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PATERNITY ESTABLISHMENT

House Bill 4916 as enrolled
Public Act 388 of 1994

Sponsor: Rep. Floyd Clack

Senate Bill 800 as enrolled
Public Act 387 of 1994

Sponsor: Sen. William Van Regenmorter

Senate Committee: Judiciary
House Committee: Judiciary

Second Analysis (1-30-95)

THE APPARENT PROBLEM:

The federal Omnibus Reconciliation Act of 1993 (OBRA) requires states to have in place certain "expedited processes" for establishing paternity under judicial or administrative procedures, among them "procedures for a simple civil process for voluntarily acknowledging paternity under which the state must provide that the rights and responsibilities of acknowledging paternity are explained, and ensure that due process rights are afforded." Under OBRA, the state must have procedures for: a hospital-based acknowledgement of paternity; a presumption under which voluntary acknowledgement is admissible as evidence of paternity and is recognized as a basis for seeking a support order; a presumption of paternity following certain genetic testing results; a default order to be entered when a putative father fails to respond following proper notice; and recognition of paternity determinations made in other states. Failure to meet these federal requirements threatens federal funding for state child support enforcement programs. Under OBRA's terms, Michigan is to have any necessary statutory amendments enacted by January 1, 1995.

Michigan already has procedures for hospital-based acknowledgement of paternity, established by Public Act 115 of 1993 (companion amendments regarding birth certificates were made by Public Act 116 of 1993). Amendments to meet the remaining OBRA requirements have been proposed.

In a related matter, amendments to the paternity act have been sought by legal services workers and others who believe that the paternity act should

ensure that custody orders are issued in conjunction with "orders of filiation" (that is, paternity determinations). They have pointed out that when an unmarried mother applies for Aid to Families with Dependent Children (AFDC) and paternity has not been established, efforts to collect support payments from the father are begun. Typically, the DSS investigates the case and, if paternity is denied or if the putative father cannot be located, the matter is referred to the local prosecutor. The prosecutor may find the putative father and proceed to establish paternity under the paternity act, resulting in a circuit court order of filiation and a support order.

However, if the prosecutor does not simultaneously seek and obtain a custody order, additional problems may ensue. Reports are that sometimes a father in such a situation will attempt to evade child support obligations by snatching the child, sometimes forcibly. With no custody order issued, police are powerless to respond to the mother's complaint. Sometimes the father will leave the child with his parents, further disrupting the child's life. Sometimes the mother will attempt to forcibly regain her child. Mothers in these situations often come to nonprofit legal aid organizations for help.

Legal services workers report that since prosecutors in Genesee and Saginaw counties started seeking and obtaining custody orders in connection with paternity actions, the numbers of parental child-snatchings have declined markedly. Many have therefore urged that there be statutory provisions

for issuing custody orders in conjunction with paternity determinations.

THE CONTENT OF THE BILLS:

Senate Bill 800 would amend the Revised Probate Code (MCL 700.111) to: clarify procedures for the acknowledgement of paternity for the purposes of intestate succession (that is, for purposes of inheritance in cases where the putative father died without leaving a will); specify that certain information is to be provided to parties whom the Department of Social Services (DSS) or the prosecutor is assisting to execute an acknowledgement of paternity; and, declare that an acknowledgement of paternity would be presumed to establish paternity for all purposes. A more detailed explanation follows.

Intestate succession. Currently, the probate code considers a child born out of wedlock to be a man's child for all purposes of intestate succession if he joins with the mother in acknowledges paternity in writing "in the same manner provided by law for the execution and acknowledgment of deeds of real estate and recorded at any time during the child's lifetime" in the appropriate probate judge's office. The bill would replace these procedures with provisions for the man and the child's mother to voluntarily acknowledge paternity by each signing the acknowledgement in the presence of two witnesses (who also would sign), plus a judge, court clerk, or Michigan notary public. The acknowledgement would be filed at either the time of birth or another time during the child's lifetime with the probate court in the mother's county of residence. If the mother was not a Michigan resident, the acknowledgement would be filed in the county of the child's birth.

Information for parties. If the DSS or the prosecutor provided assistance to parties in executing an acknowledgement of paternity, that entity would provide to the child's mother and to the man written information on the parents' rights and responsibilities resulting from the acknowledgement. At a minimum, that information would include information on: the right to seek visitation or custody; the right to notice and hearing regarding a proposed adoption; and the responsibility to comply with a child support order if issued after the acknowledgement.

Presumption. An acknowledgement of paternity executed as provided by the bill would be presumed to establish paternity for all purposes. (Note: House Bill 4916 includes complementary language recognizing acknowledgements under Senate Bill 800.) The acknowledgement could be set aside by the local circuit court only if the man was proven by clear and convincing evidence not to be the father of the child.

House Bill 4916 would amend the Paternity Act (MCL 722.714 et al.) to require that a default judgment be entered if an alleged father does not appear in a paternity action; to require alleged fathers to be served with written reports on paternity test results, and to set deadlines for objecting to those results; to recognize establishments of paternity under the laws of other states; and to require custody and visitation orders to be issued in conjunction with orders of filiation. Provisions regarding custody and visitation would take effect October 1, 1995. Additional details follow.

Paternity establishments elsewhere. Under House Bill 4916, an action would not be required under the Paternity Act if a child's father acknowledged paternity under Senate Bill 800, or if the child's paternity was established under the law of another state. The establishment of paternity under the law of another state would have the same effect and could be used for the same purposes as an acknowledgement of paternity or order of filiation under the paternity act.

Default judgments. If an alleged father did not appear in response to a summons for a paternity action, the court would enter a default judgment.

Reports of paternity orders. The bill also would amend a provision added by Public Act 146 of 1993 (enrolled Senate Bill 256) which requires a court clerk to collect a \$35 fee from the person against whom a paternity order was entered. (Of this \$35, \$9 is retained by the court and \$26 is transmitted to the Department of Public Health.) The bill would specify that regardless of whether this fee was collected, the clerk would transmit and the public health department would process the report of the paternity order in the same manner as if the fee were collected.

DNA testing, etc. Current law allows blood and tissue typing and DNA profile results, along with calculations of probability of paternity, to be admitted as evidence in paternity actions. (DNA stands for deoxyribonucleic acid, the substance found in all living things, and whose molecular structure contains genetic information. "DNA profile" means "the patterns of fragments of deoxyribonucleic acid used both to identify individuals and to study the relatedness of individuals.") Under the bill, a written report on test results and any calculation of the probability of paternity would be filed with the court and served on the alleged father. The father would have 14 days to file with the court any objections to the report. If no objection was filed, the test results and the written report would be admitted without the need for foundation testimony or other proof of authenticity or accuracy. If an objection was filed within the 14-day period, the court would hold a hearing on the motion of either party to determine the admissibility of the result or written report. The objecting party would have the burden of proving that foundation testimony or other proof of authenticity or accuracy was necessary for admission of the result or written report.

Custody orders. The court would have to include provisions on custody and visitation in an order of filiation, providing there was no dispute regarding custody. If there was a custody or visitation dispute, the court would immediately enter an order temporarily establishing custody and visitation. Pending a hearing on resolution of the dispute, the court could also refer the matter to the friend of the court for a report and recommendation. In a dispute regarding custody or visitation, the prosecutor, a county-appointed attorney, or a court-appointed attorney could not be required to represent either party regarding that dispute.

Service of paternity orders. Within the time prescribed by court rule, the party, attorney, or agency that secured the signing of an order of filiation would have to serve a copy of the order on all parties to the action and file proof of service with the court clerk.

(Note: One amendment to the paternity act may have an unintended effect. Under 1992 amendments to the act [enacted by Public Act 289 of 1992], a paternity action may be instituted until January 1, 1995 [which was two years after the effective date of the 1992 amendments] for a child

who turned 18 between August 15, 1984 and June 2, 1986. House Bill 4916, which was signed into law on December 29, 1994 and given immediate effect, replaced the language providing for the January 1, 1995 deadline with language specifying a deadline of March 1, 1993.)

FISCAL IMPLICATIONS:

The Senate Fiscal Agency (SFA) reported that Senate Bill 800 would have no fiscal impact on the Department of Social Services because it codifies existing DSS policy. The SFA also reported that the bill would have no fiscal impact on courts. The SFA reported that House Bill 4916 would increase administrative costs related to the new requirement of entering default judgments and filing results of blood, tissue, or DNA tests. There also would be costs associated with court-appointed attorneys who cannot afford a private attorney in custody disputes. The magnitude of the administrative costs could not be determined as data were not available on the number of cases in which alleged fathers do not appear before the court, or the number of objections raised by alleged fathers as to their paternity. (1-13-95)

The Department of Social Services (DSS) reports that failure to meet OBRA mandates regarding paternity procedures would threaten quarterly advances on the approximately \$105 million that the state receives annually to fund its child support enforcement efforts. (12-1-94)

ARGUMENTS:

For:

The bills would clarify and revise Michigan's procedures for establishing paternity along the lines required by federal law, thereby enabling Michigan to meet federal mandates and preserve federal child support funding of over \$100 million annually. By streamlining procedures to establish paternity, the bills would serve a larger policy purpose of ensuring that children born out of wedlock received the benefits of child support payments and the child support enforcement system. Establishment of paternity may also secure for a child other benefits such as social security benefits, pension benefits, and other rights of inheritance. And, when a father pays child support, a child may be kept out of poverty, with obvious benefits for the child, society, and the welfare budget.

For:

In addition to helping the state to meet OBRA mandates regarding timely establishment of paternity, House Bill 4916 would provide for custody to be at least temporarily established when paternity is established. The bill thus would formalize custodial arrangements and help to prevent the kinds of child-snatchings that sometimes happen when a father seeks to avoid child support obligations by forcibly taking children for whom no formal custody order had been issued.

Against:

House Bill 4916 fails to use the opportunity to make various improvements in the Paternity Act. Such improvements would include providing for interim paternity orders pending the birth of a child, thus promoting early father-child bonds and giving children the benefits of having fathers actively involved in their lives. Additional improvement would be gained by more equitably allocating fees and expenses between the parties, including the recently-added \$35 fee that is at present to be paid by the father, regardless of who initiated the paternity action. The Paternity Act also provides for the court to order a father to pay for medical expenses in connection with the pregnancy and birth; such expenses should be equitably allocated between the parents according to their relative ability to pay.

For:

House Bill 4916 would promote the public interest in accurate birth records by requiring courts and the Department of Public Health to process paternity orders and amend birth certificates regardless of whether the newly-established \$35 fee was paid. Courts would continue to collect the fee where possible, but there are many times when the fees cannot be collected, and families and the public should not have to bear the consequences of inaccurate birth records.

Response:

The fee was instituted in response to an overwhelming backlog that the Department of Public Health was experiencing with regard to processing orders of filiation and correcting birth certificates. There may be concerns that the bill would remove incentives to be diligent about collecting or paying the fee.