
By: **Delegates Gladden and Montague**
Introduced and read first time: February 11, 2000
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Paternity Proceedings - Legitimacy Presumption**

3 FOR the purpose of establishing that a laboratory report of a blood or genetic test is
4 sufficient to rebut a certain presumption in paternity proceedings under certain
5 circumstances; establishing that certain provisions of law regarding a laboratory
6 report of a blood or genetic test apply to the provisions of this Act; and generally
7 relating to paternity proceedings.

8 BY repealing and reenacting, with amendments,
9 Article - Family Law
10 Section 5-1027
11 Annotated Code of Maryland
12 (1999 Replacement Volume and 1999 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article - Family Law
15 Section 5-1029
16 Annotated Code of Maryland
17 (1999 Replacement Volume and 1999 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Family Law**

21 5-1027.

22 (a) At the trial, the burden is on the complainant to establish by a
23 preponderance of the evidence that the alleged father is the father of the child.

24 (b) Both the mother and the alleged father are competent to testify at the
25 trial.

26 (c) (1) There is a rebuttable presumption that the child is the legitimate
27 child of the man to whom its mother was married at the time of conception.

1 (2) The presumption set forth in this subsection may be rebutted by the
2 testimony of a person other than the mother or her husband.

3 (3) (I) A LABORATORY REPORT OF A BLOOD OR GENETIC TEST IS
4 SUFFICIENT TO REBUT THE PRESUMPTION SET FORTH IN THIS SUBSECTION IF:

5 1. DEFINITE EXCLUSION IS ESTABLISHED; OR

6 2. THE TESTING IS SUFFICIENTLY EXTENSIVE TO EXCLUDE
7 97.3% OF ALLEGED FATHERS WHO ARE NOT BIOLOGICAL FATHERS, AND THE
8 STATISTICAL PROBABILITY OF THE ALLEGED FATHER'S PATERNITY IS AT LEAST
9 97.3%.

10 (II) THE PROVISIONS OF § 5-1029 OF THIS SUBTITLE APPLY TO A
11 LABORATORY REPORT OF A BLOOD OR GENETIC TEST UNDER THIS PARAGRAPH.

12 [(3)] (4) If the court determines that the presumption set forth in this
13 subsection has been rebutted by testimony of a person other than the mother or her
14 husband, it is not necessary to establish nonaccess of the husband to rebut the
15 presumption set forth in this subsection.

16 [(4)] (5) If the court determines that the presumption set forth in this
17 subsection has been rebutted by testimony of a person other than the mother or her
18 husband, both the mother and her husband are competent to testify as to the
19 nonaccess of the husband at the time of conception.

20 (d) The alleged father may not be compelled to give evidence at the trial.

21 5-1029.

22 (a) (1) The Administration may request the mother, child, and alleged father
23 to submit to blood or genetic tests.

24 (2) If the mother, child, or alleged father fails to comply with the request
25 of the Administration, the Administration may apply to the circuit court for an order
26 that directs the individual to submit to the tests.

27 (b) On the motion of the Administration, a party to the proceeding, or on its
28 own motion, the court shall order the mother, child, and alleged father to submit to
29 blood or genetic tests to determine whether the alleged father can be excluded as
30 being the father of the child.

31 (c) The blood or genetic tests shall be made in a laboratory selected by the
32 court from a list of laboratories provided by the Administration.

33 (d) The laboratory shall report the results of each blood or genetic test in
34 writing and in the form the court requires.

35 (e) A copy of the laboratory report of the blood or genetic test shall be provided
36 to the parties or their counsel in the manner that the court directs.

1 (f) (1) Subject to the provisions of paragraph (3) of this subsection, the
2 laboratory report of the blood or genetic test shall be received in evidence if:

3 (i) definite exclusion is established; or

4 (ii) the testing is sufficiently extensive to exclude 97.3% of alleged
5 fathers who are not biological fathers, and the statistical probability of the alleged
6 father's paternity is at least 97.3%.

7 (2) A laboratory report is prima facie evidence of the results of a blood or
8 genetic test.

9 (3) (i) Subject to the provisions of subparagraph (ii) of this paragraph,
10 the laboratory report of the blood or genetic test is admissible in evidence without the
11 presence of a doctor or technician from the laboratory that prepared the report if the
12 report:

13 1. is signed by the doctor or technician who prepared or
14 verified the report; and

15 2. states that the result of the blood or genetic test is as
16 stated in the report.

17 (ii) When the laboratory report of the blood or genetic test is
18 admitted in evidence, a doctor or technician from the laboratory that prepared the
19 report is subject to cross-examination by any party to the proceeding if the party who
20 desires cross-examination has subpoenaed the doctor or technician at least 10 days
21 before trial.

22 (4) A laboratory report received into evidence establishing a statistical
23 probability of the alleged father's paternity of at least 99.0% constitutes a rebuttable
24 presumption of his paternity.

25 (g) If any individual fails to submit to a blood or genetic test ordered by the
26 court, that refusal, properly introduced in evidence:

27 (1) shall be disclosed to the court; and

28 (2) may be commented on by counsel.

29 (h) (1) Unless indigent, the party who requests a blood or genetic test or who
30 secures the appearance in court of a doctor or technician from the laboratory that
31 prepared the report of the blood or genetic test is responsible for the cost of the test
32 and the costs associated with the court appearance. However, if the requesting party
33 prevails in the proceeding, the court shall assess the cost of the blood or genetic test
34 or the costs associated with the court appearance against the other parties to the
35 proceeding.

36 (2) If any party chargeable with the cost of the blood or genetic test or
37 the costs associated with court appearance is indigent, the cost of the blood or genetic

1 test or the costs associated with the court appearance shall be borne by the county
2 where the proceeding is pending, except to the extent that the court orders any other
3 party to the proceeding to pay all or part of the cost.

4 (3) Subject to the right of any party to subpoena a custodian of records at
5 least 10 days before trial, a written statement from the laboratory that prepared the
6 report of the blood or genetic test concerning the cost of the test and the cost
7 associated with the court appearance shall be admissible in evidence without the
8 presence of a custodian of records and shall constitute prima facie evidence of the
9 costs.

10 (i) Upon motion of the Administration or any party to the proceeding and due
11 consideration by the court, the court shall pass a temporary order for the support of
12 the child if:

13 (1) a laboratory report establishes a statistical probability of paternity of
14 at least 99.0%; and

15 (2) the court determines that the putative father has the ability to
16 provide temporary support for the child.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2000.