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BILL ANALYSIS



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Senate Bill 604 (Substitute S-1)
Sponsor: Senator Dave Honigman
Committee: Families, Mental Health and Human Services

Date Completed: 11-9-95

SUMMARY OF SENATE BILL 604 (Substitute S-1):

The bill would amend the Paternity Act to do the following:

- Specify that the Michigan Rules of Court for civil actions would apply to all proceedings under the Act.
- Apply procedures under the Act to an action brought by either a mother or an alleged father.
- Provide that neither party would have to testify before entry of a default judgment in any proceeding under the Act.
- Allow the Department of Social Services to bring an action without first attempting to have the alleged father voluntarily initiate legal action to acknowledge paternity.
- Provide that either party could move for summary disposition upon the establishment of a presumption of paternity when a qualified person determined the probability to be 99% or higher.
- Require a court to enter an order establishing support if there were a custody dispute between the parties when the court made an determination of paternity.

The bill would take effect on October 1, 1996, and is tie-barred to Senate Bill 749, which would create the "Acknowledgment of Parentage Act".

Procedure

Currently, the Act requires a "complainant mother" to charge the person named as defendant with being the father. Upon the filing of a complaint by the mother, the court must issue a summons against the alleged father. When the alleged father appears before the court, the court must proceed with the trial of the case. If the alleged father does not appear, the court must enter a default judgment. The bill would revise these provisions and delete separate provisions under which the father or putative father of a child born out of wedlock may file a complaint for an order of filiation.

Under the bill, the party filing the complaint would have to name the person believed to be the father. Upon the filing of a complaint, the court would have to issue a summons against the named defendant. If the defendant did not file and serve a responsive pleading as required by the court rules, the court would have to enter a default judgment. Neither party would be required to testify before entry of a default judgment in any proceeding under the Act.

The Act provides that, if a child born out of wedlock is being supported in whole or in part by public assistance, the Department of Social Services (DSS) may file a complaint on behalf of the child for an order of filiation (a determination of paternity). The child's mother must be made a party plaintiff. Under the bill, the mother or alleged father would have to be made a party plaintiff. The bill specifies that public assistance would include medical assistance. The bill would delete a provision that an action may be taken by the DSS only after the Department has unsuccessfully attempted to have the alleged father voluntarily initiate legal action to acknowledge paternity.

Presumption of Paternity

The Act requires a court, upon application by either party or on its own motion, to order that the mother, child, and alleged father submit to blood or tissue typing determinations or DNA profiles to determine whether the alleged father is likely to be, or is not, the father of the child. The blood or tissue typing or DNA profile determination must be conducted by an accredited person. The result or, if a determination of exclusion of paternity cannot be made, a written report including a calculation of the probability of paternity, must be filed with the court and served on the alleged father. Objection to the result or report is waived unless made within 14 days after service on the alleged father. The objecting party has the burden of proving that foundation testimony or other proof of authenticity or accuracy is necessary for admission of the result or report. If the probability of paternity determined by the qualified person is 99% or higher, paternity must be presumed. The burden of proof is upon the alleged father to rebut the presumption by clear and convincing evidence.

Under the bill, the result of blood or tissue typing or a DNA profile determination would have to be served on both the mother and the alleged father, and an objection could be made within 14 days after service on both parties. The objecting party would have the burden of proving by clear and convincing evidence by a qualified person that foundation testimony or other proof of authenticity or accuracy was necessary for admission of the result or report. Paternity would have to be presumed if the probability of paternity determined by the qualified person were 99% or higher *and* the result and report were admissible. The bill would delete the provision that the burden of proof is upon the alleged father to rebut the presumption.

The bill specifies that, upon the establishment of the presumption of paternity, either party could move for summary disposition under the court rules. Nothing in the section of the Act providing for a presumption of paternity would abrogate the right of either party to child support from the date of the child's birth if applicable under the Act.

Support Order

Under the Act, if the court makes a determination of paternity and there is no dispute regarding custody, the court must include in the order of filiation specific provisions for the custody and visitation of the child. If there is a custody dispute, the court must immediately enter an order that temporarily establishes custody and visitation of the child. The bill would require the court also to enter an order establishing support, in the event of a custody dispute.

Other Provisions

Currently, an action does not have to be brought under the Act if the child's father acknowledges paternity under the Revised Probate Code. The bill would refer, instead, to the proposed Acknowledgment of Parentage Act.

Currently, upon entry of an order of filiation, the court clerk must collect a \$35 fee from the person against whom the order is entered. The clerk is to retain \$9 and submit the \$26 balance to the Director of Public Health. Under the bill, the fee would have to be collected if the child were born in this State.

The bill would repeal a section of the Paternity Act under which an agreement by a mother or child and the father concerning the child's support and education is binding upon the mother and child only when the court having jurisdiction has determined that adequate provision is reasonably secured and has approved the agreement (MCL 722.713). This section also provides that the performance of the agreement bars other remedies of the mother and child for the child's support and education.

MCL 722.711 et al.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have no fiscal impact on the courts.

Specifying that the \$35 fee would apply only if a child were born in this State, simply would codify current practice and therefore would have no fiscal impact.

Fiscal Analyst: M. Bain

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.