

SENATE BILL No. 197

February 5, 2009, Introduced by Senators McMANUS, PAPPAGEORGE, GARCIA and BASHAM and referred to the Committee on Families and Human Services.

A bill to amend 1956 PA 205, entitled "The paternity act," by amending sections 1, 4, and 6 (MCL 722.711, 722.714, and 722.716), sections 1 and 6 as amended by 2000 PA 31 and section 4 as amended by 1998 PA 113.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 **(A) "CHILD" MEANS A CHILD BORN OUT OF WEDLOCK.**

3 **(B) ~~(a)~~"Child born out of wedlock" means a ~~ANY OF THE~~**

4 **FOLLOWING:**

5 **(i) A child ~~begetten and~~ born to a woman who was not married**
 6 **from the conception to the date of birth of the child. ~~or a~~**

7 **(ii) A child ~~that~~ WHOM the court has determined, BEFORE AN**
 8 **ACTION FILED UNDER THIS ACT, to be a child born or conceived during**

1 a marriage but not **TO BE** the issue of that marriage.

2 ~~—— (b) "Child" means a child born out of wedlock.~~

3 ~~—— (c) "Mother" means the mother of a child born out of wedlock.~~

4 **(iii) A CHILD WHOM THE COURT DETERMINES, DURING THE PENDENCY OF**
5 **AN ACTION FILED UNDER THIS ACT, TO BE A CHILD BORN OR CONCEIVED**
6 **DURING A MARRIAGE BUT NOT TO BE THE ISSUE OF THAT MARRIAGE.**

7 **(C)** ~~(d)~~—"Court" means the circuit court.

8 **(D)** ~~(e)~~—"DNA identification profile" means the results of the
9 DNA identification profiling of genetic testing material.

10 **(E)** ~~(f)~~—"DNA identification profiling" means a validated
11 scientific method of analyzing components of deoxyribonucleic acid
12 molecules in a sample of genetic testing material to identify the
13 pattern of the components' chemical structure that is unique to the
14 individual.

15 ~~—— (g) "State disbursement unit" or "SDU" means the entity~~
16 ~~established in section 6 of the office of child support act, 1971~~
17 ~~PA 174, MCL 400.236.~~

18 **(F)** ~~(h)~~—"Genetic testing material" means a sample of an
19 individual's blood, saliva, or tissue collected from the individual
20 that is used for genetic paternity testing conducted under this
21 act.

22 **(G) "MOTHER" MEANS THE MOTHER OF A CHILD BORN OUT OF WEDLOCK.**

23 **(H) "STATE DISBURSEMENT UNIT" OR "SDU" MEANS THE ENTITY**
24 **ESTABLISHED IN SECTION 6 OF THE OFFICE OF CHILD SUPPORT ACT, 1971**
25 **PA 174, MCL 400.236.**

26 **(i)** "Summary report" means a written summary of the DNA
27 identification profile that includes only the following

1 information:

2 (i) The court case number, if applicable, the laboratory case
3 number or identification number, and the ~~family independence agency~~
4 **DEPARTMENT OF HUMAN SERVICES** case number.

5 (ii) The mother's name and race.

6 (iii) The child's name.

7 (iv) The alleged father's name and race.

8 (v) The collection dates and identification numbers of the
9 genetic testing material.

10 (vi) The cumulative paternity index.

11 (vii) The probability of paternity.

12 (viii) The conclusion as to whether the alleged father can or
13 cannot be excluded as the biological father.

14 (ix) The name, address, and telephone number of the contracting
15 laboratory.

16 (x) The name of the individual certifying the report.

17 Sec. 4. (1) An action under this act shall be brought in the
18 circuit court by ~~the~~ **ANY OF THE FOLLOWING:**

19 (A) **THE** mother. ~~, the father, a~~

20 (B) **A** child who became 18 years of age after August 15, 1984
21 and before June 2, 1986. ~~, or the family independence agency~~

22 (C) **THE DEPARTMENT OF HUMAN SERVICES** as provided in this act.

23 (D) **AN INDIVIDUAL NAMED AS THE CHILD'S FATHER ON A CERTIFICATE**
24 **OF BIRTH OR THE CHILD'S PRESUMED FATHER.**

25 (E) **A PUTATIVE FATHER. HOWEVER, A PUTATIVE FATHER MAY NOT**
26 **BRING AN ACTION IF THE CHILD IS CONCEIVED AS THE RESULT OF ACTS FOR**
27 **WHICH THE PUTATIVE FATHER WAS CONVICTED OF CRIMINAL SEXUAL CONDUCT**

1 UNDER SECTIONS 520B TO 520E OF THE MICHIGAN PENAL CODE, 1931 PA
2 328, MCL 750.520B TO 750.520E.

3 (2) IF THE MOTHER WAS MARRIED AT ANY TIME FROM THE CONCEPTION
4 TO THE DATE OF BIRTH OF THE CHILD, A PUTATIVE FATHER MAY NOT BRING
5 AN ACTION UNDER THIS ACT UNLESS THE ACTION IS COMMENCED WITHIN 1
6 YEAR AFTER THE BIRTH OF THE CHILD AND 1 OR MORE OF THE FOLLOWING
7 APPLY:

8 (A) THE MOTHER AND THE PUTATIVE FATHER MUTUALLY AND OPENLY
9 ACKNOWLEDGE A BIOLOGICAL RELATIONSHIP BETWEEN THE PUTATIVE FATHER
10 AND THE CHILD BY DOING ALL OF THE FOLLOWING:

11 (i) FILING AN AFFIDAVIT WITH THE COURT STATING THAT THE
12 PUTATIVE FATHER IS THE BIOLOGICAL FATHER OF THE CHILD.

13 (ii) FILING WITH THE COURT THE RESULTS OF BLOOD OR TISSUE
14 TYPING OR DNA IDENTIFICATION PROFILING THAT ESTABLISH THAT THE
15 PROBABILITY OF PATERNITY BY THE PUTATIVE FATHER IS 99% OR HIGHER.

16 (iii) NOTIFYING EACH INDIVIDUAL DESCRIBED IN SUBSECTION (1) (D)
17 THAT THE AFFIDAVIT AND RESULTS HAVE BEEN FILED.

18 (B) ALL OF THE FOLLOWING APPLY:

19 (i) THE MOTHER WAS SEPARATED FROM HER HUSBAND UNDER AN ORDER OR
20 JUDGMENT ENTERED IN AN ACTION FOR SEPARATE MAINTENANCE BROUGHT
21 UNDER SECTION 7 OF 1846 RS 84, MCL 552.7, OR NOT MARRIED AT OR
22 AROUND THE TIME OF CONCEPTION.

23 (ii) THE PUTATIVE FATHER FILES AN AFFIDAVIT WITH THE COURT
24 STATING THAT HE IS THE BIOLOGICAL FATHER OF THE CHILD AND THAT HE
25 CONSENTS TO DNA IDENTIFICATION PROFILING.

26 (iii) THE PUTATIVE FATHER NOTIFIES EACH INDIVIDUAL DESCRIBED IN
27 SUBSECTION (1) (D) THAT HE HAS FILED THE AFFIDAVIT.

1 (C) ALL OF THE FOLLOWING APPLY:

2 (i) THE MOTHER ACKNOWLEDGES IN WRITING A BIOLOGICAL
3 RELATIONSHIP BETWEEN THE PUTATIVE FATHER AND THE CHILD.

4 (ii) THE PUTATIVE FATHER DEMONSTRATES TO THE COURT THAT HE HAS
5 HAD PARENTING TIME WITH THE CHILD BY AGREEMENT WITH THE MOTHER.

6 (iii) THE PUTATIVE FATHER FILES AN AFFIDAVIT WITH THE COURT
7 STATING THAT HE IS THE BIOLOGICAL FATHER OF THE CHILD AND THAT HE
8 CONSENTS TO DNA IDENTIFICATION PROFILING.

9 (iv) THE PUTATIVE FATHER NOTIFIES EACH INDIVIDUAL DESCRIBED IN
10 SUBSECTION (1) (D) THAT HE HAS FILED THE AFFIDAVIT.

11 (3) A JUDGMENT IN AN ACTION UNDER SUBSECTION (2) DOES NOT
12 RELIEVE AN INDIVIDUAL DESCRIBED IN SUBSECTION (1) (D) FROM ANY CHILD
13 SUPPORT OBLIGATION INCURRED BEFORE ENTRY OF THE JUDGMENT.

14 (4) The Michigan court rules for civil actions apply to all
15 proceedings under this act. A complaint shall be filed in the
16 county where the mother or child resides. If both the mother and
17 child reside outside of this state, then the complaint shall be
18 filed in the county where the putative father resides or is found.
19 The fact that the child was conceived or born outside of this state
20 is not a bar to entering a complaint against the putative father.

21 (5) ~~(2)~~—An action to determine paternity shall not be brought
22 under this act if the child's father acknowledges paternity under
23 the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 TO
24 722.1013, or if the child's paternity is established under the law
25 of another state.

26 (6) ~~(3)~~—~~An~~ EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, AN action
27 under this act may be commenced during the pregnancy of the child's

1 mother or at any time before the child reaches 18 years of age. For
2 a child who became 18 years of age after August 15, 1984 and before
3 June 2, 1986, an action under this act may be commenced before
4 January 1, 1995. This subsection applies regardless of whether the
5 cause of action accrued before June 1, 1986 and regardless of
6 whether the cause of action was barred under this subsection before
7 June 1, 1986. A summons issued under this section shall be in the
8 form the court determines and shall be served in the same manner as
9 is provided by court rules for the service of process in civil
10 actions.

11 (7) ~~(4)~~ If the county ~~family independence agency~~ **OFFICE OF THE**
12 **DEPARTMENT OF HUMAN SERVICES** of the county in which the mother or
13 alleged father resides first determines that she or he has physical
14 possession of the child and is eligible for public assistance or
15 without means to employ an attorney; if the ~~family independence~~
16 ~~agency~~ **DEPARTMENT OF HUMAN SERVICES** is the complainant; ~~or~~ **OR** if
17 the mother, alleged father, or child is receiving services under
18 part D of title IV of the social security act, 42 U.S.C. ~~USC~~ 651 to
19 ~~667-669B~~, then the prosecuting attorney or an attorney employed by
20 the county ~~under section 1 of 1941 PA 15, MCL 49.71,~~ shall initiate
21 and conduct proceedings under this act. **THIS SUBSECTION DOES NOT**
22 **APPLY TO AN ACTION FILED UNDER SUBSECTION (2)**. The prosecuting
23 attorney **OR AN ATTORNEY EMPLOYED BY THE COUNTY** shall utilize the
24 child support formula developed under section 19 of the friend of
25 the court act, 1982 PA 294, MCL 552.519, as a guideline in
26 petitioning for child support. A complaint filed under this act
27 shall be verified by oath or affirmation.

1 (8) ~~(5)~~—The party filing ~~the~~**A** complaint **UNDER THIS ACT** shall
2 name the person believed to be the father of the child and state in
3 the complaint the time and place, as near as possible, when and
4 where the mother became pregnant. If the ~~family independence agency~~
5 **DEPARTMENT OF HUMAN SERVICES** is the plaintiff, the required facts
6 shall be stated upon information and belief.

7 (9) ~~(6)~~—Upon the filing of a complaint **UNDER THIS ACT**, the
8 court shall issue a summons against the named defendant. If the
9 defendant does not file and serve a responsive pleading as required
10 by the court rules, the court may enter a default judgment. Neither
11 party is required to testify before entry of a default judgment in
12 a proceeding under this act.

13 (10) ~~(7)~~—If, after service of process, the parties fail to
14 consent to an order naming the man as the child's father as
15 provided in this act within the time permitted for a responsive
16 pleading, then the ~~family independence agency~~**DEPARTMENT OF HUMAN**
17 **SERVICES** or its designee may file and serve both the mother and the
18 alleged father with a notice requiring that the mother, alleged
19 father, and child appear for genetic paternity testing as provided
20 in section 6.

21 (11) ~~(8)~~—If the mother, alleged father, or child does not
22 appear for genetic paternity testing as provided in subsection ~~(7)~~
23 (10), then the ~~family independence agency~~**DEPARTMENT OF HUMAN**
24 **SERVICES** or its designee may apply to the court for an order
25 compelling genetic paternity tests as provided in section 6 or may
26 seek other relief as permitted by statute or court rule.

27 (12) ~~(9)~~—It is unnecessary in any proceedings under this act

1 commenced by or against a minor to have a next friend or guardian
2 ad litem appointed for the minor unless required by the circuit
3 judge. A minor may prosecute or defend any proceedings in the same
4 manner and with the same effect as if he or she were of legal age.

5 (13) ~~(10)~~—If a child born out of wedlock is being supported in
6 whole or in part by public assistance, including medical
7 assistance, the ~~family independence agency~~ **DEPARTMENT OF HUMAN**
8 **SERVICES** may file a complaint on behalf of the child in the circuit
9 court in the county in which the child resides. The mother or
10 alleged father of the child shall be made a party plaintiff and
11 notified of the hearing on the complaint by summons. The complaint
12 made by the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES**
13 shall be verified by the director of the ~~family independence agency~~
14 **DEPARTMENT OF HUMAN SERVICES**, or his or her designated
15 representative, or by the director of the county ~~family~~
16 ~~independence agency~~ **OFFICE OF THE DEPARTMENT OF HUMAN SERVICES** of
17 the county in which an action is brought, or the county director's
18 designated representative.

19 (14) ~~(11)~~—1986 PA 107, which added this subsection, does not
20 affect the rights of an indigent defendant in proceedings under
21 this act as established by decisions of the courts of this state
22 before June 1, 1986.

23 (15) ~~(12)~~—If a determination of paternity is made under this
24 act, the court may enter an order of filiation as provided in
25 section 7. Regardless of who commences an action under this act, an
26 order of filiation entered under this act has the same effect, is
27 subject to the same provisions, and is enforced in the same manner

1 as an order of filiation entered on complaint of the mother or
2 father.

3 Sec. 6. (1) In a proceeding under this act before trial, the
4 court, ~~upon~~ **ON** application ~~made~~ by or on behalf of either party, or
5 on its own motion, shall order that the mother, child, and alleged
6 father submit to blood or tissue typing determinations, which may
7 include, but are not limited to, determinations of red cell
8 antigens, red cell isoenzymes, human leukocyte antigens, serum
9 proteins, or DNA identification profiling, to determine whether the
10 alleged father is likely to be, or is not, the father of the child.
11 If the court orders a blood or tissue typing or DNA identification
12 profiling to be conducted and a party refuses to submit to the
13 typing or DNA identification profiling, in addition to any other
14 remedies available, the court may do either of the following:

15 (a) Enter a default judgment at the request of the appropriate
16 party.

17 (b) If a trial is held, allow the disclosure of the fact of
18 the refusal unless good cause is shown for not disclosing the fact
19 of refusal.

20 (2) A blood or tissue typing or DNA identification profiling
21 shall be conducted by a person accredited for paternity
22 determinations by a nationally recognized scientific organization,
23 including, but not limited to, the American association of blood
24 banks.

25 (3) The court shall fix the compensation of an expert at a
26 reasonable amount and may direct the compensation to be paid by the
27 county, **IF SECTION 4(7) IS APPLICABLE**, or by any other party to the

1 case, or by both in the proportions and at the times the court
2 prescribes. Before blood or tissue typing or DNA identification
3 profiling is conducted, the court may order a part or all of the
4 compensation paid in advance. If the ~~family independence agency~~
5 **DEPARTMENT OF HUMAN SERVICES** paid for the genetic testing expenses,
6 the court may order repayment by the alleged father if the court
7 declares paternity. **IN AN ACTION FILED UNDER SECTION 4(2), THE**
8 **PUTATIVE FATHER SHALL PAY FOR THE GENETIC TESTING EXPENSES.**

9 Documentation of the genetic testing expenses is admissible as
10 evidence of the amount, which evidence constitutes prima facie
11 evidence of the amount of those expenses without third party
12 foundation testimony.

13 (4) Subject to subsection (5), the result of blood or tissue
14 typing or a DNA identification profile and the summary report shall
15 be served on the mother and alleged father. The summary report
16 shall be filed with the court. Objection to the DNA identification
17 profile or summary report is waived unless made in writing, setting
18 forth the specific basis for the objection, within 14 calendar days
19 after service on the mother and alleged father. The court shall not
20 schedule a trial on the issue of paternity until after the
21 expiration of the 14-day period. If an objection is not filed, the
22 court shall admit in proceedings under this act the result of the
23 blood or tissue typing or the DNA identification profile and the
24 summary report without requiring foundation testimony or other
25 proof of authenticity or accuracy. If an objection is filed within
26 the 14-day period, on the motion of either party, the court shall
27 hold a hearing to determine the admissibility of the DNA

1 identification profile or summary report. The objecting party has
2 the burden of proving by clear and convincing evidence by a
3 qualified person described in subsection (2) that foundation
4 testimony or other proof of authenticity or accuracy is necessary
5 for admission of the DNA identification profile or summary report.

6 (5) If the probability of paternity determined by the
7 qualified person described in subsection (2) conducting the blood
8 or tissue typing or DNA identification profiling is 99% or higher,
9 and the DNA identification profile and summary report are
10 admissible as provided in subsection (4), paternity is presumed. If
11 the results of the analysis of genetic testing material from 2 or
12 more persons indicate a probability of paternity greater than 99%,
13 the contracting laboratory shall conduct additional genetic
14 paternity testing until all but 1 of the putative fathers is
15 eliminated, unless the dispute involves 2 or more putative fathers
16 who have identical DNA.

17 (6) Upon the establishment of the presumption of paternity as
18 provided in subsection (5), either party may move for summary
19 disposition under the court rules. This section does not abrogate
20 the right of either party to child support from the date of birth
21 of the child if applicable under section 7.