



**H.B. 242**

123rd General Assembly  
(As Introduced)

**Reps. Jones, Winkler, Sutton, Corbin, Krebs, Pringle, Netzley, Padgett, Van Vyven, Hood, Tiberi, Hartnett, D. Miller, Jolivette, Sulzer, Schuler, Allen, James, Willamowski, Smith, O'Brien, Netzley, Damschroder, Sykes, Hollister, Young**

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**BILL SUMMARY**

- Permits a court to relieve a person from an order requiring him to pay child support for a child on a motion made at any time based on genetic test results that find there is less than a 5% chance the person or the person's minor male child is the father of the child.
- Declares that the right to this relief is a substantive right regardless of whether the person or the person's minor male child has admitted or acknowledged himself to be, or was presumed or determined to be, the child's father.
- Permits, with certain limitations and after a motion has been granted relieving the person from the child support order, a paternity action to be brought and permits the court to determine the existence of paternity between the person relieved from the order or the person's minor male child and the child subject to the order.

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**CONTENT AND OPERATION**

**Background**

Current law provides that under certain circumstances a man is presumed to be the father of a child and may be ordered by a court or county child support enforcement agency to pay child support. In addition, a court or agency that makes a determination that a man is the father of a child must issue an order requiring the man to pay child support for the child. A court or agency may also order the grandparents of a child to pay support for the child if the child was born to the

unemancipated and unmarried minor children of the grandparents and paternity is established between the child and the male minor.

The Ohio Rules of Civil Procedure provide that in order to request a new trial concerning any issue, including paternity, a party must serve a motion for a new trial no later than 14 days after the entry of the judgment.<sup>1</sup> The Rules also provide that, on motion and on such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect, (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B), (3) fraud, misrepresentation or other misconduct of an adverse party, (4) the judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, or (5) any other reason justifying relief from the judgment. The motion must be made within a reasonable time--for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.<sup>2</sup>

### **The bill**

(secs. 2151.23, 3105.21, 3109.05, 3109.19, 3111.13, 3111.20, 3111.21, 3111.22, 3111.27, 3113.04, 3113.07, 3113.2111, 3113.216, and 3113.31)

The bill provides that notwithstanding Civil Rule 60(B) (see **COMMENT 3**), on motion and on any terms that are just, a court must relieve a party from a final order that requires the party to pay child support if both of the following apply:<sup>3</sup>

- The party submits genetic test results within six months after those genetic test results are determined that find there is less than a 5% chance the party or the party's male minor child (in cases in which a grandparent of the child subject of the child support order is required to pay support) is the father of the child;

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<sup>1</sup> *Civ. R. 59(B)*.

<sup>2</sup> *Civ. R. 60(B)*.

<sup>3</sup> *"Child support" is defined as support for a child that is required by a court-issued or administrative support order issued or modified prior to, on, or after the effective date of the bill under Revised Code sections listed in the bill that require or permit the issuance of support orders.*

- Not more than two years have elapsed since the date the order was issued requiring the party to pay child support for the child.

The bill prohibits a court from rejecting genetic test results solely because the results are based on samples from only the party or male minor and the child.

The filing of a motion under the bill for relief from the child support order does not affect the finality of the order or suspend its operation. If a court grants a motion relieving a party from a child support order, the granting of the motion does not prevent any person from subsequently filing an administrative or court action to establish a parent and child relationship between the child and the party who was relieved from the child support order or the male minor, provided that the person cannot file more than one such action in any two-year period regarding the party or male minor and the child. If a person files an action to establish the existence of a parent and child relationship after the motion for relief from the child support order is granted, the court may enter a judgment in that action determining the existence of a parent and child relationship between the party who was relieved from the child support order or the male minor and the child, except that a judgment of paternity may not be entered unless genetic tests taken subsequent to the granting of the motion indicate that there is a statistical probability that the party previously relieved from the child support order or the male minor is the natural father of the child.

The bill provides that if relief from a child support order is granted and the party relieved, the male minor, or any relative of the party or male minor has companionship or visitation rights with the child, the court granting the relief must immediately send written notice to the court that issued the order granting companionship or visitation rights. On receipt of the notice, the court must terminate the companionship or visitation rights.

The bill also states that the General Assembly declares that the right to obtain relief from a child support order provided in the bill based on scientific evidence that the party or the male minor is not the father of the child is a substantive right (see **COMMENT 3**). A party who is required to pay support under a child support order is entitled to obtain relief from the order under the bill regardless of whether the party or male minor at any time prior to the filing of the motion for relief from the order:

- Was married to the mother of the child;
- Acknowledged paternity of the child in a writing sworn to before a notary public;

- Was named with his consent as the child's father on the child's birth certificate;
- Was required to support the child by a written voluntary promise or a court order;
- Signed with his consent the child's birth certificate as an informant;
- Was named in an acknowledgment of paternity that a court entered on its journal or that has become final;
- Was presumed to be the natural father according to law;
- Was determined to be the father of the child in a parentage action;
- Otherwise admitted, acknowledged, or was determined to be the child's father.

A person paying child support is entitled to obtain relief from a child support order under the bill regardless of whether the child support order was issued prior to, on, or after the bill's effective date.

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## COMMENT

1. In *Strack v. Pelton* (1994), 70 Ohio St.3d 172, the Ohio Supreme Court addressed a situation in which a man made a Rule 60(B) motion for relief from a divorce decree that found him to be the father of a child of the terminated marriage and required him to pay child support. At the time of the divorce proceedings, blood-grouping tests were conducted on the parties that did not exclude the man as the father. Nine years after the divorce decree was entered, the human leukocyte antigen genetic test was conducted on the parties and it showed that the man was not the child's father. However, the trial court denied the 60(B) motion and the Supreme Court affirmed the trial court's decision. The Supreme Court reasoned that the motion was based on "new evidence" that was not presented within the one year time limitation required by the new evidence provision of Rule 60(B)(2). Thus, even though the man was not the father, he was not relieved from the judgment finding paternity and the child support order.

2. In *Cuyahoga Support Enforcement Agency v. Guthrie* (1999), 84 Ohio St.3d 437, the Supreme Court addressed a situation in which Guthrie, although notified that an administrative paternity proceeding had been commenced against him, failed to appear at the hearing. When the Cuyahoga Support Enforcement Agency filed a paternity action against him in the juvenile court, he again failed to

respond or appear. Several months after paternity was determined and a support order issued, Guthrie received a notice of default. At that time, he asked for legal counsel and genetic testing. Based on the results of genetic tests ordered by the magistrate, the juvenile court found that Guthrie was not the child's father and vacated the earlier order. In affirming the trial court decision to vacate the paternity determination and support order, the Supreme Court held: (1) a Civ. R. 60(B)(2) motion to vacate a paternity determination and support order is not appropriate because paternity test results obtained after a paternity determination are not "newly discovered evidence" if the test results were based on technology that was available at the time the original paternity determination was made, (2) a Civ. R. 60(B)(4) motion to vacate a paternity determination and support order is not appropriate because the motion is intended to provide relief to those subjected to circumstances they had no opportunity to foresee or control and Guthrie could have asserted his rights at the administrative or court hearing, but voluntarily and deliberately chose not to do so, and (3) juvenile courts have authority to vacate a court-issued paternity determination and child support order under Revised Code § 3111.16. The *Guthrie* decision does not apply to administrative orders or to court orders arising out of divorce or dissolution proceedings and therefore has a narrower focus than H.B. 242.

3. Article IV, Section 5(B) of the Ohio Constitution grants the Supreme Court authority to prescribe rules governing practice and procedure in all courts of the state. Any statute that infringes on the practice and procedure matters encompassed in those rules is unconstitutional. Pursuant to its constitutional authority, the Supreme Court adopted a number of rules, including the Ohio Rules of Civil Procedure. The provisions of the bill that address relieving a party from a final judgment, order, or proceeding requiring a man, as the father of a child, to pay support for the child, may conflict with Civil Rule 60(B) governing relief from judgment. This conflict may be present even though the bill states specifically that the General Assembly finds the right to relief from such a judgment, order, or proceeding to be a substantive right and not a procedural matter.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-10-99	p. 286

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