

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 1062 (Delegate Montague)
Judiciary

Family Law - Paternity Proceedings - Blood or Genetic Tests

This bill requires that a father be notified of his right to blood or genetic testing to establish paternity, provides that an executed affidavit of parentage may be modified or set aside in the same manner and to the same extent as a declaration of paternity, and prohibits a court from ordering blood or genetic tests to determine paternity if the motion for testing is made more than two years after the birth of the child, unless the court determines that it would be in the best interest of the child.

Fiscal Summary

State Effect: The bill would not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: This bill requires that, before completing an affidavit of parentage form, a father must be advised orally and in writing of his right to a blood or genetic test to establish paternity.

After the expiration of the 60-day period for rescission of the affidavit of parentage, the executed affidavit may be modified or set aside in the same manner and to the same extent as a declaration of paternity, using the same procedures as those used for a declaration of paternity.

A declaration of paternity may be modified or set aside: (1) in the manner and to the extent that any order or decree of an equity court is subject to the revisory power of the court under any law, rule, or established principle of practice and procedure in equity; or (2) if a blood or genetic test done in accordance with State law establishes the exclusion of the individual named as the father in the order.

In addition, the bill generally prohibits the circuit court in paternity proceedings from ordering a mother, child, and alleged father to submit to blood or genetic tests to determine whether the alleged father can be excluded as the biological father of the child, if the motion for tests is made more than two years after the birth of the child. However, the bill does allow the tests to be ordered if the court determines that the tests would be in the best interest of the child.

This bill applies only to declarations of paternity issued on or after October 1, 2001.

Current Law: In a paternity proceeding, an unmarried father and mother must be provided with an opportunity to execute an affidavit of parentage, and must be advised orally and in writing of the legal consequences of executing the affidavit and the benefit of seeking legal counsel.

After the expiration of the 60-day period for rescission of the affidavit of parentage, the affidavit may be challenged in court only on the basis of fraud, duress, or material mistake of fact.

The court is not subject to a time limit when ordering the mother, child, and alleged father to submit to blood or genetic tests to determine whether the alleged father can be excluded as being the father of the child.

Background: This bill is intended to overrule a recent Maryland Court of Appeals decision, *Langston v. Riffe*, 359 Md. 396 (2000), wherein the Court held that anyone who had a paternity declaration entered against him prior to October 1, 1995 without genetic or blood testing may initiate proceedings to modify or set aside that declaration based on a blood or genetic test. (October 1, 1995 was the effective date of the statute allowing a modification or set aside of a declaration of paternity based on blood or genetic testing.) The Court also held that it would be inappropriate for a court to consider the best interest of the child in deciding whether to allow a post-declaration blood or genetic test.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Department of Health and Mental Hygiene (Community Public Health Administration), Department of Legislative Services

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