

House Bill 568

By: Representatives Dempsey of the 13th, Weldon of the 3rd, Oliver of the 82nd, Willard of the 51st, Atwood of the 179th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated,
2 relating to determination of paternity, so as to revise provisions relative to paternity testing
3 in certain cases; to provide for reimbursement of paternity testing costs incurred by the
4 Department of Human Services; to provide for related matters; to repeal conflicting laws; and
5 for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 3 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to
9 determination of paternity, is amended by revising Code Section 19-7-43, relating to petitions
10 for determination of paternity, as follows:

11 "19-7-43.

12 (a) A petition to establish the paternity of a child may be brought by:

13 (1) The child;

14 (2) The mother of the child;

15 (3) Any relative in whose care the child has been placed;

16 (4) The Department of Human Services in the name of and for the benefit of a child for
17 whom public assistance is received or in the name of and for the benefit of a child not the
18 recipient of public services whose custodian has applied for services for the child; or

19 (5) One who is alleged to be the father.

20 (b) Regardless of its terms, an agreement, other than an agreement approved by the court
21 in accordance with this article, between an alleged or presumed father and the mother or
22 child does not bar a petition under this Code section.

23 (c) If a petition under this article is brought before the birth of the child, all proceedings
24 shall be stayed until after the birth except service of process, discovery, and the taking of
25 depositions.

26 (d) In any case in which the paternity of a child or children has not been established, any
27 party may make a motion for the court to order the mother, the alleged father, and the child
28 or children to submit to genetic tests as specified in Code Section 19-7-45. Such motion
29 shall be supported by a sworn statement (1) alleging paternity and setting forth facts
30 establishing a reasonable possibility of the requisite sexual contact between the parties; or
31 (2) denying paternity and setting forth facts establishing a reasonable possibility of the
32 nonexistence of sexual contact between the parties. Appropriate orders shall be issued in
33 accordance with the provisions of this article. The court shall grant the motion unless it
34 finds good cause as defined by the federal Social Security Act or if other good excuse for
35 noncooperation is established.

36 (e) In any case for the collection of child support involving the Department of Human
37 Services in which the paternity of a child or children has not been established or in which
38 the individual receiving services alleges that paternity rests in a person other than the
39 previously established father, the Department of Human Services may shall order genetic
40 testing of the mother, the alleged father, and the child or children to submit to genetic tests
41 as specified in Code Section 19-7-45. No genetic testing shall be undertaken by the
42 Department of Human Services if the child was adopted either by the applicant for services
43 or other alleged parent or if the child was conceived by means of artificial insemination.
44 The request for the order need for genetic testing shall be supported by a sworn statement
45 alleging paternity and setting forth facts establishing a reasonable possibility of the
46 requisite sexual contact between the parties. The parties shall be given notice and an
47 opportunity to contest the order before the ~~department~~ Department of Human Services prior
48 to the testing or the imposition of any noncooperation sanction.

49 (f) In any case in which the court or the ~~department~~ Department of Human Services orders
50 genetic testing and one or both of the parties to the action is receiving child support
51 services pursuant to Code Section 19-11-6, the ~~department~~ Department of Human Services
52 shall pay the costs of such tests subject to recoupment from the alleged father if paternity
53 is established. A If the genetic test excludes the possibility of the alleged father being the
54 biological father, then the applicant for services who named the alleged father shall be
55 liable to the Department of Human Services for reimbursement of the paternity testing fee.
56 Upon completion of the first test, but prior to the entry of any order, a second genetic test
57 shall be ordered by the department if an order for paternity has not been issued and if the
58 person making the request tenders payment in full of the cost of the initial test as well as
59 the cost of the second test at the time of the request. Parents who, after notice sent by mail
60 to their last known address, fail to cooperate with paternity testing or fail to make any child
61 available for paternity testing may be sanctioned by the Department of Human Services.
62 Such sanctions may include but shall not be limited to loss of the opportunity for paternity

63 testing, loss of state benefits, denial of services, and administrative case closure. The
 64 Department of Human Services may bring a petition for contempt in the event of such
 65 noncooperation in violation of any court order."

66 **SECTION 2.**

67 Said article is further amended by revising Code Section 19-7-45, relating to genetic tests,
 68 as follows:

69 "19-7-45.

70 (a) All orders requiring parties to submit to genetic tests shall be issued in conformance
 71 with Code Sections 19-7-43, ~~and 19-7-46,~~ and 19-7-54. In all cases such tests ~~must~~ shall
 72 be conducted by a laboratory certified by the American Association of Blood Banks and
 73 shall be conducted so that the results meet the standards the American Association of
 74 Blood Banks requires in order for such results to be admitted as evidence in a court of law.

75 (b) When an action to determine paternity is initiated prior to the birth of a child, the court
 76 shall order that the genetic tests be made as soon as medically feasible after the birth. The
 77 tests shall be performed by a duly qualified licensed practicing physician, duly qualified
 78 immunologist, or other qualified person. In all cases, however, the court shall determine
 79 the number and qualifications of the experts. In all cases the results shall be made known
 80 to all parties at interest as soon as available.

81 (c) An order issued under this Code section is enforceable by contempt, provided that, if
 82 the petitioner refuses to submit to an order for a genetic test, the court may dismiss the
 83 action upon motion of the respondent."

84 **SECTION 3.**

85 Said article is further amended by revising Code Section 19-7-54, relating to motions to set
 86 aside determinations of paternity, as follows:

87 "19-7-54.

88 (a) ~~In~~ Unless otherwise specified in this Code section, in any action in which a male is
 89 required to pay child support as the father of a child, a motion to set aside a determination
 90 of paternity may be made at any time upon the grounds set forth in this Code section. Any
 91 such motion shall be filed in the superior court and shall include:

92 (1) An affidavit executed by the movant that the newly discovered evidence has come
 93 to movant's knowledge since the entry of judgment; and

94 (2) The results from scientifically credible parentage-determination genetic testing, as
 95 authorized under Code Section 19-7-46 and administered within 90 days prior to the
 96 filing of such motion, that finds that there is a 0 percent probability that the male ordered
 97 to pay such child support is the father of the child for whom support is required.

- 98 (b) The court shall grant relief on a motion filed in accordance with subsection (a) of this
 99 Code section upon a finding by the court of all of the following:
- 100 (1) The genetic test required in paragraph (2) of subsection (a) of this Code section was
 101 properly conducted;
- 102 (2) The male ordered to pay child support has not adopted the child;
- 103 (3) The child was not conceived by artificial insemination while the male ordered to pay
 104 child support and the child's mother were in wedlock;
- 105 (4) The male ordered to pay child support did not act to prevent the biological father of
 106 the child from asserting his paternal rights with respect to the child; and
- 107 (5) The male ordered to pay child support with knowledge that he is not the biological
 108 father of the child has not:
- 109 (A) Married the mother of the child and voluntarily assumed the parental obligation
 110 and duty to pay child support;
- 111 (B) Acknowledged his paternity of the child in a sworn statement;
- 112 (C) Been named as the child's biological father on the child's birth certificate with his
 113 consent;
- 114 (D) Been required to support the child because of a written voluntary promise;
- 115 (E) Received written notice from the Department of Human Services, any other state
 116 agency, or any court directing him to submit to genetic testing which he disregarded;
- 117 (F) Signed a voluntary acknowledgment of paternity as provided in Code Section
 118 19-7-46.1; or
- 119 (G) Proclaimed himself to be the child's biological father.
- 120 (c) In the event movant fails to make the requisite showing provided in subsection (b) of
 121 this Code section, the court may grant the motion or enter an order as to paternity, duty to
 122 support, custody, and visitation privileges as otherwise provided by law.
- 123 (d) In any case where the underlying child support order was issued by a court of this state
 124 or by the Department of Human Services and is being enforced by the Department of
 125 Human Services, the movant may request a genetic test from the Department of Human
 126 Services, contingent upon advance payment of the genetic test fee by the movant. In any
 127 case where the custodian of the child does not consent to testing, the movant may petition
 128 the court to ask for testing of the other parent and the child or children.
- 129 ~~(d)~~(e) In the event relief is granted pursuant to subsection (b) of this Code section, relief
 130 shall be limited to the issues of prospective child support payments, past due child support
 131 payments, termination of parental rights, custody, and visitation rights. In any case where
 132 the underlying order was obtained by the Department of Human Services, a court granting
 133 the motion to set aside paternity may relieve the obligor of responsibility for any future or
 134 past due amounts, or both, owed to the state. The court may also relieve the obligor of the

135 same that is owed to any other person or entity so long as the obligor adds that person or
 136 entity to the underlying motion and provides that person or entity with notice of the action.
 137 In all motions brought under this Code section where there is any amount owed to the state,
 138 the state shall be made a party. Failure to include the Department of Human Services shall
 139 prevent the waiver of any amount owed to the state.

140 ~~(e)~~(f) The duty to pay child support and other legal obligations for the child shall not be
 141 suspended while the motion is pending except for good cause shown; however, the court
 142 may order the child support be held in the registry of the court until final determination of
 143 paternity has been made.

144 ~~(f)~~(g)(1) In any action brought pursuant to this Code section, if the genetic test results
 145 submitted in accordance with paragraph (2) of subsection (a) of this Code section are
 146 provided solely by the male ordered to pay child support, the court on its own motion
 147 may, and on the motion of any party shall, order the child's mother, the child, and the
 148 male ordered to pay child support to submit to genetic tests. The court shall provide that
 149 such genetic testing be done no more than 30 days after the court issues its order.

150 (2) If the mother of the child or the male ordered to pay child support willfully fails to
 151 submit to genetic testing, or if either such party is the custodian of the child and willfully
 152 fails to submit the child for testing, the court shall issue an order determining the relief
 153 on the motion against the party so failing to submit to genetic testing. If a party shows
 154 good cause for failing to submit to genetic testing, such failure shall not be considered
 155 willful.

156 (3) The party requesting genetic testing shall pay any fees charged for the tests. If the
 157 custodian of the child is receiving services from an administrative agency in its role as
 158 an agency providing enforcement of child support orders, such agency shall pay the cost
 159 of genetic testing if it requests the test and may seek reimbursement for the fees from the
 160 person against whom the court assesses the costs of the action.

161 ~~(g)~~(h) If relief on a motion filed in accordance with this Code section is not granted, the
 162 court shall assess the costs of the action and attorney's fees against the movant."

163 **SECTION 4.**

164 All laws and parts of laws in conflict with this Act are repealed.