

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1441

By: Glover

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 3, as amended by Section 2, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1998, Section 3), which relates to dispute of certain presumptions; removing restrictions on authority to dispute certain presumptions relating to paternity; authorizing certain support; amending 10 O.S. 1991, Section 70, as last amended by Section 1, Chapter 323, O.S.L. 1998 (10 O.S. Supp. 1998, Section 70), which relates to court determination of paternity; providing for dismissal of certain actions relating to payment of child support, if a person is determined not to be the father of a child; providing for removal of name of person from birth certificate; amending Section 6, Chapter 356, O.S.L. 1994, as amended by Section 21, Chapter 402, O.S.L. 1997 (56 O.S. Supp. 1998, Section 238.6B), which relates to administrative determination of paternity; removing certain time provisions relating to ability to contest certain determinations; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 1991, Section 3, as amended by Section 2, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1998, Section 3), is amended to read as follows:

Section 3. A. The presumption of paternity created pursuant to Section 2 of this title may be disputed only by the husband or wife, the putative father or their descendants. Paternity may be established pursuant to Section 70 of this title.

B. If a child is born during the course of the marriage and is reared by the husband and wife as a member of their family without disputing the child's legitimacy for a period of at least two (2) years, the presumption cannot be disputed by anyone other than the husband or wife.

C. If the child is not the legitimate child of the husband, the husband is not bound to maintain the wife's child unless he agrees to do so in writing.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 70, as last amended by Section 1, Chapter 323, O.S.L. 1998 (10 O.S. Supp. 1998, Section 70), is amended to read as follows:

Section 70. A. Except as otherwise provided by law, a woman who gives birth to a child is the natural mother of the child.

B. Paternity may be established by:

1. A notarized written statement of the father and mother acknowledging paternity pursuant to Section 1-311.3 of Title 63 of the Oklahoma Statutes. A statement acknowledging paternity shall have the same legal effect as an order of paternity entered in a court or administrative proceeding.

- a. The statement may be rescinded by the mother or acknowledging father within sixty (60) days after the statement is signed by filing a signed rescission of affidavit acknowledging paternity form with the Office of the State Registrar of Vital Statistics.
- b. If the mother was married at the time of conception or birth, and her husband is not the natural father of the child, and the time to dispute paternity pursuant to Section 3 of this title has not expired, the husband may sign a husband's denial of paternity form, which must be filed along with the affidavit acknowledging paternity.
- c. The rescission of affidavit acknowledging paternity and the husband's denial of paternity forms shall be prescribed by the Department of Human Services and made available at the same locations as the affidavit acknowledging paternity provided for in Section 1-311.3 of Title 63 of the Oklahoma Statutes;

2. Scientifically reliable genetic tests, including but not limited to blood tests;

3. District or administrative court order; or

4. As otherwise provided by law.

C. 1. If at any time the person signing the acknowledgment of paternity is determined not to be the father of the child, pursuant to scientifically reliable genetic testing, upon request by such person, the Department or the court shall dismiss any pending court or administrative collection proceedings against the father and the father will be released from any court-ordered or Department of Human Services order of payments for the support and maintenance of the child.

2. The State Registrar of Vital Statistics shall remove the name of the person listed as the father from the birth certificate upon notice from the Department that such person has been excluded as the father of the child by genetic testing. Once paternity is established, the State Registrar of Vital Statistics shall correct its records and amend the birth certificate to reflect the father's name;

D. Proceedings to establish paternity may be brought in the appropriate district court or through the Department of Human Services, Office of Administrative Hearings: Child Support. Proceedings may be brought by the mother, father, guardian, or custodian of the child, the Department of Human Services, the district attorney, a public or private agency or authority chargeable with the support of the child, or by the child. The court, after determining paternity in a civil action, shall enter an order providing for the support and maintenance of the child. The social security numbers of both parents and the child shall be included on the child support order summary form provided for in Section 120 of Title 43 of the Oklahoma Statutes which shall be filed with all orders establishing paternity. The district court

may further make provision for custody and visitation based upon the best interests of the child.

~~D.~~ E. An action to establish paternity shall be available to a child if commenced within one (1) year after the child reaches the age of eighteen (18).

SECTION 3. AMENDATORY Section 6, Chapter 356, O.S.L. 1994, as amended by Section 21, Chapter 402, O.S.L. 1997 (56 O.S. Supp. 1998, Section 238.6B), is amended to read as follows:

Section 238.6B A. The Department of Human Services may serve a notice of paternity and support obligations on an individual alleged to be the parent of a child for whom paternity has not been judicially or administratively established. Venue for such action shall be, at the option of the plaintiff, in the county where the mother, father or child resides. Service of the notice shall be in the same manner as a summons in a civil action pursuant to Section 2004 of Title 12 of the Oklahoma Statutes.

B. The notice shall be verified and have attached to it a copy of any affidavit acknowledging paternity or any blood or other genetic test results, if available, and shall state:

1. The name and date of birth of any minor children, along with the name of the natural mother and custodian, if different than the mother or putative father;

2. The amount of child support and other support, including the amounts ordered pursuant to paragraph 3 of this subsection, to be ordered in accordance with the Child Support Guidelines provided in Section 118 of Title 43 of the Oklahoma Statutes;

3. The amount of reimbursement for the costs of the birth and the reasonable expenses of providing for said child which has accrued or is accruing, provided that the liability for the above costs shall be imposed for five (5) years preceding the issuance of the notice;

4. That health insurance for the child whenever such insurance is available through employment or other group health insurance plan and that payment of proportionate share of any unreimbursed health costs shall be required;

5. The amount of reimbursement requested for the costs of the genetic test to determine paternity, if any;

6. That an immediate income assignment will be effectuated for payment of current support and any judgments entered;

7. That in the absence of genetic test results or an affidavit acknowledging paternity a notice to appear and show cause why the administrative judge should not determine him to be the father will be issued;

~~8. That if the affidavit acknowledging paternity was signed within sixty (60) days prior to the date of the notice paternity may be disputed;~~

9. That a father may object to the notice of paternity and support obligations. To object he must, within twenty (20) days of the date of service, make a written request for a hearing to show cause why he should not appear for genetic testing, and be determined to be the father of any such children, liable for the support requested in the notice, for the costs accrued and accruing or the amount to be paid thereon;

~~10. That if the affidavit acknowledging paternity was signed within sixty (60) days prior to the date of the notice, or in the absence of such affidavit, paternity may be disputed. If~~

9. That if paternity is disputed, the Administrative Law Judge shall enter an order directing genetic tests to determine paternity and advise the putative father that if he fails to appear he will be in default and an order will be entered against him. If the putative father is not excluded, and the statistical probability of paternity according to scientifically reliable genetic tests including but not limited to blood tests is ninety-eight percent

(98%) or less and he is contesting the issue of paternity, he may request the Department to remove the action to district court to determine paternity. If the statistical probability of paternity is greater than ninety-eight percent (98%), or the statistical probability is ninety-eight percent (98%) or less and the father does not request the Department to remove to district court within fifteen (15) days of the Department mailing the genetic test or other test results, determination of paternity shall become final for all intents and purposes and may be overturned only by appeal to district court. Any such request shall be in writing and served on the Department personally or by registered or certified mail;

~~11.~~ 10. That if the putative father fails to appear at the genetic testing, show cause, or any subsequent hearing or if no notice to appear for genetic testing was served and no hearing is requested on or before twenty (20) days from the date of service, the finding of paternity shall become final and a support order entered. The order shall be docketed with the district court in the county of residence of the custodian or the child. If neither the custodian nor the child reside in the state, the order shall be docketed in the county of residence of the noncustodial parent. The support order shall be enforced in the same manner as an order of the district court; and

~~12.~~ ~~At~~ 11. That at any time after paternity is determined, the Department may set a hearing to determine the child support obligation, if child support has not already been established. Failure to appear at such hearing will result in a support order being entered against the noncustodial parent.

C. The Department may accept voluntary acknowledgments of support liability and support amounts.

D. If the father's name has not been entered on the child's birth certificate, the Department of Human Services shall notify the

State Registrar of Vital Statistics who shall enter the father's name on the birth certificate.

E. If child support services are being provided pursuant to Section 237 of this title, prior to the issuance of the notice of paternity and support obligation, a father who denies paternity may request that a genetic test or other test be administered. The request for testing shall be in writing and served on the Department personally or by registered or certified mail.

F. If a request for testing is made pursuant to subsection B or E of this section, the Department shall arrange for the test and, pursuant to rules promulgated by the Department, may advance the cost of such testing. The Department shall mail a copy of the test results by a certificate of mailing to the father's last-known address. If a request for genetic tests was made pursuant to subsection E of this section, the Department shall mail the notice of paternity and support obligations to the father by certificate of mailing to the father's last-known address.

G. If genetic testing excludes a person from being a natural parent, the Department shall dismiss any pending court or administrative collection proceedings against the person. The State Registrar of Vital Statistics shall remove the name of the person listed as the father from the birth certificate, upon notice from the Department that such person has been excluded by genetic testing. Once paternity is established, the State Registrar of Vital Statistics shall correct its records and amend the birth certificate to reflect the father's name.

H. If both the custodian and the father agree to change the surname of the child to that of the father, the Department may order the name changed. Upon receipt of an order changing the child's surname, the State Registrar of Vital Statistics shall correct its records and amend the birth certificate to reflect the name change.

I. All docketed administrative orders shall be modified and enforced in the same manner as an order of the district court.

SECTION 4. This act shall become effective November 1, 1999.

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