SFA BILL ANALYSIS

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House Bill 4691 (as reported by the Committee of the Whole)
Sponsor: Representative David M. Gubow
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 12-4-89

RATIONALE

The Paternity Act provides a procedural vehicle for determining the paternity of children born out of wedlock and enforcing the obligation to support them. In determining paternity, the court may order either parent or the child to submit to blood or tissue typing tests. If a party refuses to submit, the Act provides that, "in addition to any other remedies available", the refusal must be disclosed at trial unless good cause is shown for nondisclosure. The Act does not specify any other sanction for refusal, however, and the Michigan Supreme Court ruled in July 1988 that a contempt citation is an appropriate sanction but the use of a default judgment conflicted with the Act (Bowerman v MacDonald, 431 Mich 1). The Court reasoned that, "Contempt can be applied in addition to the disclosure of refusal at trial. Default, if applied, obviates the need for a trial and cannot therefore be said to be used in addition to the disclosure at trial." Paternity actions are fundamentally civil in nature, however, and the court in other civil actions may enter a default judgment against a party for failing to comply with discovery orders. In view of these facts, as well as the overwhelming evidence that blood and tissue tests can provide, it has been suggested that default judgments also be allowed against parties to paternity suits who refuse to submit to testing.

In addition, although the law has been stripped over the years of various aspects that once echoed criminal procedure, at least one vestige of criminality remains: a statement that the alleged father cannot be compelled to testify. Given the civil nature of these actions, which involve sharply contested questions of fact, it has been suggested also that this provision be eliminated.

CONTENT

The bill would amend the Paternity Act to allow a court, in a paternity suit in which any party refused to submit to a court-ordered blood or tissue typing test, either to enter a default judgment at the request of the appropriate party or, if a trial were held, to allow disclosure of the refusal unless good cause were shown for not disclosing that fact. The bill would delete the requirement that refusal be disclosed at trial absent good cause for nondisclosure. The bill also would delete the provision under which the alleged father cannot be compelled to testify.

The bill also provides that tissue typing tests could include tests of deoxyribonucleic acid (DNA), in addition to tests of red cell antigens, red cell isoenzymes, human leukocyte antigens, and serum proteins, as currently allowed.

MCL 722.715 and 722.716

SENATE COMMITTEE ACTION

The Senate Committee of the Whole adopted an amendment to allow tissue testing by testing DNA.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local units of government. Savings realized by the courts due to a possible

minimal reduction in workload from default judgments under this bill cannot be estimated.

ARGUMENTS

Supporting Argument

A determination of the facts is crucial in paternity actions, and the most important discovery procedure in these cases is blood and tissue testing. The Act recognizes the evolution of blood testing technology to determine the probability of paternity with great precision and allows test results to be introduced, not only to exclude an alleged father from paternity, but also, if he is not excluded, to determine the likelihood that he is actually the father. Since the purpose of the Act is to determine paternity and enforce support obligations, a default judgment would seem to be more appropriate and effective than a contempt citation in achieving that goal. Under the bill, both remedies would be available to the court in the event that a party refused to submit to court-ordered testing.

Supporting Argument

As the Michigan Supreme Court pointed out in the Bowerman case, "The nature of paternity actions has undergone considerable evolution since the passage of the original Bastardy Act of 1846. With minor exceptions, the civil aspects of the action...have steadily increased while those aspects reflecting principles of criminal procedure have been reduced or eliminated altogether... Even under [the 1846] statute, however, punishment of the father was never among its purposes, and the act did not provide for criminal penalties." Although both the Court and the Legislature have made it abundantly clear that paternity actions are civil in nature, the Act still contains a provision added in 1966 that an alleged father cannot be compelled to testify. The Court in Bowerman suggested that perhaps this was included in recognition of the fact that a purported father could still face arrest and incarceration. A 1986 amendment, however, eliminated all provisions permitting arrest of an alleged father and required that service be accomplished only by summons served in the same manner as provided by court rules for the service of process in civil actions. Further, the need to protect against self-incrimination does not exist in civil cases in the same way as in criminal cases, in which a guilty verdict can deprive the defendant of his freedom. Since no rationale remains for permitting an alleged father to refuse to testify, the provision allowing this refusal should be eliminated.

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