

Legislative Analysis



SUMMARY SUPPORT AND PATERNITY ACT

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House Bill 5465

Sponsor: Rep. Kenneth Kurtz

Committee: Families, Children, and Seniors

Complete to 4-29-14

A SUMMARY OF HOUSE BILL 5465 AS INTRODUCED 4-23-14

House Bill 5465 would create a new act entitled "the Summary Support and Paternity Act," which addresses procedures for determining paternity and support. This summary describes the bill section-by-section.

Definitions are found in Section 2 of the bill. The bill refers throughout to "Title IV-D" and a "Title IV-D Agency." This is a reference to Title 4 of the federal Social Security Act, which deals with grants to states for aid and services to needy families with children and for child welfare services. Part D of the federal act addresses child support and the establishment of paternity. A Title IV-D agency is the agency in the state performing the functions under Title IV-D and includes a person performing those functions under contract, including an Office of the Friend of the Court or a prosecuting attorney.

Section 4: Determination of Father

The bill specifies that a man is the father of a child born out of wedlock if the man has been determined to be the child's father under Section 5 of this new act, under another law of this state, or under the law of another state.

Section 5: Determining Paternity

If the paternity of a child born out of wedlock has not otherwise been established and the child is either supported in whole or in part by public assistance or if either party has signed an application for services under Title IV-D of the federal Social Security Act, the Title IV-D agency may file a statement with the court on behalf of the child, the mother, or the alleged father. The statement would be in a form approved by the State Court Administrative Office. The statement would include the names of the parties, the date of the child's birth, and the time and place as near as possible of the child's conception. If the mother or alleged father signs the statement, the statement would need to be verified as required by Supreme Court rules. A statement filed by the Title IV-D agency on behalf of the mother, child, or alleged father would not have to be verified. The person on whose behalf the statement is filed is the filing party under this act.

The Title IV-D agency filing the statement would have to serve a copy of the statement and a notice of intent to establish paternity on the parties. The notice would be in a form established by the SCAO under the supervision and direction of the Supreme Court and must include information that the man has been named as the child's father that the non-filing party must respond to the Title IV-D agency within 21 days either admitting

paternity in writing, submitting a written request for genetic testing, or producing proof that the alleged father has been excluded as the father under the laws of this or another state.

The notice also must specify that, if a party requests genetic testing, the mother, child, and alleged father would be required to submit to genetic testing at the date, time, and place determined by the Title IV-D agency; and that, if neither party requests genetic testing within 21 days or produces proof that the alleged father has been excluded as the father, the alleged father would be established as the child's legal father.

Upon filing of the statement and notice with the court and subject to service, the court could do one or more of the following: establish a child's paternity; issue a support order under this act; establish a child's custody or parenting time under the Child Custody Act of 1970, or grant any other relief available under the Child Custody Act, the Friend of the Court Act, or the Support and Parenting Time Enforcement Act.

The statement and notice could be sent by regular mail, but if the non-filing party does not respond in writing admitting paternity or requesting genetic testing, the statement and notice would be served in the same manner as provided by court rules for the service of process in civil matters. Unless the court enters an order declaring that the alleged father is not the child's father, both parents would need to provide information as requested by the Title IV-D agency sufficient to allow it to calculate support under the support formula.

Section 7: Genetic Testing

If a party requests genetic testing in a timely manner under Section 5, the Title IV-D agency would have to notify the parties of the date, time, and place for the collection of the genetic sample for genetic testing of the mother, alleged father, and child. The date for taking the genetic samples for testing would be not later than 60 days after the request.

Genetic testing must be conducted by a person accredited for paternity determinations by a nationally recognized scientific organization and approved by the Department of Human Services. If the non-filing party requests genetic testing and the alleged father is not excluded as the child's father, the non-filing party would be required repay the cost of the genetic test to the state.

Within 28 days of receiving genetic test results, the Title IV-D agency would need to notify the parties and the court of the test results. The agency would have to submit a proposed order to the court. The court would enter the order if it were satisfied that the required procedures have been followed. The proposed order would do either of the following: (1) If it concludes a probability of paternity of 99% or higher, then it would acknowledge the alleged father as the child's father and could order the payment of support and the repayment of the cost of the genetic test to the state; or (2) if the testing excludes the alleged father, declare that the father is not the child's father.

If the non-filing party provides proof that the alleged father has been excluded as the child's father in a separate action, the proof submitted in support of the exclusion would need to be filed with the court. The court would provide notice and an opportunity for the parties to be heard and would either (1) dismiss the action filed, if it finds the alleged father has been excluded; or (2) if it finds that the alleged father has not been excluded, then order the parties and the child to have genetic testing.

A party could file a motion to set aside the order entered or contest the genetic test results on the grounds that the tests are inaccurate. The objection, required proof, and hearing would need to be conform to the provisions of the Paternity Act (MCL 722.716).

Section 9: No Request for Genetic Testing

If neither noticed party requests genetic testing, or if the alleged father admits paternity, the Title IV-D agency would have to submit a proposed order to the court that establishes the alleged father to be the child's father and order payment of support. If the court is satisfied that the procedures in this act have been followed, it would enter the order.

If the action is being filed on behalf of the alleged father and the child's mother does not admit the alleged father's paternity, the court would not enter an order declaring the alleged father to be the child's father unless genetic testing determines he has a probability of paternity of 99% or higher.

If a party who has participated in the proceeding or who has been served with the statement and failed to submit to genetic testing, and the court is made aware of that fact by affidavit or otherwise, it would find the party in contempt, issue a warrant for arrest to compel the party to appear for genetic testing, order other actions as the court considers appropriate, and order the person to pay the costs of the proceeding. The court could may order the child's mother to produce the child and to submit to genetic testing. A court could also dismiss the proceeding if the filing party fails to appear or produce the child for genetic testing, but the dismissal would not bar future action to establish the child's paternity.

Section 10: Child Support

The child's mother and father would have a duty to pay support for the child that could be enforced by either party, the child, the child's guardian, the child's foster parent, or the state through the Title IV-D agency. The parents of a child born out of wedlock are also liable for the medical expenses connected to the mother's pregnancy and the child's birth to the same extent and in the same manner as those expenses are allowed under the Paternity Act, (MCL 722.711 to 722.730).

Section 11: Established Paternity

If the paternity of a child has been established and no action has been filed in a court of this state in which the support of the child can be determined, the following provisions would apply.

If support has not been established for a child being supported in whole or in part by public assistance or if an application for services has been received, the Title IV-D agency could file with the court-- in the county in which the mother, the child, or the father lives--a notice of support obligation on a form established by the State Court Administrative Office under the supervision and direction of the Supreme Court.

The form would have to state facts that include the following: (a) that the child's mother or father has been determined to be the parent of the child; (b) that support is being sought and that the child is not living with the individual from whom support is being sought; (c) that the individual against whom the duty of support is being enforced has 21 days to contest the notice by requesting a hearing for either of the following reasons: that the individual against whom the duty of support is being enforced is not the individual named as the child's parent or that the facts in the notice are not correct.

Upon filing of the notice with the court and subject to service, the court could do one or more of the following: establish a child's paternity; issue a support order; establish a child's custody or parenting time under the Child Custody Act; or grant any other relief available under the Child Custody Act, the Friend of the Court Act, or the Support and Parenting Time Enforcement Act.

After the notice is filed, the Title IV-D agency would have to send a copy of the notice to the individual against whom the agency seeks to enforce a duty of support. The notice could be sent by regular mail, but if the individual does not respond in writing, the notice would be served in the same manner as is provided by court rules for the service of process in civil actions.

After the notice is filed or concurrently with the filing, the individual against whom the duty of support is being enforced would, within 21 days after the filing, agree in writing on a form established by the State Court Administrative Office to support as established by the support formula. The custodial parent or party could also sign this agreement. The Title IV-D agency would file the agreement with the court that has jurisdiction.

If the individual does not respond to the notice, the agency would be required to submit a proposed order to the court establishing the individual's duty to pay support. The court would enter the order if it is satisfied that the procedures established in the act have been followed.

If the individual against whom a duty of support is being enforced proves to the court that the facts in the form are not correct, the court would enter an order that is appropriate, including dismissing the proceeding or ordering genetic testing. The court could not enter an order that does not recognize an individual's paternity established under another law of this state.

Section 12: Support Obligation

The Title IV-D agency would use the procedures set forth in Section 17b of the Friend of the Court Act to establish the support obligation of a parent who is ordered to pay support

even though the agency using the procedures is not the Friend of the Court. The procedures described in this section could be used at the same time as the procedures to establish the duty of support. A person subject to this act would be required to provide information requested by the agency to establish the person's support obligation.

Section 13: Support and Paternity Services

The title IV-D agency providing support and paternity establishment services in a county on the effective date of this act would need to provide support and paternity establishment services under this act.

A county, with the consent of the office of child support, could agree that another agency within the county could provide the services. An agreement to remove the services from an agency that is providing support and paternity establishment services would also require the consent of that agency. If a judicial branch agency is not providing support and establishment services within the county, an agreement to require a judicial branch agency to provide the services would also require the consent of the chief judge of the court. If the prosecuting attorney is not providing support and establishment services within the county, an agreement to require the prosecuting attorney to provide the services would also require the consent of the prosecutor.

Counties, with the consent of all interested agencies, could enter into agreements to provide services regionally under this act provided that the services are made available in each county at least monthly. This act does not restrict the Title IV-D agency from providing services in any manner that uses technology, assent, consolidation of services, or coordination of services with other agencies. The agency with the consent of the Department of Human Services and the State Court Administrative Office could carry out the services in any manner that is not inconsistent with the act to improve efficiency and encourage cooperation between the parents, agencies, and units of government that are affected by the act. This includes, but is not limited to, the following:

- Notices and other documents required to be sent or served may be combined.
- Service and mailing of notices could be completed using any technology or method permitted by court rule.
- Consent agreements and waivers could be substituted for notices.
- Information or other data could be transmitted or downloaded using any technology that can serve the same purpose as physical files.
- One agency may transmit or download information or other data on behalf of another agency.

If a party contests the establishment of paternity, or the basis for owing a duty of support, the court would need to hold a preliminary hearing to determine whether the party can establish a prima facie case. The rules of evidence would not apply to this preliminary hearing. If the initial determination of a prima facie case is made by a referee, there would be no right to a de novo hearing from that determination. If the party cannot establish a prima facie case, the petition would be dismissed. If a prima facie case is established, the court would be required to hold a hearing on the petition. The bill specifies

that the Title IV-D agency conducts proceedings on behalf of the state and not as the attorney for any other party.

A support order entered under this section is enforceable as provided in the Support and Parenting Time Enforcement Act. If this act contains a specific provision regarding the contents or enforcement of a child support order that conflicts with a provision in the support and parenting time enforcement act, this act controls in regard to that provision.

Enacting Section:

This act would takes effect 90 days after being enacted into law.

FISCAL IMPACT:

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.