

REVOCAION OF PATERNITY IN ALLEGED RAPE CASES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 858 (Substitute S-1) as reported by committee

Sponsor: Sen. Rick Jones

House Committee: Criminal Justice

Senate Committee: Judiciary

Complete to 5-24-16

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 178 of 2016)

SUMMARY:

The bill provides a mechanism by which a mother could bring an action to have a court revoke paternity if the child had been conceived by nonconsensual sexual penetration.

The bill amends the Revocation of Paternity Act. The act allows various parties (the mother, acknowledged father, alleged father, or a prosecuting attorney) to bring an action to determine that a presumed father is not a child's father. An action may also be filed to set aside an acknowledgment of parentage or an order of filiation.

Currently, if an action is brought by an alleged father who proves by clear and convincing evidence that he is the child's father, the court may make a determination of paternity and enter an order of filiation. SB 858 would add that if an action is brought by a mother who, after a fact-finding hearing, proves by clear and convincing evidence that the child was conceived as a result of nonconsensual sexual penetration, the court would have to do one of the following:

- Revoke an acknowledgment of parentage for an acknowledged father.
- Determine that a genetic father is not the child's father.
- Set aside an order of filiation for an affiliated father.
- Make a determination of paternity regarding an alleged father and enter an order of revocation of paternity for that alleged father.

This would not apply if, after the child was conceived by the nonconsensual penetration, the biological parents cohabit and establish a mutual custodial environment for the child. "Sexual penetration" would mean that term as defined in Section 520a of the Michigan Penal Code.

In addition, the act allows the court to order a nonprevailing party in an action to pay the prevailing party's costs of the action and attorney fees. The bill would include a mother who brought an action under the bill; thus, a mother who did not prevail in an action to prove the child was conceived as a result of nonconsensual sexual penetration could be ordered to pay the other party's legal costs and fees. However, the bill excludes a mother who brought an action under the bill from a provision requiring an assurance (e.g., posting a surety bond) that the costs of the action and attorney fees if the person does not prevail will be covered.

Further, the act prohibits a court from issuing an order setting aside a judgment or determination of a court or administrative agency of another state, even if the judgment or determination is being enforced in Michigan. The bill would also prohibit a court from issuing an order that is inconsistent with federal law pertaining to full faith and credit being given to child custody determinations.

The bill would take effect 90 days after enactment.

MCL 722.1443 and 722.1445

FISCAL IMPACT:

The bill would have no fiscal impact on the judiciary.

BRIEF DISCUSSION OF THE ISSUES:

Under the bill, a father's paternity may be revoked if the mother can present by clear and convincing evidence that the child was conceived as a result of a rape. This is already allowed under law if there was a conviction in the case. However, there may be reasons why the father was not convicted; for instance, the mother may not have reported the assault at the time or may have feared reprisal if she did report it. According to advocates, it is not uncommon for the father to later use tactics of intimidation and/or manipulation to continue to victimize the mother. For example, the perpetrator may offer to not push for parenting time or custody if child support obligations are dropped. The bill would provide a mechanism by which a mother could have the perpetrator's parental rights terminated. Under current law, and without a conviction of a sexual assault, she can only seek to have parenting time or custody denied.

Further, quick enactment of the bill could enable the state to receive additional funding under two grant awards available under the federal Rape Survivor Child Custody Act. Deadlines for the additional awards are fast approaching and would need to be submitted soon as only states whose laws are in compliance with the federal act by May 26 will be eligible for the first round of funding increases. According to testimony presented to the Committee, the state could be eligible to receive an increase of about \$414,151 in its current grant funding and the increased funding would continue for a two-year period.

The bill does have some opposition. For instance, once the father's parental rights are terminated, he would no longer be obligated to pay child support. This would put the burden on taxpayers to provide support if the mother were on public assistance. If needed, a mother on public assistance may already file for good cause to avoid a paternity action; therefore, the bill is not needed to protect low-income mothers from being forced by departmental policy to maintain contact with an alleged abuser.

POSITIONS:

Michigan Catholic Conference indicated support for the bill. (5-24-16)

Right to Life of Michigan indicated support for the bill. (5-24-16)

Michigan Domestic and Sexual Violence Prevention & Treatment Board indicated support for the bill. (5-24-16)

Michigan Coalition to End Domestic and Sexual Violence indicated support for the bill. (5-24-16)

Family Law Section-State Bar of Michigan indicated opposition to the bill. (5-24-16)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

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