

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

BILL: [Am. Sub. H.B. 242](#)

DATE: May 17, 2000

STATUS: As Enacted — Effective October 27, 2000

SPONSOR: [Rep. Jones](#)

LOCAL IMPACT STATEMENT REQUIRED: Yes

CONTENTS: **Requires a court to relieve a party from a judgement, order or proceeding that establishes paternity or that requires the party to pay child support, if genetic testing determines there is a zero percent probability that the party or the party's minor male child is father of the child in question, and makes other changes in the child support law**

State Fiscal Highlights

STATE FUND	FY 2001	FY 2002	FUTURE YEARS
General Revenue Fund			
Revenues	Potential negligible loss	Potential negligible loss	Potential negligible loss
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2001 is July 1, 2000 - June 30, 2001.

- LBO assumes a negligible potential decrease in state funds in situations where child support payments made on behalf of public assistance clients are no longer collected.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2000	FY 2001	FUTURE YEARS
Counties			
Revenues	Minimal gain plus loss of in perhaps the tens of thousands of dollars	Minimal gain plus loss of in perhaps the tens of thousands of dollars	Minimal gain plus loss of in perhaps the tens of thousands of dollars
Expenditures	Minimal net increase	Minimal net increase	Minimal net increase

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Some courts may experience additional minimal expenditures associated with additional genetic testing the court may require of the parties to the motion for relief.
- Similarly, some county child support enforcement agencies (CSEAs) may experience additional minimal expenditures associated with additional genetic testing requested by some custodial parents represented by the CSEA in its support enforcement role.
- If the court grants relief from a child support order, whether the case is a public assistance related case or a nonpublic case, it would require the county child support enforcement agency (CSEA) again to establish the



paternity of the child. Thus, the CSEA would incur additional costs in order to handle the workload associated with the establishment of paternity and the subsequent child support order. The volume of work involved in such overturned cases is unknown. However, LBO estimates costs associated with this provision will be minimal.

- Other provisions of the bill prevent a court from awarding an amount for the father's failure to support the child prior to the date the court issues the order. As a result, some CSEAs may experience an indeterminate but likely negligible decrease in costs associated with support order enforcement and collection efforts in certain cases.
- To the extent that provisions of the bill will reduce child support collections in some cases, courts and CSEAs—which are required by law to impose a processing charge of the greater of two percent of the support payment or \$1 on child support receipts—will experience a loss of revenue, the magnitude of which is uncertain, but likely to be in the tens of thousands of dollars statewide each year.
- Increased expenditures incurred to establish paternity earn federal reimbursement at a rate of 66 percent. Thus there is a minimal, but not offsetting, gain in federal reimbursement.

Detailed Fiscal Analysis

Provisions of the Bill

The bill provides that the court must relieve a party from a paternity determination or child support order if genetic test results submitted with the motion demonstrate that there is zero percent probability that the party or the male minor is the father of the child in question. The bill permits the court to issue an order canceling the arrearage and includes a provision explicitly stating that the bill's provisions should not be seen as limiting any actions that may be taken by the party relieved of the child support order to recover child support paid under the order. The bill only applies to administrative or court orders issued in Ohio.

The bill makes it a substantive right to be so relieved from a child support order, regardless of whether a person was married to the mother; has admitted paternity, or been named as the father of the child by voluntary written promise, court order, or birth certificate documentation; or was presumed or determined to be the natural father of the child in any circumstance or action under O.R.C. Chapter 3111.

A party is prohibited from obtaining relief from a child support order or paternity determination under the bill, in the following circumstances: if the party or male minor adopted the child; if the child was conceived as a result of artificial insemination; or if the court determines by a preponderance of evidence that the party or male minor knew the child was not his child before being presumed to be the natural father or otherwise admitting or acknowledging himself to be the child's father.

The bill specifies that if a party who has been granted companionship or visitation rights is granted relief from a judgment, order or proceeding under the bill, the court issuing the relief order must notify the court granting companionship or visitation rights, which must then determine whether those rights should be terminated, modified, or continued. The bill also provides that if relief is not granted,

the court must require the person filing the action under the bill to pay all court costs of the action and reasonable attorneys fees of the opposing party.

The bill requires that all genetic testing required as a condition for moving for relief or ordered by the court in connection with the motion for relief be performed by a genetic testing laboratory accredited by the American Association of Blood Banks or by qualified examiners authorized by the court or by the Department of Human Services (ODHS). The bill specifies that the party requesting the testing is responsible for paying any fees associated with the tests, unless the custodian of the child is represented by a child support enforcement agency (CSEA) in which case the CSEA must pay the costs of the testing. The bill makes explicit that the agency or person who paid the fees charged for the testing may seek reimbursement for those fees from the person against whom the court assesses the costs of the action.

The bill also permits the court to order the child's mother to submit genetic tests if the results on which the motion for relief is founded are based on samples from only the party or minor male and the child.

The bill also prohibits a court from requiring a parent to pay an amount for that parent's failure to support a child prior to the date of the court's support order if the alleged father had no knowledge or reason to have knowledge of his paternity prior to the initial filing for paternity establishment and if the child in question was over the age of three at the time of the initial filing.

Estimate of the Number of Paternity Disestablishment Motions

It is difficult to predict the number of challenges to child support orders that will occur under the bill, but LBO believes that fewer than 1,000 challenges, most of which will be successful because test results must accompany the motion, will occur annually. Precise records concerning genetic testing and paternity disestablishment in Ohio are lacking; this estimate is arrived at on the basis of information received from the ODHS Office of Child Support (OCS), its contract laboratories, and from the Iowa Department of Human Services' Bureau of Collections.

ODHS spends \$4 million annually on genetic testing in paternity cases, primarily involving mothers and/or children receiving state assistance, but including also a very small number of persons regardless of income. ODHS' Office of Child Support (OCS) contracts with four different private laboratories whose prices vary, but OCS estimates an average of \$165 per test-trio (mother, child, and putative father). Based on this average, the Department funds genetic testing in approximately 24,242 cases annually. OCS officials state that "well less than 5 percent" (1,212) of that total caseload involves paternity *dis*establishment; the vast majority involve initial determination of paternity. According to contracting laboratories, the exclusion rate (i.e., the percentage of tests that exclude the possibility that a person is the father of the child in question) for all genetic testing is approximately 32 percent. Applying this overall exclusion rate to the estimated number of paternity disestablishment motions ($1,212 \times .32 = 388$) yields an approximation of roughly 400 cases with genetic test results sufficient to warrant a motion annually. The actual number may be higher or lower depending upon whether the exclusion rate is higher or lower in the subgroup of disestablishment cases that come forward under the bill.

Experience in other states suggests even fewer successful challenges may result. As late as 1999, only Iowa and Alaska had statutory paternity disestablishment. The Iowa arrangement is more comparable to that proposed in the bill; specifically, Iowa law permits motions to disestablish paternity at any time during the child's minority if supported by genetic testing that finds there is less than a five percent chance of paternity. Under the Iowa law, child support arrearages are satisfied by the State and all court costs are borne by the movant. According to the Iowa Department of Human Services' Bureau of Collections, not more than 50 cases appear annually involving a successful challenge to a child support order. Given that the U.S. Census Bureau estimates the population of Iowa and of Ohio at 2.9 million and 11.2 million, respectively, as of July 1998, and assuming similar social patterns in both states, one can extrapolate that Ohio may experience as few as 200 successful challenges under the bill.

Costs of Genetic Testing

The bill requires the movant to submit genetic test results, less than six months old, when filing the motion for relief. The costs of these genetic tests will fall to the party filing the motion. The court may order and, if any party to the action so moves, must order the child's mother, the child, and the alleged father to submit to tests. In such cases, the party requesting the genetic testing (i.e., the court, the child support enforcement agency [CSEA], or the child's mother) must pay the fees associated with genetic testing. As noted above, the costs of such a test average \$165 per trio and it is reasonable to anticipate between 200 and 1,000 motions for relief will be filed annually as suggested above.

LBO cannot predict precisely the frequency with which parties to such motions for relief will request additional genetic testing, but *if additional tests were required in all such cases*, the most-cost scenario, the total costs associated with this testing would range between \$33,000 and \$165,000. The actual fiscal impact will depend not only upon the number of motions for relief filed and the tendency of the courts and the parties to the cases to request additional testing, but also upon the proportion of such requests made by the courts and by the CSEAs representing custodial parents (as opposed to the custodial and non-custodial parent). Although LBO cannot predict this proportion, it anticipates that the costs to local governments statewide will be minimal.

Paternity Establishment and Support Collections

County child support enforcement agencies (CSEAs) will experience a minimal increase in expenditures necessary to re-establish paternity and obtain new child support orders as a result of those motions under the bill that are successful. The increased CSEA expenditures are somewhat offset by the 66 percent federal match that is provided for child support enforcement activities. In addition, LBO estimates a net negligible loss in state revenues as a result of some number of cases in which child support payments made on behalf of public assistance clients will no longer be collected; all child support payments collected on behalf of Temporary Assistance to Needy Families (TANF) clients, up to the total amount of the cash assistance received by the obligee, are retained by the State.

Child Support Arrearages and Recovery Issues

The bill permits the court to issue an order canceling the arrearage and includes a provision explicitly stating that the bill's provisions should not be seen as limiting any actions that may be taken by the party relieved of the child support order to recover child support paid under the order. Counties may experience an increase in expenditures should relieved parties pursue civil action against the governmental entities responsible for issuing, establishing, and enforcing the judgement, order, or proceeding that required the party to pay child support in error. The magnitude and distribution of this potential increase in expenditures is dependent upon the likelihood and, to some degree, the potential for success of such legal action.

The bill also limits the ability of a court to award an amount of back support in certain cases. Under current law, a custodial parent may file for paternity establishment at any time up to five years after the date on which the child reaches the age of majority and courts may award not only an amount for current support, but also an amount for the non-custodial parent's failure to support the child from the date of birth to the date the support order was issued, as well as for all or any part of the reasonable expenses of the mother's pregnancy and confinement. Under the bill, if the alleged father had no knowledge or reason to have knowledge of his paternity prior to the initial filing for paternity establishment and, if the child in question was over the age of three at the time of the initial filing, a court is prohibited from awarding an amount for the failure to support the child prior to the date it issues the support order.

To the extent that such cases arise and to the extent that child support receipts are reduced as a result of this provision, there likely will be a decrease in enforcement costs borne by the county CSEAs. However, to the extent that such cases arise and that child support receipts decline, the courts and CSEAs also will experience a minimal loss of revenue. Current law requires courts and CSEAs to impose a processing fee that is the greater of two percent of the support payment or \$1. The size of that loss cannot be predicted; however, given that that provision applies to the universe of child support orders and not just to the subset of paternity establishment challenges estimated above, the magnitude of this loss of revenue to the counties likely will be in the tens of thousands of dollars.

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