

CHAPTER FIVE

Having Children

THE UNITED STATES SUPREME COURT HAS DECLARED that the decision of whether or not to have a child is a very personal one and that the decision is protected by the right of privacy under the United States Constitution. This means that individuals who wish to have a child cannot be barred from doing so (unless perhaps they are incarcerated). In addition, individuals who do not wish to have a child have a legal right to obtain and use contraceptives.

One spouse cannot legally force the other spouse to have a child.

Conversely, if a woman becomes pregnant, neither her partner nor the courts can force her to have an abortion. The decision of whether to continue a pregnancy belongs to the woman.

If a husband or wife wants to have a child, but their partner does not, that could be a basis for a divorce. A disagreement on such a fundamental issue could be an "irreconcilable difference" under the no-fault divorce laws of most states. In states that have grounds for divorce based on someone being at fault, a disagreement on the question of whether to have children might be viewed as "mental cruelty," and thus a basis for ending the marriage.

Medically Assisted Pregnancies

As medical science advances, there are a variety of ways in which individuals who wish to become parents can be helped to do so by medically assisted means, including artificial insemination and in vitro fertilization. These medical procedures have legal implications that vary by state. Generally, however, if both husband and wife consent to artificial insemination or in vitro fertilization, the rights and duties of the husband, wife, and child will be the same as if the child had been naturally conceived.

Surrogate Parenthood

In a **surrogate parenting arrangement**, a woman agrees, with or without payment, to bear a child for another couple. This usually occurs when the wife cannot conceive or carry a child to term. In most surrogate parenting arrangements, the husband's sperm, through artificial insemination, fertilizes an egg belonging to either the wife or the surrogate mother. This makes the husband the biological father of the child.

The surrogate mother agrees to give up all parental rights at birth. Then the wife of the biological father legally adopts the child. A few states outlaw this arrangement when the surrogate mother receives payment. Other states have laws that restrict surrogate parenting arrangements or that might give the surrogate mother the right to keep the child after birth. Seek legal advice before entering into a surrogate parenting arrangement.

Abortion

Women still have a right to an abortion, and it appears that will remain the law in the United States for many years to come. In the 1992 case of *Planned Parenthood v. Casey*, the U.S. Supreme Court reaffirmed its 1973 decision in *Roe v. Wade* that women have a constitutional right to seek an abortion before the fetus is viable outside the womb. The Court also ruled that states may not require a woman to notify her husband before the woman seeks an abortion. (The Court was particularly concerned about the impact of a notification requirement on women who are in an abusive relationship.)

Although affirming a woman's right to seek an abortion early in pregnancy, the Supreme Court in *Casey* held that states may regulate many other aspects of abortion. After a fetus is viable, it is permissible for states to prohibit abortions unless the mother's life or health is endangered.

States also may impose a waiting period to obtain an abortion (unless the mother's health is endangered). In *Casey*, the Court upheld Pennsylvania's 24-hour waiting period as a reasonable means of assuring that a woman who seeks an abortion makes a deliberate decision. During that waiting period, states also may require that the providers of abortions inform the woman about alternatives to abortion and the risks of abortion.

A statute requiring parental consent before a minor could seek an abortion also was upheld, although the statute also allowed a minor to forego asking parents and seek permission from a judge instead if the facts of the case supported bypass of parental consent.

The scope of regulation and funding of abortions by the government varies from state to state.

Childbirth

Parents generally are free to select the place at which their child will be born. They may choose a hospital, their own home, or a birthing center staffed by midwives if such centers are available in their area.

Under federal law a hospital equipped to handle delivering babies may not turn away a woman in active labor even if the woman is uninsured. The law prohibiting hospitals from turning away patients who are in urgent need of care is called the **Emergency Medical Treatment and Active Labor Act**--also referred to as the **anti-dumping law**.

If parents are considering an at-home delivery, they should make sure the mother receives good prenatal care and that the health care provider believes the delivery will not pose significant risks to the mother or child. If the delivery is risky for the mother or child, the mother should deliver at a hospital equipped to handle high-risk cases.

Some states allow nurse-midwives to deliver children at the parents' home or at a birthing center. Other states allow nurse-midwives to practice only at hospitals or under the direct supervision of a physician.

As health care technology improves and as health insurance companies seek to reduce the cost of health care, it is increasingly common for mother and child to remain in the hospital for only a short period of time after delivery--

often twenty-four hours or less for a normal delivery and two or three days for a Caesarian section. If the health care provider believes a longer hospital stay is necessary, that usually will be ordered.

If the patient wants a longer stay, but the health care provider or insurance company does not think the additional stay is necessary, the patient probably will have to pay in full for the extra stay. Patients may appeal decisions to deny coverage. The patient's contract with the health insurance company or health maintenance organization (HMO) will specify the details of the appeal system.

It is common, however, for the first appeal to be informal one--a phone call or letter to the insurance company or HMO. If the informal appeal is not satisfactory to the patient, a more formal appeal usually can be taken, such as a hearing before administrators or physicians who work for the insurance company or HMO. If that also fails, the patient might be entitled (depending on the nature of the contract and the state in which the patient lives) to seek outside relief, such as through the court system or a neutral arbitrator.

Fathers or other family members may wish to be present at the delivery of a child. The decision of whether or not fathers or other family members are allowed in the delivery room normally is left to the hospital's regulation. Most hospitals permit fathers to be present during delivery, although many hospitals prefer that the father and mother have gone through some training before the delivery, such as a Lamaze class. Parents should check with their hospital about

other rules and about what persons other than fathers are allowed in the delivery room.

Paternity

A man who fathers a child by a woman to whom he is not married generally can acknowledge his **paternity** by signing the child's birth certificate or another document soon after the child's birth.

If a man does not admit that a child is his, a woman can file suit against him to prove that he is the father and to obtain child support. Support for a child born out of wedlock is established using the same support guidelines for a child whose parents are obtaining a divorce. (Child support is discussed in chapter 11.) In many states, fathers of children born out of wedlock also may be obliged to help pay the mother's medical expenses associated with the pregnancy and delivery.

Paternity cases usually involve use of scientific evidence. DNA testing from swabs of tissue from the mouth or from a blood sample can prove to near certainty that a man is or is not the father of the child.

As with a child born to married parents, the obligation of support usually lasts until the child is an adult. If a father refuses to support his child, a court may garnish his wages, seize his property or bank accounts, and even send him to jail.

Rights and Responsibilities of Parents

Parents have a right to control the care and upbringing of their children. This gives parents the power to make various decisions affecting the child, including where to live, what school to attend, what religion to follow, and what medical treatment to obtain.

Normally the state may not interfere in these decisions. Only in life-threatening or extreme situations will the courts step in to overrule parents. For example, when a child might die without the medical care that the parents refuse to provide, a judge may make the child a ward of the court (or the state) and order that the care be provided. Parents have even been prosecuted for withholding medical treatment from seriously ill children. This has occurred even in situations where parents have followed their religious beliefs.

Although children can be hard to control (particularly adolescents), parents have the legal authority to control their children's behavior and social lives. Parents may discipline or punish their children appropriately. They may not, however, use cruel methods or excessive force. Such treatment would be considered child abuse and could subject the parents to prosecution.

If a child causes damage to another person or property, the parents may be liable for damages. Some states, for example, have statutes that make parents liable for vandalism caused by their children up to a certain dollar amount, such as \$500 or \$1,000. If a child is severely out of control, the state may take custody of a child.

If a child has an auto accident while driving a parent's car, the parent's auto insurance policy generally will cover the loss to the same extent it would if

the parent had been driving the car (although parents usually have to pay higher insurance premiums to cover young drivers).

Parents are legally responsible for their children until they reach the age of majority (usually eighteen), marry, or leave home to support themselves. In some states, divorced parents may be obliged to pay for a child's college education or trade school. (See pages 11-13 of chapter 11.) In addition, a parent's duty to support a disabled child might continue for the child's entire life.

Neglect and Abuse Laws

Under state laws, it is a criminal offense for parents and legal guardians to fail to meet children's basic needs, including food, clothing, shelter, medical treatment, and supervision. Such failure constitutes **child neglect**.

Child abuse laws make it a crime for adults to abuse children in their care. Such adults include parents, legal guardians, other adults in the home, and baby-sitters. Supervising adults may not go beyond reasonable physical punishment. For example, adults who beat children so severely that the children require medical treatment have violated these laws. Child abuse laws cover not only physical abuse and sexual abuse, but also emotional abuse, such as subjecting a child to extreme public humiliation.

A person may be guilty of child abuse that he or she did not personally commit if that person had legal responsibility for the child and failed to protect the child from the abuser.

The law compels a wide range of people who have contact with children to report suspected child abuse or neglect. Such people include doctors, nurses, teachers, childcare workers, and social workers. A person who is required to report suspected neglect or abuse may face civil or criminal penalties for failure to do so.

States often encourage the reporting of suspected abuse through special hot lines. The laws of most states encourage persons to make reports of abuse by granting them immunity from defamation suits by the accused parents if they make the report in **good faith**--meaning the person who made the report genuinely suspected abuse, even if it later turns out that abuse did not occur.

Some states keep central lists of suspected child abuse cases. This helps identify abusers, such as parents who take their children to different hospitals in order to conceal evidence that they have repeatedly abused their children.

If the state takes a child away from a parent who has abused or neglected the child, the state usually seeks to reunite the family after correction of the problems that led to removal. This, however, is not always possible. If, for example, the parent makes little effort to improve or does not satisfactorily complete parenting skills programs offered by the state, then the state may ask a court to end all parental rights. If this happens, the legal bonds between parents and child are completely and permanently cut. The child then may be adopted by another family.

Rights of Children

The law defines children as unmarried persons under the age of majority-- usually eighteen--who have not left home to support themselves.

Children have a right to be supported by their parents. As mentioned in the last section, the right of support includes food, shelter, clothing, and medical care. Parents also are obliged arrange for the education of their children either at school or at home. If parents seek to educate their children at home, the parents usually must prove to the state that the parents offer a genuine education program at home. Children taught at home may be subject to state testing to insure that the children are making satisfactory progress in their education.

Children also have a right to be educated by the government through high school (assuming the child is not expelled from school for misconduct). Under federal law, children with significant physical or mental handicaps have a right to government-paid special education programs to meet their needs. If a parent believes a child needs a special education program, but the government is not providing one, the parent can appeal the issue through administrative agencies within the school system and through the courts if necessary.

“Mature minors” (often defined as children over the age of twelve) are allowed to make their own decisions regarding certain medical procedures, even if parents disagree with the child’s choice. For example, in most states parents do not have an absolute veto power over a minor's decision to use contraceptives or obtain an abortion. In many states, minors also can seek treatment for venereal disease without notification or consent of the parents. In addition, in

some states, a mature minor can seek and obtain short-term mental health treatment or counseling without parental consent.

If a child receives a large sum of money, such as through inheritance, payment of a damage award for a personal injury, or starring in a television series, the law provides protection regarding how the money is to be managed. The law generally requires the appointment of a **guardian** to manage the child's finances.

The guardian could be a parent or someone other than a parent. Sometimes there will be two guardians--one a parent and the other a non-family-member, such as an attorney or a bank officer. Guardians are required to make sure the money is well managed and spent for the child's best interest. The money cannot be used for the primary benefit of other family members. If a guardian spends the money for the guardian's own benefit or in some other way mismanages the funds, the guardian can be personally liable for the amount lost.

To help insure that the child's money is properly invested and spent, the court may require that the guardian file periodic **accountings** with the court, itemizing the child's assets, explaining how the money has been spent, and outlining plans for future expenditures.

The law allows children to sue, including, for example, for personal injuries suffered in an auto accident or a poorly maintained park. In most instances, the child's parent or legal guardian must begin the suit in the child's name.

Children accused of committing crimes are handled by the juvenile courts of their state, not the regular criminal justice system. (In many states, children accused of serious crimes who are above a certain age--sometimes as low as thirteen--may be tried in court as adults.) Juvenile courts entitle children to only some of the procedural safeguards that adults receive, but juvenile courts have more freedom to deal with juveniles in an effort to rehabilitate them. A child on trial as a juvenile, for example, usually does not have a right to a jury trial, but the child generally may not be confined beyond the age of 18.

Duties of Adult Children Toward Their Parents

Adult children normally have no legal responsibilities toward their parents. In return, their parents have no legal duties toward them. However, there are exceptions. In some states, children must support parents who otherwise would be on welfare. Children usually can avoid paying support if they can show that the parents did not care for them when they were minors.

In some states, adult children may have to contribute to the support of a parent who is in a state hospital or mental institution. However, the children's ability to pay--not the actual costs of the care--usually determines how much the children must pay.

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