



**Sub. H.B. 242\***  
123rd General Assembly  
(As Reported by S. Judiciary)

**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, Damschroder, Sykes, Hollister, Young, Boyd, Ford, Ferderber, Ogg, DePiero, Barrett, Britton, Gooding, Buchy, Flannery, Hoops, Vesper, Patton**

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**BILL SUMMARY**

- Requires a court to grant a person relief from a final judgment, court order, or administrative determination or order determining him or a male minor to be the father of a child or requiring him or a male minor to pay child support for a child based on genetic test results that find there is a zero per cent probability that the person or male minor is the father of the child and certain other criteria.
- Prohibits a court from relieving a person or male minor from a paternity determination or support order if the court determines that the person or male minor knew he was not the father of the involved child before being presumed to be the father under Ohio's Parentage Law, admitting being the father, or the occurrence of other specified acts.
- Requires genetic tests on which relief is granted under the bill to be conducted by qualified examiners authorized by the court or the Department of Human Services or by a genetic testing laboratory accredited by the American Association of Blood Banks.
- Permits a court that grants relief from a child support order to cancel child support arrearages owed under the child support order.

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\* *This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Provides that nothing in the bill limits any actions that may be taken to recover child support previously paid under the child support order from which relief was granted.
- Declares that the right to relief under the bill is a substantive right obtainable only by presentation of genetic evidence.
- Permits, with certain limitations and after a motion has been granted relieving the person or male minor from a child support order, a paternity action to be brought and permits the court to determine the existence of paternity between the person or the male minor and the child subject to the order.
- Provides that, if a person brings a paternity action after relief is granted under the bill to again establish a parent-child relationship between the person or the male minor who obtained relief and the child subject to the order from which relief was granted, the person bringing the paternity action will be liable for all court costs of the action and the reasonable attorney's fees of the opposing party if the court determines no parent-child relationship exists.
- Permits a court to order genetic tests on its own motion and requires it to order genetic tests on the motion of a party and requires the requester of the genetic tests to pay for the tests.
- Prohibits a court that issues an order requiring a parent to pay an amount for the current support of a child from making an award requiring that parent to pay an amount for that parent's failure to support the child (arrearages) prior to the date the court issues the order for the payment of current support and prohibits that court from requiring that parent to pay all or any part of the reasonable expenses of the mother's pregnancy and confinement, if certain specified criteria are met.

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## CONTENT AND OPERATION

### *Relief from paternity and support determinations due to DNA evidence--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 male child of the grandparents, and paternity is established between the child and the male minor child of the grandparents.

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 (Civ. R. 59(B)). 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, and for reasons (1), (2), and (3), above, not more than one year after the judgment, order, or proceeding was entered or taken. (Civ. R. 60(B).)

**Relief from paternity and support determinations due to DNA evidence--  
operation of the bill**

**Cause of action and venue**

The bill provides that notwithstanding the provisions to the contrary in Civil Rule 60(B) (see **COMMENT 3**) and in accordance with the bill's procedures, a person may file a motion for relief from a final judgment, court order, or administrative determination or order that determines that (1) the person or a male minor for whom the person is paying child support is the father of a child or (2) that requires the person or the male minor to pay child support. The person is required to file the motion in the court of common pleas of the county in which the original judgment, court order, or administrative determination or order was made. (R.C. 3113.2111(A)(1).)

The bill further provides that upon the motion of any adverse party or upon its own motion, the court in which the above action is brought may transfer the action to the county in which an adverse party resides when it appears to the court that the location of the original venue presents a hardship for that adverse party (R.C. 3113.2111(A)(2)).

### **Judicial grant or denial of relief**

The bill provides that upon the filing of a motion for relief under the bill, a court must grant relief from the aforementioned final judgment, court order, or administrative determination or order if all of the following apply: (1) the court receives genetic test results from a genetic test administered no more than six months prior to the filing of the motion for relief that finds that there is a zero per cent probability that the person or male minor is the father of the child, (2) the person or male minor has not adopted the child, and (3) the child was not conceived as a result of artificial insemination in compliance with R.C. 3111.30 to 3111.38 (Nonspousal Artificial Insemination Law) (R.C. 3113.2111(B)(1)).

The bill also prohibits a court from **denying** relief from a final judgment, court order, or administrative determination or order that is the subject of a motion for relief filed under the bill solely because of the occurrence of any of the following acts if the person or male minor at the time of or prior to the occurrence of that act **did not know** that he was not the natural father of the child (R.C. 3113.2111(B)(2)):

- (1) The person or male minor married the mother of the child.
- (2) The person or male minor acknowledged his paternity of the child in a writing sworn to before a notary public.
- (3) The person or male minor was named as the child's natural father on the child's birth certificate with the valid consent of the person or male minor.
- (4) The person or male minor was required to support the child because of a written voluntary promise or by a court order or an administrative support order.
- (5) The person or male minor validly signed the child's birth certificate as an informant as provided in R.C. 3705.09 as that section existed prior to January 1, 1998.
- (6) The person or male minor was named in an acknowledgment of paternity of the child that a court entered upon its journal pursuant to former R.C. 2105.18.
- (7) The person or male minor was named in an acknowledgment of paternity of the child that has become final.
- (8) The person or male minor was presumed to be the natural father of the child.

(9) The person or male minor was determined to be the father of the child in a parentage action.

(10) The person or male minor otherwise admitted or acknowledged himself to be the child's natural father.

Additionally, the bill prohibits a court from **granting** relief from a final judgment, court order, or administrative determination or order that is the subject of a motion for relief filed under the bill if the court determines, by a preponderance of the evidence, that the person or male minor **knew** that he was not the natural father of the child before any of the following (R.C. 3113.2111(C)):

(1) Any act listed in (1) to (7), above, occurred.

(2) The person or male minor was presumed to be the natural father of the child under any circumstances not based on genetic testing.

(3) The person or male minor otherwise admitted or acknowledged himself to be the child's father.

#### **Genetic test provisions**

The bill provides that in any action for relief instituted under the bill, if the genetic test results submitted in connection with the motion for relief are solely provided by the moving party, the court, upon its own motion, may order and, upon the motion of any party to the action, must order the child's mother, the child, and the alleged father to submit to genetic tests. The clerk of the court must schedule the genetic testing no later than 30 days after the court issues its order. (R.C. 3113.2111(D)(1).)

Additionally, if the mother is the custodian of the child and willfully fails to submit the child to genetic testing, if the alleged father of the child willfully fails to submit himself to genetic testing, or if the alleged father is the custodian of the child and willfully fails to submit the child to genetic testing, the court must issue an order determining the motion for relief against the party failing to submit themselves or the child to the genetic testing. If a party shows good cause for failing to submit to genetic testing or for failing to submit the child to genetic testing, the court cannot consider the failure to be willful. (R.C. 3113.2111(D)(2).)

The bill also provides that the party requesting the genetic tests must pay any fees charged for the tests, unless the custodian of the child is represented by the child support enforcement agency in its role as the agency providing enforcement of child support orders, in which case the child support enforcement

agency must pay the costs of genetic testing if it requests the tests. The child support enforcement agency or the person who paid the fees charged for the genetic testing may seek reimbursement for the fees from the person against whom the court assesses the costs of the action. (R.C. 3113.2111(D)(3).)

The bill requires the genetic tests to be made by qualified examiners who are authorized by the court or the Department of Human Services or by a genetic testing laboratory accredited by the American Association of Blood Banks. An examiner conducting a genetic test, upon the completion of the test, must send a complete report of the test results to the clerk of the court that ordered the test. (R.C. 3113.2111(D)(4).)

### **Post relief motions and determinations**

Subsequent to a court granting a motion that relieves a person or male minor from a final judgment, court order, or administrative determination or order under the bill, any person may file an action to establish a parent-child relationship between the person or male minor who was granted relief and the child who is the subject of the judgment, court order, or administrative determination or order from which relief was granted. No person may file more than one action of that type in any two-year period regarding the person or male minor who was granted relief and the child. A court, pursuant to a motion filed under the bill and in accordance with Ohio's Parentage Law, may enter a judgment in the action that determines the existence of a parent-child relationship between the person or male minor granted relief and the child only if genetic tests taken subsequent to the granting of the motion for relief under the bill indicate that there is a statistical probability that the party or the male minor is the natural father of the child. If a person files such an action after the granting of relief under the bill and the court determines that no parent-child relationship exists between the person or the male minor and the child, the court must require the person who filed the action to pay all court costs of the action and the reasonable attorney's fees of the opposing party. (R.C. 3113.2111(E).)

The bill provides that if a court grants relief from a judgment, court order, or administrative determination or order pursuant to the bill and the person who is relieved from the judgment, court order, or administrative determination or order, the male minor, or any relative of the person or male minor has been granted companionship or visitation rights with the child, the court must determine whether the order granting those rights should be terminated, modified, or continued. If a court grants relief from a judgment, court order, or administrative determination or order for the payment of child support pursuant to this section and child support arrearages are owed, the court may issue an order canceling that arrearage. Nothing in the bill limits any actions that may be taken by the person or

male minor granted relief to recover child support paid under the judgment or order from which relief was granted. (R.C. 3113.2111(F) and (G).)

### **Loser pays**

The bill provides that if relief from a judgment, court order, or administrative order for the payment of child support is not granted pursuant to the provisions of the bill, the court denying the relief must require the person who filed the motion for relief to pay all court costs of the action and the reasonable attorney's fees of the opposing party (R.C. 3113.2111(H)).

### **Orders affected by the bill**

The bill states that, except as otherwise provided in the bill, a party is entitled to obtain relief under the bill regardless of whether the final judgment, court order, or administrative determination or order from which relief is sought was issued prior to, on, or after the effective date of the bill (R.C. 3113.2111(I)).

### **Other provisions**

The bill defines "child support" as support for a child that is included in a support order issued or modified prior to, on, or after the effective date of the bill under the existing Revised Code sections that require or permit the issuance of court or administrative support orders. The definition does not include support orders issued in other states. (R.C. 3113.2111(J)(1).)

The bill defines "genetic tests" and "genetic testing" to mean either: (1) tissue or blood tests, or (2) DNA typing of blood and buccal cell samples, including typing and comparison of the DNA from the blood of one person and buccal cells of another. A buccal cell comes from the cheek inside the mouth. (R.C. 3113.2111(J)(2) by reference to R.C. 3111.09, which is not in the bill.)

The bill states that the General Assembly hereby declares that it is a person's or male minor's substantive right to obtain relief from a final judgment, court order, or administrative determination or order that determines that the person or male minor is the father of a child or that requires the person or male minor to pay child support for a child. The person or male minor may obtain relief from a final judgment, court order, or administrative determination or order only if relief is granted based on genetic evidence that the person or male minor is not the father of the child who is the subject of the judgment, court order, or administrative determination or order. (Section 3.)

**Court orders for support for the time period prior to the issuance of an order for current support**

**Existing law**

An action to determine the existence or nonexistence of the father and child relationship may not be brought later than five years after the child reaches the age of 18. At any time prior to the limitation date, an action may be brought to determine the existence or nonexistence of such a relationship and if the existence of the father and child relationship is found, the mother may be eligible for an award of support for the time period prior to the date of the determination of a father and child relationship. The judgment or order must direct the father to pay all or any part of the reasonable expenses of the mother's pregnancy and confinement. (R.C. 3111.05 and 3111.13(C).) When a court is determining whether to require a parent to pay an amount for that parent's failure to support a child prior to the date the court issues an order requiring that parent to pay an amount for the current support of that child, it must consider all relevant factors, including, but not limited to, any monetary contribution either parent of the child made to the support of the child prior to the court issuing the order requiring the parent to pay an amount for the current support of the child. (R.C. 3111.13(F)(3).)

**Operation of the bill**

The bill provides that a court cannot require a parent to pay an amount for that parent's failure to support a child prior to the date the court issues an order requiring that parent to pay an amount for the current support of that child or to pay all or any part of the reasonable expenses of the mother's pregnancy and confinement, if both of the following apply: (1) at the time of the initial filing of an action to determine the existence of the parent and child relationship with respect to that parent, the child was over three years of age, and (2) prior to the initial filing of an action to determine the existence of the parent and child relationship with respect to that parent, the alleged father had no knowledge and had no reason to have knowledge of his alleged paternity of the child. For purposes of the above provisions, the mother of the child may establish that the alleged father had or should have had knowledge of the paternity of the child by showing, by a preponderance of the evidence, that she performed a reasonable and documented effort to contact and notify the alleged father of his paternity of the child. (R.C. 3111.13(F)(4)(a) and (b).)

A party is entitled to obtain modification of an existing order for arrearages issued under these provisions of the bill regardless of whether the judgment, court order, or administrative support order from which relief is sought was issued prior to, on, or after the effective date of the bill. (R.C. 3111.13(F)(4)(c)).

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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
Reported, H. Family Services	10-13-99	pp. 1268-1269
Passed House (77-13)	11-09-99	pp. 1335-1337
Reported, S. Judiciary	05-10-00	p. 1681

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