court:

(1) has determined that fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit; and

(2) at the request of a man described in subsection (k), has ordered a genetic test, and the test indicates that the man is excluded as the father of the child.

(m) Unless good cause is shown, a court shall not suspend the legal responsibilities under subsection (j)(2)(A) of a party to the executed paternity affidavit during a challenge to the affidavit.

(n) The court may not set aside the paternity affidavit unless a genetic test ordered under subsection (k) or (l) excludes the person who executed the paternity affidavit as the child's biological father.

(o) If a paternity affidavit is not executed under subsection (b), the hospital where the birth occurs or a person in attendance at the birth shall inform the child's mother of services available for establishing paternity.

(p) Except as provided in this section, if a man has executed a paternity affidavit in accordance with this section, the executed paternity affidavit conclusively establishes the man as the legal father of a child without any further proceedings by a court.

(q) If both the mother and the person described in subsection (g)(2) check the box and sign as described in subsection (h)(1)(A), the mother and the person described in subsection (g)(2):

- (1) share joint legal custody of the child; and
- (2) have equal access to the child's school and medical records.

An action to establish custody or parenting time of a party who has agreed under subsection (h) to share joint legal custody shall be tried de novo.

(r) Before a paternity affidavit executed under this section is signed, it must be presented separately to:

- (1) the child's mother; and
- (2) the man who reasonably appears to be the child's biological father;

so that the child's mother may review the affidavit alone and without the presence of the man who reasonably appears to be the child's biological father, and so that the man who reasonably appears to be the child's biological father may review the affidavit alone and without the presence of the child's mother. A signed paternity affidavit is voidable if the requirements of this subsection are not satisfied.

(s) An agreement to share joint legal custody described under subsection (h) is void if either of the following applies:

- (1) A genetic test performed by an accredited laboratory indicates a person described in subsection (g)(2) is not the biological father of the child.
- (2) A person described in subsection (g)(2) fails to submit:
  - (A) to a local health officer; and
  - (B) not later than sixty (60) days after the date of the child's birth;

the results of a genetic test performed by an accredited laboratory that indicates the person is the biological father of the child.

(t) An individual who is:

- (1) a:
  - (A) child's mother; or
  - (B) person identified as the father under subsection (g)(1);and
- (2) less than eighteen (18) years of age;

must have an opportunity to consult with any adult chosen by the individual regarding the contents of a paternity affidavit before signing the paternity affidavit under this section. A signed paternity affidavit is voidable if the individual does not have the opportunity to consult with an adult chosen by the individual.

*As added by P.L.46-1995, SEC.63. Amended by P.L.133-1995, SEC.14; P.L.1-1997, SEC.93; P.L.257-1997(ss), SEC.31; P.L.138-2001, SEC.4; P.L.145-2006, SEC.140; P.L.146-2006, SEC.10; P.L.25-2010, SEC.1; P.L.128-2012, SEC.19.*

### **IC 16-37-2-3**

#### **Time for filing birth certificate**

Sec. 3. A certificate of birth shall be filed not more than five (5)

days after the birth occurs.  
*As added by P.L.2-1993, SEC.20.*

#### **IC 16-37-2-4**

##### **Acceptance of delayed filed birth certificates**

Sec. 4. A local health officer may accept a certificate of birth presented for filing not more than twelve (12) months after the birth occurred if the attending physician, certified nurse midwife, certified direct entry midwife, or other person desiring to file the certificate states the reason for the delay in writing. This statement shall be made a part of the certificate of birth.

*As added by P.L.2-1993, SEC.20. Amended by P.L.232-2013, SEC.4; P.L.141-2014, SEC.17.*

#### **IC 16-37-2-5**

##### **Birth certificates presented more than 12 months after birth**

Sec. 5. A certificate of birth presented for filing more than twelve (12) months after the birth occurred is a delayed certificate of birth and the record shall be filed only with the state department.

*As added by P.L.2-1993, SEC.20. Amended by P.L.141-2014, SEC.18.*

#### **IC 16-37-2-6**

##### **Rules for accepting delayed birth certificates**

Sec. 6. The state department shall adopt rules concerning the application for, the supporting documents for, and the acceptance of delayed certificates of birth. The state department shall keep delayed certificates of birth in a file separate from other certificates of birth.

*As added by P.L.2-1993, SEC.20.*

#### **IC 16-37-2-7**

##### **Certificate of birth registration; issuance to delayed birth certificate applicant**

Sec. 7. The state department shall issue a certificate of birth registration without charge to the applicant for a delayed certificate of birth if the state department finds the application is properly executed.

*As added by P.L.2-1993, SEC.20.*

#### **IC 16-37-2-8**

##### **Probative value of delayed birth certificate**

Sec. 8. The probative value of a delayed certificate of birth shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

*As added by P.L.2-1993, SEC.20.*

#### **IC 16-37-2-9**

##### **Permanent record; public inspection; adoptee birth records**

Sec. 9. (a) The local health officer shall make a permanent record of the following from a birth certificate:

- (1) Name.
- (2) Sex.
- (3) Date of birth.
- (4) Place of birth.
- (5) Name of the parents.
- (6) Birthplace of the parents.
- (7) The date of filing of the certificate of birth.
- (8) The person in attendance at the birth.
- (9) Location of the birth, including whether the birth occurred at a hospital, licensed health care facility, home, or other non-health care facility.

(b) Except as provided in subsection (c), the permanent record shall be open to public inspection.

(c) The birth record of an adopted child remains subject to the confidentiality provisions of IC 31-19 regarding the release of adoption information.

*As added by P.L.2-1993, SEC.20. Amended by P.L.46-1995, SEC.64; P.L.133-1995, SEC.15; P.L.1-1997, SEC.94; P.L.257-1997(ss), SEC.32; P.L.2-1998, SEC.60; P.L.232-2013, SEC.5.*

#### **IC 16-37-2-10**

##### **"DNA test"; additions or corrections to birth certificate; evidence**

Sec. 10. (a) As used in this section, "DNA test" means an identification process in which the unique genetic code of an individual that is carried by the individual's deoxyribonucleic acid (DNA) is compared with the genetic codes of another individual.

(b) The state department may make additions to or corrections in a certificate of birth on receipt of adequate documentary evidence, including the results of a DNA test under subsection (c) or a paternity affidavit executed under section 2.1 of this chapter.

(c) The state department may make an addition to a birth certificate based on the results of a DNA test only if:

- (1) a father is not named on the birth certificate; and
- (2) a citation to this subsection as the authority for the addition is noted on the birth certificate.

*As added by P.L.2-1993, SEC.20. Amended by P.L.46-1995, SEC.65; P.L.133-1995, SEC.16.*

#### **IC 16-37-2-11**

##### **Custody of children of unknown parentage; reports**

Sec. 11. A person who assumes custody of a child of unknown parentage shall report immediately to the local health officer.

*As added by P.L.2-1993, SEC.20.*

#### **IC 16-37-2-12**

##### **Children of unknown parentage; certificates of birth**



Sec. 12. The local health officer shall prepare a certificate of birth for a child of unknown parentage. The place where the child was found or where custody was assumed shall be known as the place of birth and the date of birth shall be determined by approximation. If the child is identified or if a regular certificate of birth is found or obtained, the local health officer shall correct the health officer's records and file a corrected certificate of birth with the state department.

*As added by P.L.2-1993, SEC.20.*

#### **IC 16-37-2-13**

##### **Recorded name of child born out of wedlock**

Sec. 13. A child born out of wedlock shall be recorded:

- (1) under the name of the mother; or
- (2) as directed in a paternity affidavit executed under section 2.1 of this chapter.

*As added by P.L.2-1993, SEC.20. Amended by P.L.46-1995, SEC.66; P.L.133-1995, SEC.17.*

#### **IC 16-37-2-14**

##### **Duties of health officer regarding paternity affidavit**

Sec. 14. If a paternity affidavit executed under section 2.1 of this chapter is filed with a local health officer, the local health officer shall do the following:

- (1) Correct the local record of birth by adding the name of the father to the certificate of birth.
- (2) File a copy of the affidavit with the report required by IC 16-37-1-6.

*As added by P.L.2-1993, SEC.20. Amended by P.L.46-1995, SEC.67; P.L.133-1995, SEC.18.*

#### **IC 16-37-2-15**

##### **Proper name of illegitimate child whose parents subsequently marry**

Sec. 15. If the parents of a child born out of wedlock in Indiana later marry, the child shall legally take the last name of the father.

*As added by P.L.2-1993, SEC.20.*

#### **IC 16-37-2-16**

##### **New birth certificate upon marriage of illegitimate child's parents; correction of records**

Sec. 16. If a man claiming to be the child's biological father marries the mother of a child born out of wedlock, the man and the mother may produce proof of the marriage and execute a paternity affidavit under section 2.1 of this chapter. The local health officer shall then remove all evidence of the fact that the child was born out of wedlock from the child's record of birth. The proof of marriage and executed paternity affidavit shall be forwarded to the state

department by the local health officer. Upon receiving the proof of marriage and executed paternity affidavit, the state department shall make the corrections to the child's certificate of birth.

*As added by P.L.2-1993, SEC.20. Amended by P.L.257-1997(ss), SEC.33.*

#### **IC 16-37-2-17**

##### **Repealed**

*(Repealed by P.L.257-1997(ss), SEC.41.)*

#### **IC 16-37-2-18**

##### **Form of new birth certificate**

Sec. 18. If a certificate of birth is issued from the record described in section 16 of this chapter, the certificate:

- (1) must include:
  - (A) the full name of the child;
  - (B) the date and place of birth;
  - (C) the name of the father;
  - (D) the maiden name of the mother; and
  - (E) other data required;
- (2) must be uniform in color, size, and content with all other certificates; and
- (3) may not refer to the fact that the child was born out of wedlock.

*As added by P.L.2-1993, SEC.20. Amended by P.L.257-1997(ss), SEC.34.*

#### **IC 16-37-2-19**

##### **Violations**

Sec. 19. (a) Except as otherwise provided, a person who recklessly violates or fails to comply with section 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, or 16 of this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.

*As added by P.L.2-1993, SEC.20.*