

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 702
Judiciary

(Delegates Menes and Grosfeld)

Family Law - Paternity Proceedings - Statute of Limitations for Challenging Paternity Orders

This bill specifies that if a motion to submit to blood or genetic testing is filed by a party to a paternity proceeding more than three years after a declaration of paternity is entered, the court may not order an individual to submit to a genetic or blood test. A declaration of paternity may be modified or set aside if a motion or petition is filed within three years after the paternity declaration is entered. The bill has prospective application only.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Generally, a declaration of paternity is final, except that the declaration may be modified or set aside in the way that any equity court order is subject to the revisory power of the court. Alternatively, a declaration of paternity may be set aside if a blood or genetic test done in accordance with State law establishes the exclusion of the individual named as the father. No specific time limit is established for when a paternity blood or genetic test must be requested and performed. A declaration of paternity may not be modified or set aside if the individual named in the paternity order acknowledged paternity knowing he was not the father.

The Child Support Enforcement Administration (CSEA) may request the mother, child, and alleged father to submit to blood or genetic tests. If the parties refuse, CSEA may seek a court order for the tests. Pursuant to a motion by CSEA, a motion by a party to a proceeding, or the court's own volition, the court shall order the mother, child, and alleged father to submit to blood or genetic tests from an approved laboratory to determine whether the alleged father can be excluded.

If a court finds that an alleged father is the father, an order must be passed that declares the alleged father to be the father in fact and that provides for child support. The father must continue to pay child support until whichever of the following events occurs first for the child: adulthood, marriage, death, or emancipation.

Background: This bill arises out of the case of *Walter v. Gunter*, which was handed down January 9, 2002 by the Maryland Court of Appeals. The court considered whether Walter, the petitioner, remains liable for child support arrearages when the paternity judgment is vacated. In a five to four decision, the court held that the alleged father cannot be legally obligated for child support arrearages that result from a vacated paternity judgment.

In 1993, the respondent, Gunter, filed a Complaint to Establish Paternity and claimed the petitioner was the father of her child. Walter consented to a paternity judgment in 1993. Walter was ordered to pay child support of \$43.00 per week. In the following years, Walter was unable to meet his child support obligations. In March 2000, Walter filed to modify the child support order and a motion for genetic testing. The genetic test excluded Walter conclusively as the father of the child. The circuit court terminated Walter's future child support obligations. Upon further argument, the court also set aside the paternity judgment and declared Walter was responsible for any arrearages up to March 30, 2000, which totaled over \$11,000. Walter appealed and the case reached the Court of Appeals through expedited review. The judgment of the circuit court was reversed and remanded. The court reasoned that because the biological and legal status of "parenthood" in Walter's situation had been extinguished, there can be no financial obligation.

Additional Information

Prior Introductions: A similar bill, HB 534 of the 2001 session, established the statute of limitations for challenging paternity orders at five years. It also authorized the court to order a paternity test after the five year deadline if in the best interest of the child. It received an unfavorable report from the Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

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