
By: **Delegate Montague**

Introduced and read first time: February 9, 2001

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Paternity Proceedings - Blood or Genetic Tests**

3 FOR the purpose of requiring that before completing an affidavit of parentage form, a
4 father be advised of his right to a blood or genetic test to establish paternity;
5 establishing that an executed affidavit of parentage may be challenged in court
6 and modified or set aside in accordance with certain procedures under certain
7 circumstances; prohibiting a court from ordering an individual to submit to a
8 blood or genetic test under certain circumstances; providing for the application
9 of this Act; and generally relating to paternity proceedings.

10 BY repealing and reenacting, with amendments,
11 Article - Family Law
12 Section 5-1028 and 5-1029
13 Annotated Code of Maryland
14 (1999 Replacement Volume and 2000 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article - Family Law
17 Section 5-1038
18 Annotated Code of Maryland
19 (1999 Replacement Volume and 2000 Supplement)

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

22 **Article - Family Law**

23 5-1028.

24 (a) An unmarried father and mother shall be provided an opportunity to
25 execute an affidavit of parentage in the manner provided under § 4-208 of the Health
26 - General Article.

27 (b) The affidavit shall be completed on a standardized form developed by the
28 Department.

- 1 (c) (1) The completed affidavit of parentage form shall contain:
- 2 (i) in ten point boldface type a statement that the affidavit is a
3 legal document and constitutes a legal finding of paternity;
- 4 (ii) the full name and the place and date of birth of the child;
- 5 (iii) the full name of the attesting father of the child;
- 6 (iv) the full name of the attesting mother of the child;
- 7 (v) the signatures of the father and the mother of the child
8 attesting, under penalty of perjury, that the information provided on the affidavit is
9 true and correct;
- 10 (vi) a statement by the mother consenting to the assertion of
11 paternity and acknowledging that her cosignatory is the only possible father;
- 12 (vii) a statement by the father that he is the natural father of the
13 child; and
- 14 (viii) the Social Security numbers provided by each of the parents.
- 15 (2) Before completing an affidavit of parentage form[, the]:
- 16 (I) THE unmarried mother and the father shall be advised orally
17 and in writing of the legal consequences of executing the affidavit and of the benefit
18 of seeking legal counsel; AND
- 19 (II) THE FATHER SHALL BE ADVISED ORALLY AND IN WRITING OF
20 HIS RIGHT TO A BLOOD OR GENETIC TEST TO ESTABLISH PATERNITY.
- 21 (d) (1) An executed affidavit of parentage constitutes a legal finding of
22 paternity, subject to the right of any signatory to rescind the affidavit:
- 23 (i) in writing within 60 days after execution of the affidavit; or
- 24 (ii) in a judicial proceeding relating to the child:
- 25 1. in which the signatory is a party; and
- 26 2. that occurs before the expiration of the 60-day period.
- 27 (2) (i) After the expiration of the 60-day period, an executed affidavit
28 of parentage may be challenged in court [only on the basis of fraud, duress, or
29 material mistake of fact] AND MODIFIED OR SET ASIDE IN THE SAME MANNER AND
30 TO THE SAME EXTENT AS A DECLARATION OF PATERNITY UNDER THE PROCEDURES
31 SPECIFIED IN § 5-1038(A) OF THIS ARTICLE.
- 32 [(ii) The burden of proof shall be on the challenger to show fraud,
33 duress, or material mistake of fact.]

1 [(iii)] (II) The legal responsibilities of any signatory arising from the
2 affidavit, including child support obligations, may not be suspended during the
3 challenge, except for good cause shown.

4 (e) The Administration shall prepare written information to be furnished to
5 unmarried mothers under § 4-208 of the Health - General Article concerning the
6 benefits of having the paternity of their children established, including the
7 availability of child support enforcement services.

8 (f) The Department shall make the standardized affidavit forms available to
9 all hospitals in the State.

10 (g) The Secretary, in consultation with the Department of Health and Mental
11 Hygiene and the Maryland Hospital Association, shall adopt regulations governing
12 the provisions of this section and § 4-208 of the Health - General Article.

13 5-1029.

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

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

19 (b) (1) [On] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
20 ON the motion of the Administration, a party to the proceeding, or on its own motion,
21 the court shall order the mother, child, and alleged father to submit to blood or genetic
22 tests to determine whether the alleged father can be excluded as being the father of
23 the child.

24 (2) IF A MOTION UNDER PARAGRAPH (1) OF THIS SUBSECTION IS FILED
25 MORE THAN 2 YEARS AFTER THE BIRTH OF THE CHILD, THE COURT MAY NOT ORDER
26 AN INDIVIDUAL TO SUBMIT TO A BLOOD OR GENETIC TEST UNLESS THE COURT
27 DETERMINES THAT IT WOULD BE IN THE BEST INTEREST OF THE CHILD.

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

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

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

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

36 (i) definite exclusion is established; or

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

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

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

10 1. is signed by the doctor or technician who prepared or
11 verified the report; and

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

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

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

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

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

25 (2) may be commented on by counsel.

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

33 (2) If any party chargeable with the cost of the blood or genetic test or
34 the costs associated with court appearance is indigent, the cost of the blood or genetic
35 test or the costs associated with the court appearance shall be borne by the county
36 where the proceeding is pending, except to the extent that the court orders any other
37 party to the proceeding to pay all or part of the cost.

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

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

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

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

14 5-1038.

15 (a) (1) Except as provided in paragraph (2) of this subsection, a declaration
16 of paternity in an order is final.

17 (2) (i) A declaration of paternity may be modified or set aside:

18 1. in the manner and to the extent that any order or decree of
19 an equity court is subject to the revisory power of the court under any law, rule, or
20 established principle of practice and procedure in equity; or

21 2. if a blood or genetic test done in accordance with § 5-1029
22 of this subtitle establishes the exclusion of the individual named as the father in the
23 order.

24 (ii) Notwithstanding subparagraph (i) of this paragraph, a
25 declaration of paternity may not be modified or set aside if the individual named in
26 the order acknowledged paternity knowing he was not the father.

27 (b) Except for a declaration of paternity, the court may modify or set aside any
28 order or part of an order under this subtitle as the court considers just and proper in
29 light of the circumstances and in the best interests of the child.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply only
31 to declarations of paternity issued and affidavits of parentage executed on or after the
32 effective date of this Act.

33 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 2001.