

House Bill 568 (COMMITTEE SUBSTITUTE) (AM)

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;
 31 or (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. Any party who, after notice sent by
 60 mail to his or her last known address, fails to cooperate with paternity testing or fails to
 61 make any child available for paternity testing may be sanctioned by the Department of
 62 Human Services. Such sanctions may include but shall not be limited to loss of the

63 opportunity for paternity testing, loss of state benefits, denial of services, and
 64 administrative case closure. The Department of Human Services may bring a petition for
 65 contempt in the event of such 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.

77 (c) Genetic ~~The~~ tests shall be performed by a duly qualified licensed practicing physician,
 78 duly qualified immunologist, or other qualified person. In all cases, however, the court
 79 shall determine the number and qualifications of the experts. In all cases the results shall
 80 be made known to all parties at interest as soon as available.

81 (d) 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 (e)(1) The Department of Human Services and any court issuing an order with respect
 85 to a determination of paternity shall not, insofar as possible, attach the written results
 86 from a genetic test to any pleading or court order.

87 (2) The genetic material collected for a genetic test shall be destroyed within six months
 88 after the entry of a final order relating to child support or a determination regarding
 89 paternity; provided, however, that when there is an appeal from a determination regarding
 90 paternity, upon motion of an interested party a court may order a delay in such
 91 destruction. When the Department of Human Services is a party in an action under this
 92 Code section, it shall be the department's responsibility to provide notice of the entry of
 93 an order to the appropriate persons and entities.

94 (3) No later than 30 days after the destruction required by this subsection, the recipients
 95 of the genetic material collected for a genetic test and the written results of such tests
 96 shall provide the individuals tested with written notice, by first-class mail, of the date that
 97 such material and results were destroyed.

- 98 (4) The genetic material collected for a genetic test shall not be shared with any other
 99 person or entity.
- 100 (5) The individual from whom genetic material was collected may seek injunctive relief,
 101 a civil penalty of \$500.00, and reasonable attorney's fees from any person who violates
 102 this Code section."

103 SECTION 3.

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

106 "19-7-54.

107 (a) ~~In~~ Unless otherwise specified in this Code section, in any action in which a male is
 108 required to pay child support as the father of a child, a motion to set aside a determination
 109 of paternity may be made at any time upon the grounds set forth in this Code section. Any
 110 such motion shall be filed in the superior or state court that entered the order and shall
 111 include:

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

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

118 (b) The court shall grant relief on a motion filed in accordance with subsection (a) of this
 119 Code section upon a finding by the court of all of the following:

120 (1) The genetic test required in paragraph (2) of subsection (a) of this Code section was
 121 properly conducted;

122 (2) The male ordered to pay child support has not adopted the child;

123 (3) The child was not conceived by artificial insemination while the male ordered to pay
 124 child support and the child's mother were in wedlock;

125 (4) The male ordered to pay child support did not act to prevent the biological father of
 126 the child from asserting his paternal rights with respect to the child; and

127 (5) The male ordered to pay child support with knowledge that he is not the biological
 128 father of the child has not:

129 (A) Married the mother of the child and voluntarily assumed the parental obligation
 130 and duty to pay child support;

131 (B) Acknowledged his paternity of the child in a sworn statement;

132 (C) Been named as the child's biological father on the child's birth certificate with his
 133 consent;

- 134 (D) Been required to support the child because of a written voluntary promise;
- 135 (E) Received written notice from the Department of Human Services, any other state
136 agency, or any court directing him to submit to genetic testing which he disregarded;
- 137 (F) Signed a voluntary acknowledgment of paternity as provided in Code Section
138 19-7-46.1; or
- 139 (G) Proclaimed himself to be the child's biological father.
- 140 (c) In the event movant fails to make the requisite showing provided in subsection (b) of
141 this Code section, the court may grant the motion or enter an order as to paternity, duty to
142 support, custody, and visitation privileges as otherwise provided by law.
- 143 (d) In any case when the underlying child support order was issued by a court of this state
144 or by the Department of Human Services and is being enforced by the Department of
145 Human Services, a movant may request a genetic test from the Department of Human
146 Services, contingent upon advance payment of the genetic test fee by such movant. In any
147 case when the custodian of the child does not consent to testing, a movant may petition the
148 court to ask for testing of the other parent and the child or children.
- 149 ~~(d)~~(e) In the event relief is granted pursuant to subsection (b) of this Code section, relief
150 shall be limited to the issues of prospective child support payments, past due child support
151 payments, termination of parental rights, custody, and visitation rights. In any case when
152 the underlying order was obtained by the Department of Human Services, a court granting
153 the motion to set aside a determination of paternity may relieve the obligor of responsibility
154 for any future or past due amounts, or both, owed to the state. The court may also relieve
155 the obligor of the same that is owed to any other person or entity so long as the obligor
156 adds that person or entity to the underlying motion and provides that person or entity with
157 notice of the action. In all motions brought under this Code section when there is any
158 amount owed to the state, the Department of Human Services shall be made a party.
159 Failure to include the Department of Human Services as a party shall prevent the waiver
160 of any amount owed to the state.
- 161 ~~(e)~~(f) The duty to pay child support and other legal obligations for the child shall not be
162 suspended while the motion is pending except for good cause shown; however, the court
163 may order the child support be held in the registry of the court until final determination of
164 paternity has been made.
- 165 ~~(f)~~(g)(1) In any action brought pursuant to this Code section, if the genetic test results
166 submitted in accordance with paragraph (2) of subsection (a) of this Code section are
167 provided solely by the male ordered to pay child support, the court on its own motion
168 may, and on the motion of any party shall, order the child's mother, the child, and the
169 male ordered to pay child support to submit to genetic tests. The court shall provide that
170 such genetic testing be done no more than 30 days after the court issues its order.

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

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

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

184

SECTION 4.

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