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BILL ANALYSIS



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Senate Bill 256 (as introduced 3-10-11)
Sponsor: Senator Steven Bieda
Committee: Judiciary

Date Completed: 4-12-11

CONTENT

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

- **Allow a putative father to bring a paternity action.**
- **Provide that a putative father could not bring a paternity action if the mother were married at any time between conception and the child's birth, unless a biological relationship between the child and the putative father was acknowledged or the mother was legally separated or unmarried around the time of conception, and other conditions were met.**
- **Revise the definition of "child born out of wedlock".**
- **Require a putative father to pay for the genetic testing expenses in an action he filed.**
- **Specify that a judgment in an action brought by a putative father would not relieve a presumed father, or an individual named as a father on a birth certificate, from a child support obligation incurred before the judgment.**

The Act defines "child" as a child born out of wedlock. "Child born out of wedlock" means 1) a child born to a woman who was not married from the conception to the date of the child's birth, or 2) a child whom the court has determined to be a child born or conceived during a marriage but not the issue of that marriage.

In the second category, the bill would refer instead to a child whom the court has determined, *before* an action filed under the Act, to be a child born or conceived during a marriage but not to be the issue of that marriage. The bill also would include in the definition a child whom the court determines, *during* the pendency of a paternity action, to be a child born or conceived during a marriage but not to be the issue of that marriage.

The Act allows a paternity action to be brought in the circuit court by the mother, the father, the Department of Human Services (DHS), or a child who turned 18 years old after August 15, 1984, and before June 2, 1986. The bill would delete that reference to a father, and allow a paternity action to be brought by an individual named as the child's father on a birth certificate or the child's presumed father.

The bill also would allow a putative father to bring a paternity action, unless the child were conceived as a result of acts for which the putative father was convicted of first-, second-, third-, or fourth-degree criminal sexual conduct.

If a child's mother were married at any time from the conception to the date of the birth of the child, a putative father could not bring a paternity action unless the action was commenced within one year after the child's birth, a father was not named on the child's birth certificate within one year after the child was born, or the mother's husband refused to be named as the father on the child's birth certificate, and one or more of the following applied:

- The mother and the putative father mutually acknowledged a biological relationship between the putative father and the child.
- The mother was separated from her husband or was not married at or around the time of conception.
- The mother acknowledged in writing a biological relationship between the putative father and the child.

If the mother and the putative father mutually and openly acknowledged a biological relationship between the putative father and the child, they would have to do all of the following:

- File with the court an affidavit stating that the putative father was the child's biological father.
- File with the court the results of blood or tissue typing or DNA identification profiling that established that the probability of paternity by the putative father was 99% or higher.
- Notify the child's presumed father or an individual named as the child's father on a birth certificate that the affidavit and results had been filed.

If the mother were separated from her husband under an order or judgment entered in an action for separate maintenance or not married at or around the time of conception, the putative father would have to do the following:

- File with the court an affidavit stating that he was the child's biological father and that he consented to or a court had ordered DNA identification profiling.
- Notify the child's presumed father or an individual named as the child's father on a birth certificate that the affidavit had been filed.

If the mother acknowledged in writing a biological relationship between the putative father and the child, the putative father would have to meet the two requirements listed above, as well as demonstrate to the court that he had had parenting time with the child by agreement with the mother.

The Act requires a county prosecuting attorney or an attorney employed by a county to initiate and conduct paternity actions if the county DHS office determines that the mother or alleged father has physical possession of the child and is eligible for public assistance or without means to employ an attorney, if the DHS is the complainant, or if the mother, alleged father, or child is receiving services under Part D of Title IV of the Social Security Act (which provides for grants to states for child support enforcement and paternity actions). Under the bill, this requirement would not apply to an action brought by a putative father.

(The Act and the bill do not define the term "putative father", but it generally refers to a man who is alleged to be or claims to be the biological father of a child born to a woman to whom he is not married at the time of the child's birth. The term "presumed father" also is not defined but it commonly includes a man who was married to the mother at the time a child was conceived or born.)

MCL 722.711 et al.

BACKGROUND

The Paternity Act authorizes the circuit court to determine the paternity of a child born out of wedlock, in an action filed by the child's mother or father, or, if the child is receiving public assistance, by the Department of Human Services. A child is considered to be born out of wedlock if he or she is born to a woman who was not married at the time of conception or birth, or if the court has made a determination that the child was born or conceived during a marriage but is not the issue of the marriage.

Historically, under what is known as Lord Mansfield's Rule, if a child was born or conceived during a marriage, neither the mother nor the father could present evidence that the child was not legitimate. In effect, there was an irrebuttable presumption that the mother's husband was the legal father. The rule was overturned by the Michigan Supreme Court in a 1977 decision, *Seraphin v Seraphin* (401 Mich 629), which allowed the question of a child's legitimacy to be raised during divorce proceedings.

In 1991, in *Girard v Wagenmaker* (437 Mich 231), the Court addressed the issue of whether a putative father may bring a suit for a determination of the paternity of a child born while the mother was legally married to another man. The *Girard* Court held that a putative father does not have standing to bring a paternity suit unless there has been a *prior* court determination that the mother's husband is not the father.

Although *Girard* interpreted the Paternity Act as it was written in 1985, the holding in *Girard* remains current law. As the Court of Appeals stated in a January 2011 opinion (*Pecoraro v Rostagno-Wallat*, No. 293445), "In Michigan, a child conceived and born during a marriage is legally presumed the legitimate child of that marriage and the mother's husband is the child's father as a matter of law. A third party may not rebut this legal presumption unless there first exists a judicial determination arising from a proceeding between the husband and wife that declares the child is not the product of the marriage."

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Matthew Grabowski

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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.