



SENATE BILL No. 604

June 15, 1995, Introduced by Senators HONIGMAN, GEAKE, HOFFMAN, GOUGEON, SHUGARS, DUNASKISS, STILLE, MC MANUS and EMMONS and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend sections 1, 4, 6, 7, and 7b of Act No. 205 of the Public Acts of 1956, entitled "The paternity act," section 1 as amended by Act No. 107 of the Public Acts of 1986 and sections 4, 6, and 7 as amended and section 7b as added by Act No. 388 of the Public Acts of 1994, being sections 722.711, 722.714, 722.716, 722.717, and 722.717b of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1, 4, 6, 7, and 7b of Act No. 205 of
2 the Public Acts of 1956, section 1 as amended by Act No. 107 of
3 the Public Acts of 1986 and sections 4, 6, and 7 as amended and
4 section 7b as added by Act No. 388 of the Public Acts of 1994,
5 being sections 722.711, 722.714, 722.716, 722.717, and 722.717b
6 of the Michigan Compiled Laws, are amended to read as follows:

1 Sec. 1. As used in this act:

2 (a) "Child born out of wedlock" means a child ~~begotten and~~
3 born to a woman who was not married ~~from~~ AT the TIME OF concep-
4 tion ~~to~~ OR the date of birth of the child, or a child ~~which~~
5 THAT the court ~~has determined~~ DETERMINES to be a child born or
6 conceived during a marriage but not the issue of that marriage.

7 (b) "Child" means a child born out of wedlock.

8 (c) ~~"Mother" means the mother of a child born out of~~
9 ~~wedlock.~~ "COMPLAINANT" MEANS A PERSON FILING A COMPLAINT UNDER
10 THIS ACT.

11 (d) "Court" means the circuit court.

12 (E) "MOTHER" MEANS THE MOTHER OF A CHILD BORN OUT OF
13 WEDLOCK.

14 Sec. 4. (1) An action under this act shall be brought by
15 the mother, the father, a child who became 18 years of age after
16 August 15, 1984 and before June 2, 1986, or the department of
17 social services as provided in this act. THE MICHIGAN RULES OF
18 COURT FOR CIVIL ACTIONS APPLY TO ALL PROCEEDINGS UNDER THIS ACT.
19 Complaints shall be made in the county where the mother or child
20 resides. If both the mother and child reside outside OF this
21 state, then the complaint shall be made in the county where the
22 putative father resides or is found. The fact that the child was
23 conceived or born outside of this state is not a bar to entering
24 a complaint against the putative father.

25 (2) An action is not required to be brought under this act
26 if the child's father acknowledges paternity under ~~section +++~~
27 ~~of the revised probate code, Act No. 642 of the Public Acts of~~

1 ~~1978, being section 700.111 of the Michigan Compiled Laws~~ THE
2 LAW OF THIS STATE, or if the child's paternity is established
3 under the law of another state.

4 (3) An action under this act may be instituted during the
5 pregnancy of the child's mother ~~—~~ OR at any time before the
6 child reaches 18 years of age. ~~—, or for~~ FOR a child who became
7 18 years of age after August 15, 1984 and before June 2, 1986, AN
8 ACTION UNDER THIS ACT MAY BE INSTITUTED before ~~March 1, 1993~~
9 JANUARY 1, 1995. This subsection applies regardless of whether
10 the cause of action accrued before June 1, 1986 and regardless of
11 whether the cause of action was barred under this subsection
12 before June 1, 1986.

13 (4) A complaint under this act shall be filed in the circuit
14 court. If the county department of social services of the county
15 in which the complainant mother OR ALLEGED FATHER resides first
16 determines ~~her~~ THE COMPLAINANT TO HAVE PHYSICAL POSSESSION OF
17 THE CHILD AND to be eligible for public assistance or to be with-
18 out means to employ an attorney; if the department of social
19 services is the complainant; or if the complainant mother OR
20 ALLEGED FATHER or child is receiving services under part D of
21 Title IV of the social security act, 42 U.S.C. 651 to 667, then
22 the prosecuting attorney or an attorney employed by the county
23 pursuant to section 1 of Act No. 15 of the Public Acts of 1941,
24 being section 49.71 of the Michigan Compiled Laws, shall
25 ~~represent the complainant mother in initiating and conducting~~
26 ~~the~~ INITIATE AND CONDUCT proceedings under this act. The
27 prosecuting attorney shall utilize the child support formula

1 developed under section 19 of the friend of the court act, Act
2 No. 294 of the Public Acts of 1982, being section 552.519 of the
3 Michigan Compiled Laws, as a guideline in petitioning for child
4 support. A complaint filed under this act ~~by the mother of the~~
5 ~~child~~ shall be verified ~~by the mother~~ by oath or affirmation.

6 (5) A ~~complainant mother~~ COMPLAINT shall ~~charge~~ NAME the
7 person ~~named as defendant with being~~ BELIEVED TO BE the father
8 of the child and state the time and place, as near as possible,
9 when and where the mother became pregnant. If the department of
10 social services is the complainant, the ~~person named as~~
11 ~~defendant~~ REQUIRED FACTS shall be ~~charged~~ STATED upon informa-
12 tion and belief.

13 (6) Upon the filing of a complaint, ~~by the mother of the~~
14 ~~child,~~ the court shall issue a summons against the ~~alleged~~
15 ~~father.~~ ~~Upon the alleged father appearing before the court by~~
16 ~~virtue of the summons, the court shall proceed with the trial of~~
17 ~~the case.~~ NAMED DEFENDANT. The summons shall be in the form the
18 court determines and shall be served in the same manner as is
19 provided by court rules for the service of process in civil
20 actions. If the ~~alleged father~~ DEFENDANT does not ~~appear~~
21 ~~before the court~~ FILE AND SERVE A RESPONSIVE PLEADING AS
22 REQUIRED BY THE COURT RULES, the court shall enter a default
23 judgment. NEITHER PARTY IS REQUIRED TO TESTIFY BEFORE ENTRY OF A
24 DEFAULT JUDGMENT IN ANY PROCEEDING UNDER THIS ACT.

25 ~~(7) The father or putative father of a child born out of~~
26 ~~wedlock may file a complaint in the circuit court in the county~~
27 ~~in which the child or mother resides or is found, praying for the~~

~~1 entry of the order of filiation as provided for in section 7.
2 The mother of the child shall be made a party defendant and noti-
3 fied of the hearing on the complaint by summons, which shall be
4 in the form the court determines and shall be served in the same
5 manner as is provided by court rules for the service of process
6 in civil actions. The court, following the hearing, may enter an
7 order of filiation. An order of filiation entered under this
8 subsection has the same effect, is subject to the same provi-
9 sions, and is enforced in the same manner as an order of filia-
10 tion entered on complaint of the mother.~~

11 (7) ~~(8)~~ It is unnecessary in any proceedings under this
12 act commenced by or against a minor to have a next friend or
13 guardian ad litem appointed for the minor unless required by the
14 circuit judge. A minor may prosecute or defend any proceedings
15 in the same manner and with the same effect as if he or she were
16 of legal age.

17 (8) ~~(9)~~ If a child born out of wedlock is being supported
18 in whole or in part by public assistance, the department of
19 social services may file a complaint on behalf of the child in
20 the circuit court in the county in which the child resides, pray-
21 ing for the entry of the order of filiation, as provided in sec-
22 tion 7. The mother OR ALLEGED FATHER of the child shall be made
23 a party plaintiff and notified of the hearing on the complaint by
24 summons, which shall be in the form the court determines and
25 shall be served in the same manner as is provided by court rules
26 for the service of process in civil actions. An order of
27 filiation entered under this subsection has the same effect, is

1 subject to the same provisions, and is enforced in the same
2 manner as an order of filiation entered on complaint of the
3 mother OR FATHER. The complaint made by the department of social
4 services shall be verified by the director of social services, or
5 his or her designated representative, or by the director of the
6 county department of social services ~~, or his or her designated~~
7 ~~representative,~~ of the county in which an action is brought, OR
8 THE COUNTY DIRECTOR'S DESIGNATED REPRESENTATIVE. ~~The action~~
9 ~~provided for in this subsection may be taken only after the~~
10 ~~department has unsuccessfully attempted to have the alleged~~
11 ~~father voluntarily initiate legal action to acknowledge~~
12 ~~paternity.~~

13 (9) ~~(+0)~~ Act No. 107 of the Public Acts of 1986, which
14 added this subsection, does not affect the rights of an indigent
15 defendant in proceedings under this act as established by deci-
16 sions of the courts of this state before June 1, 1986.

17 Sec. 6. (1) In a proceeding under this act before trial,
18 the court, upon application made by or on behalf of either party,
19 or on its own motion, shall order that the mother, child, and
20 alleged father submit to blood or tissue typing determinations,
21 which may include, but are not limited to, determinations of red
22 cell antigens, red cell isoenzymes, human leukocyte antigens,
23 serum proteins, or DNA profiles, to determine whether the alleged
24 father is likely to be, or is not, the father of the child. If
25 the court orders a blood or tissue typing or DNA profile determi-
26 nation to be conducted and a party refuses to submit to the

1 typing or DNA profile determination, in addition to any other
2 remedies available, the court may do either of the following:

3 (a) Enter a default judgment at the request of the appropri-
4 ate party.

5 (b) If a trial is held, allow the disclosure of the fact of
6 the refusal unless good cause is shown for not disclosing the
7 fact of refusal.

8 (2) A blood or tissue typing or DNA profile determination
9 shall be conducted by a person accredited for paternity determi-
10 nations by a nationally recognized scientific organization,
11 including, but not limited to, the American association of blood
12 banks.

13 (3) The court shall fix the compensation of an expert at a
14 reasonable amount and may direct the compensation to be paid by
15 the county or by any other party to the case, or by both in the
16 proportions and at the times the court prescribes. Before blood
17 or tissue typing or a DNA profile determination is conducted, the
18 court may order a part or all of the compensation paid in
19 advance.

20 (4) The result of blood or tissue typing or a DNA profile
21 determination and, if a determination of exclusion of paternity
22 cannot be made, a written report including, but not limited to, a
23 calculation of the probability of paternity shall be filed with
24 the court and served on the MOTHER AND alleged father. Objection
25 to the result or report is waived unless made in writing, setting
26 forth the specific basis for the objection, within 14 calendar
27 days after service on the MOTHER AND alleged father. The court

1 shall not schedule a trial on the issue of paternity until after
2 the expiration of the 14-day period. If an objection is not
3 filed, the court shall admit in proceedings under this act the
4 result of the blood or tissue typing or the DNA profile and the
5 written report without requiring foundation testimony or other
6 proof of authenticity or accuracy. If an objection is filed
7 within the 14-day period, on the motion of either party, the
8 court shall hold a hearing to determine the admissibility of the
9 result or written report. The objecting party has the burden of
10 proving BY CLEAR AND CONVINCING EVIDENCE BY A QUALIFIED PERSON
11 DESCRIBED IN SUBSECTION (2) that foundation testimony or other
12 proof of authenticity or accuracy is necessary for admission of
13 the result or written report.

14 (5) If the probability of paternity determined by the quali-
15 fied person described in subsection (2) is 99% or higher, AND THE
16 RESULT AND REPORT ARE ADMISSIBLE AS PROVIDED IN SUBSECTION (4),
17 paternity shall be presumed. ~~The burden of proof is upon the~~
18 ~~alleged father to rebut the presumption by clear and convincing~~
19 ~~evidence.~~ If 2 or more persons are determined to have a proba-
20 bility of paternity of 99% or higher, paternity shall be presumed
21 for the person with the highest probability.

22 (6) UPON THE ESTABLISHMENT OF THE PRESUMPTION OF PATERNITY
23 AS PROVIDED IN SUBSECTION (5), EITHER PARTY MAY MOVE FOR SUMMARY
24 DISPOSITION UNDER THE COURT RULES. NOTHING IN THIS SECTION ABRO-
25 GATES THE RIGHT OF EITHER PARTY TO CHILD SUPPORT FROM THE DATE OF
26 BIRTH OF THE CHILD IF APPLICABLE UNDER SECTION 7.

1 (7) ~~(6)~~ As used in this section, "DNA profile" means the
2 patterns of fragments of deoxyribonucleic acid used both to
3 identify individuals and to study the relatedness of
4 individuals.

5 Sec. 7. (1) The court shall enter an order of filiation
6 declaring paternity and providing for the support of the child
7 under any of the following circumstances:

8 (a) The finding of the court or the verdict ~~is against the~~
9 ~~defendant~~ DETERMINES THAT THE MAN IS THE father.

10 (b) The defendant ~~father~~ acknowledges paternity either
11 orally to the court or by filing with the court a written
12 acknowledgment of paternity.

13 (c) The defendant ~~father~~ is served with summons and a
14 default judgment is entered against him OR HER.

15 (2) An order of filiation entered under subsection (1) shall
16 specify the sum to be paid weekly or otherwise, until the child
17 reaches the age of 18. Subject to section 7a, the court may also
18 order support for a child after he or she reaches 18 years of
19 age. In addition to providing for the support of the child, the
20 order shall also provide for the payment of the necessary
21 expenses incurred by or for the mother in connection with her
22 confinement, for the funeral expenses if the child has died, for
23 the support of the child prior to the entry of the order of fili-
24 ation, and for the expenses in connection with the pregnancy of
25 the mother or of the proceedings as the court considers proper.
26 However, if proceedings under this act are commenced after the
27 lapse of more than 6 years from the birth of the child, an amount

1 shall not be awarded for expenses or support that accrued before
2 the date on which the complaint was filed unless any of the fol-
3 lowing circumstances exists:

4 (a) Paternity has been acknowledged by the father in writing
5 in accordance with statutory provisions.

6 (b) One or more payments were made for support of the child
7 during the 6-year period and proceedings are commenced within 6
8 years from the date of the most recent payment.

9 (c) The defendant was out of the state, was avoiding service
10 of process, or threatened or coerced the complainant not to file
11 a proceeding under this act during the 6-year period. The court
12 may award an amount for expenses or support that accrued before
13 the date the complaint was filed if the complaint was filed
14 within a period of time equal to the sum of 6 years and the time
15 that the defendant was out of state, was avoiding service of pro-
16 cess, or threatened or coerced the complainant not to file a pro-
17 ceeding under this act.

18 (3) Except as otherwise provided in this section, the court
19 shall order support in an amount determined by application of the
20 child support formula developed by the state friend of the court
21 bureau. The court may enter an order that deviates from the for-
22 mula if the court determines from the facts of the case that
23 application of the child support formula would be unjust or inap-
24 propriate and sets forth in writing or on the record all of the
25 following:

26 (a) The support amount determined by application of the
27 child support formula.

1 (b) How the support order deviates from the child support
2 formula.

3 (c) The value of property or other support awarded instead
4 of the payment of child support, if applicable.

5 (d) The reasons why application of the child support formula
6 would be unjust or inappropriate in the case.

7 (4) Subsection (3) does not prohibit the court from entering
8 a support order that is agreed to by the parties and that devi-
9 ates from the child support formula, if the requirements of sub-
10 section (3) are met.

11 (5) Beginning January 1, 1991, each support order entered by
12 the court shall provide that each party keep the office of the
13 friend of the court informed of both of the following:

14 (a) The name and address of his or her current source of
15 income. As used in this subdivision, "source of income" means
16 that term as defined in section 2 of the support and visitation
17 enforcement act, Act No. 295 of the Public Acts of 1982, being
18 section 552.602 of the Michigan Compiled Laws.

19 (b) Any health care coverage that is available to him or her
20 as a benefit of employment or that is maintained by him or her;
21 the name of the insurance company, health care organization, or
22 health maintenance organization; the policy, certificate, or con-
23 tract number; and the names and birth dates of the persons for
24 whose benefit he or she maintains health care coverage under the
25 policy, certificate, or contract.

26 (6) For the purposes of this act, "support" may include
27 payment of medical, dental, and other health care expenses, child

1 care expenses, and educational expenses. The court shall require
2 that 1 or both parents obtain or maintain any health care cover-
3 age that is available to them at a reasonable cost, as a benefit
4 of employment, for the benefit of a child who is the subject of
5 an order of filiation under this section. If a parent is
6 self-employed and maintains health care coverage, the court shall
7 require the parent to obtain or maintain dependent coverage for
8 the benefit of the child, if available at a reasonable cost.

9 (7) A judgment or order entered under this act providing for
10 the support of a child or payment of expenses in connection with
11 the mother's confinement or pregnancy is enforceable as provided
12 in the support and visitation enforcement act, Act No. 295 of the
13 Public Acts of 1982, being sections 552.601 to 552.650 of the
14 Michigan Compiled Laws.

15 (8) Upon entry of an order of filiation, IF THE CHILD WAS
16 BORN IN THIS STATE, the clerk of the court shall collect a fee of
17 \$35.00 from the person against whom the order of filiation is
18 entered. The clerk shall retain \$9.00 of the fee and remit the
19 \$26.00 balance, along with a written report of the order of fili-
20 ation, to the director of public health. The report shall be on
21 a form prescribed by or in a manner approved by the director of
22 public health. Regardless of whether the fee required by this
23 section is collected, the clerk shall transmit and the department
24 of public health shall receive the report of the order of
25 filiation.

26 (9) If an order of filiation is abrogated by a later
27 judgment or order of a court, the clerk of the court that entered

1 the order shall immediately communicate that fact to the director
2 of public health on a form prescribed by the director of public
3 health.

4 (10) Within the time prescribed by court rule, the party,
5 attorney, or agency that secures the signing of an order of fili-
6 ation shall serve a copy of the order on all parties to the
7 action and file proof of service with the court clerk.

8 Sec. 7b. If the court makes a determination of paternity
9 and there is no dispute regarding custody, the court shall
10 include in the order of filiation specific provisions for the
11 custody and visitation of the child as provided in the child cus-
12 tody act of 1970, Act No. 91 of the Public Acts of 1970, being
13 sections 722.21 to 722.29 of the Michigan Compiled Laws. If
14 there is a dispute between the parties concerning custody or vis-
15 itation, the court shall immediately enter an order that
16 ESTABLISHES SUPPORT AND temporarily establishes custody and visi-
17 tation of the child. Pending a hearing on or other resolution of
18 the dispute, the court may also refer the matter to the friend of
19 the court for a report and recommendation as provided in section
20 5 of the friend of the court act, Act No. 294 of the Public Acts
21 of 1982, being section 552.505 of the Michigan Compiled Laws. In
22 a dispute regarding custody or visitation, the prosecuting attor-
23 ney, an attorney appointed by the county, or an attorney
24 appointed by the court under section 4 shall not be required to
25 represent either party regarding that dispute.