

SENATE BILL No. 256

March 10, 2011, Introduced by Senators BIEDA, ROBERTSON, JONES and GLEASON and referred to the Committee on Judiciary.

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:

Sec. 1. As used in this act:

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

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

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

(ii) A child ~~that~~ **WHOM** the court has determined, **BEFORE AN**
ACTION FILED UNDER THIS ACT, to be a child born or conceived during
a marriage but not **TO BE** the issue of that marriage.

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

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

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

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

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

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

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

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

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

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

(i) "Summary report" means a written summary of the DNA identification profile that includes only the following information:

(i) The court case number, if applicable, the laboratory case

number or identification number, and the ~~family independence agency~~
DEPARTMENT OF HUMAN SERVICES case number.

(ii) The mother's name and race.

(iii) The child's name.

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

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

(vi) The cumulative paternity index.

(vii) The probability of paternity.

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

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

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

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

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

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

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

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

(E) **A PUTATIVE FATHER. HOWEVER, A PUTATIVE FATHER MAY NOT
BRING AN ACTION IF THE CHILD IS CONCEIVED AS THE RESULT OF ACTS FOR
WHICH THE PUTATIVE FATHER WAS CONVICTED OF CRIMINAL SEXUAL CONDUCT
UNDER SECTIONS 520B TO 520E OF THE MICHIGAN PENAL CODE, 1931 PA
328, MCL 750.520B TO 750.520E.**

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

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

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

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

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

19 (B) ALL OF THE FOLLOWING APPLY:

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

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

27 (iii) THE PUTATIVE FATHER NOTIFIES EACH INDIVIDUAL DESCRIBED IN

1 SUBSECTION (1) (D) THAT HE HAS FILED THE AFFIDAVIT.

2 (C) ALL OF THE FOLLOWING APPLY:

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

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

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

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

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

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

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

27 (6) ~~(3)~~—~~An~~—EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, AN action

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

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

1 shall be verified by oath or affirmation.

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

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

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

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

1 (12) ~~(9)~~—It is unnecessary in any proceedings under this act
2 commenced by or against a minor to have a next friend or guardian
3 ad litem appointed for the minor unless required by the circuit
4 judge. A minor may prosecute or defend any proceedings in the same
5 manner and with the same effect as if he or she were of legal age.

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

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

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

1 subject to the same provisions, and is enforced in the same manner
2 as an order of filiation entered on complaint of the mother or
3 father.

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

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

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

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

26 (3) The court shall fix the compensation of an expert at a
27 reasonable amount and may direct the compensation to be paid by the

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

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

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

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

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

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