

# **Unwed Fathers Receive Rights to Infant Children**

## **By Jeffery M. Leving**

Unwed biological fathers are often told they have no rights when it comes to their infant children when placed for adoption. The fact they fathered their child is not considered important when the mother decides, on her own, to give the infant child up for adoption in certain circumstances.

But, this gender disparity in equal protection and due process in parental rights is changing.

Recently, the State of Utah adopted House Bill 308 that is designed to safeguard unwed paternal rights in regards to children six months or younger from being adopted. This law would require unwed fathers to be issued official notification of the mother's intention to give their infant child up for adoption in certain circumstances. Once received, the father would then have 30 days to assert his rights as a parent and petition the court for custody. This closes a loophole which had allowed mothers to circumvent notifying the biological father and thus committing the ultimate act of parental alienation – terminating the father-child relationship forever.

Common sense and fair play would argue that if an unwed mother decides to give up her rights to a child, then the biological father would automatically be given the opportunity to take custody of his child. Instead, a stranger can be given the right to adopt the child, often without the father even knowing he will never see his child again.

All too often these points are treated unreasonably in many states because too many jurisdictions have rejected the rights of fathers regarding infant children born outside of marriage.

The mother, it is aggressively argued, bears the burden of child birth and therefore should be the sole parent overseeing the child's well-being and future relationship with the birth father. This not only doesn't make sense, but can strip children of someone who has a natural biological drive to protect them – their own father.

Utah isn't the only state that has begun to tear down these antiquated attitudes against biological fathers.

Recently, a legislative initiative evolved in the State of Michigan to adopt a similar law involving putative fathers. This House Bill (HB 4067), which, among other things, would allow biological fathers the right to seek to establish paternity even if the child's mother was married to another man between the time the child was conceived and born.

The new Michigan legislation would provide a detailed mechanism to establish paternity for a biological father as previous statutes automatically granted paternity to the marital father.

Again, common sense would dictate that the biological father, the one who conceived the child with the mother, would have rights to establish paternity and custody, but this is not always the case. Existing laws in many states not only ignore the rights of the father, but ignore the rights of the child. Who better to enjoy the legal right to defend a child's health, education, and welfare than their biological, natural father when mom walks away?

The rights of fathers should be balanced against the rights of mothers when it comes to safeguarding the well-being of their children. Equal protection and due process should exist in every state regardless of gender and marital status. Unwed fathers should not be wrongfully excluded from making decisions that are necessary in raising their children, including education, religious training, and health care. This is critical in this nation where approximately 33.1% of children are born out of wedlock.

However, if there is a child placement disagreement, the child's future is too often decided based on parental gender and marital status.

Unwed fathers' rights legislation will hopefully be enacted into law in both Utah and also in Michigan and spread throughout the nation. These are steps in the right direction to correct this unfair imbalance. Constitutional rights must apply to unwed fathers and their children too.

Jeffery M. Leving is the author of *Fathers' Rights* and *Divorce Wars*, as well as the soon to be released *How to Be a Good Divorced Dad*, which garnered praise from President Barack Obama and an endorsement from Francis Cardinal George of the Archdiocese of Chicago. He also co-authored the Illinois Joint Custody Law and is the founder of <http://dadsrights.com>. Leving is a dedicated matrimonial attorney focusing on what is best for the children – a relationship with both parents.