



**House  
Legislative  
Analysis  
Section**

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**AMEND ESTABLISHMENT OF  
PATERNITY**

**House Bill 4624 (Substitute H-1)  
Sponsor: Rep. James McNutt**

**House Bill 4669 (Substitute H-2)  
Sponsor: and Rep. James Ryan**

**First Analysis (11-21-96)  
Committee: Judiciary and Civil Rights**

***THE APPARENT PROBLEM:***

Historically, there has been a long standing presumption that a child born during a marriage is the child of the husband and wife of that marriage. As a result, a man who believed himself to be the biological father of a child born to woman married to someone else has had little opportunity to attempt to prove that he was in fact the biological father of the child. In addition to this longstanding presumption, the Michigan Supreme Court's 1991 decision in Girard v Wagenmaker strictly limited the standing (ability) of a man other than the husband of the mother to attempt to prove that he was the biological father of the child (see BACKGROUND INFORMATION). According to the court's decision in Girard v. Wagenmaker, in order for a putative father (other than the husband) to be allowed to bring a suit to prove that he is the biological father of a child that was born to a married woman, a determination must have been made that the mother's husband was not the father of the child. Obviously, this strictly limited the putative father's chances of establishing paternity since prior to his attempt to establish paternity there was probably little reason for a determination to have been made that the child's father was not the mother's husband.

Many biological fathers felt that ruling unfairly limited their standing to seek a determination of paternity since no similar limitations were placed upon mothers or on the Family Independence Agency when they sought to establish paternity. Last spring, Senate Bill 604 attempted to make a change in the law to allow a biological father to challenge the paternity of a child born during the mother's marriage to someone else. However, difficulties regarding the possible harm that could occur if a putative father were allowed to raise the question of paternity regarding a child of an otherwise intact family caused this language to be removed from the bill. However, the question remained whether an alternative could be offered that would protect intact families while also providing biological fathers the opportunity to establish a relationship with their children. Legislation

has been offered to remedy the alleged unfairness of the current restrictions on putative fathers' ability to seek a determination of paternity without presenting too great a risk of harm to intact families.

***THE CONTENT OF THE BILLS:***

House Bill 4624 would amend the Paternity Act (MCL 722.711) to allow an alleged biological father standing to assert paternity in cases where the mother was married to someone else at the time of the child's conception and/or birth. The primary change effected by the bill would be to change the definition of "child born out of wedlock" to include a child that the court "determines" (instead of "has determined") to have been born or conceived during a marriage but was not the issue of that marriage. (It is expected that this change would invalidate the ruling in the Girard case and serve to eliminate the requirement that a prior court determination that a child was not the issue of the marriage be made before an alleged biological father could attempt to establish paternity of the child.)

House Bill 4669 would amend the Child Custody Act (MCL 722.27 and 722.27a) prohibit a biological father who did not have an established parent-child relationship with the child from being granted custody unless there was evidence to establish beyond a reasonable doubt that granting custody to the biological father would be in the best interest of the child. In addition, when a court determined the frequency, duration, and type of parenting time to be granted to a biological father who had established paternity under the paternity act, the bill would require the court to consider as a factor in its decision whether the biological father had an established parent-child relationship with the child.

The bills are tie-barred to each other.

House Bills 4624 and 4669 (11-21-96)

**BACKGROUND INFORMATION:**

Girard v Wagenmaker (437 Mich 231 [1991]). This dispute began when the plaintiff filed a complaint alleging that he was the father of a child conceived and born while the defendant-mother was married to her husband. The complaint alleged that the child was not a child of that marriage, and requested a determination of the child's paternity and an order of filiation if the plaintiff was found to be the child's biological father. The defendant filed a motion for summary disposition, alleging that the plaintiff did not establish that the child was a "child born out of wedlock". The Michigan Supreme Court examined the Paternity Act's definition of "child born out of wedlock": a child born during a marriage whom the court "has determined" to be not the issue of the marriage. (Although the Act subsequently was amended to refer to a child "born or conceived" during a marriage, the court stated that this would not have changed its result.) Based on its interpretation of the Paternity Act, the court held that, "...the Legislature did not express an intention to grant a putative father standing to establish the paternity of a child born while the mother was legally married to another man without a prior determination that the mother's husband is not the father". The court concluded that the plaintiff in this case had no standing to bring an action to determine the paternity of the defendant's child.

**FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, House Bill 4624 would have no significant fiscal impact on the Family Independence Agency, and House Bill 4669 would have no fiscal impact on the state or local government. (11-18-96)

**ARGUMENTS:****For:**

These bills attempt to repair an injustice that has been done to biological fathers. The Michigan Supreme Court has unjustly prevented biological fathers from access to their children by prohibiting them from asserting their paternity in cases where the mother of the child was married to someone else. The bills attempt to give a biological father the same right to prove his paternity as is currently provided to the Family Independence Agency and the mother of the child. Given the technological advances in establishing paternity, the presumption that the husband is the father of a child born during a marriage is no longer necessary. Paternity can be proved or disproved with a simple blood test.

By changing the definition of "child born out of wedlock", the bills would address the type of situation found in the Girard v Wagenmaker case and allow putative fathers to file for a determination of paternity of a child born or conceived during a marriage regardless of whether there had been a prior determination that the child was born out of wedlock. Even so, the change does not mean that the alleged father would necessarily be able to establish paternity; the bill would simply allow for the court to make a determination at the time the alleged father makes his claim of paternity instead of requiring that the question have been answered before the assertion is made. The bills also protect intact families by barring a biological father who has had no parental relationship with a child from attempting to get custody of the child (unless it can be shown that it would be in the best interests of the child) and requires that the lack of a parent-child relationship between the biological father and the child be taken into account in deciding to what degree parenting time should be granted.

**Against:**

The basis for the presumption that a child born to a husband and wife is the issue of the marriage has nothing to do with the accuracy of the means for proving paternity. The reason for the presumption is to protect intact families from outside individuals disrupting the family unit by asserting paternity of a child. Not only do such claims damage the marital bonds between the husband and wife, they can be extremely upsetting for the child. If a child is being cared for by a husband and wife who the child believes are its parents, should another man be allowed to essentially destroy that family merely because of his belief that he is the biological father of the child? It hardly seems likely that allowing such an occurrence would be in the best interests of the child. While undoubtedly the biological father of a child may have many reasons for wanting to prove that a particular child is in fact his offspring, the question is whether any of those reasons justifies the risk of harm to the child and to the family of which the child is a part. These bills will simply provide an opportunity for selfish biological fathers to destroy an intact family so that they can claim paternity of a child who might be better off without them.

**POSITIONS:**

A representative of the Family Law Section - State Bar of Michigan testified in support of the concept of the bills. (11-20-96)

A representative of the Prosecuting Attorneys Association of Michigan testified in support of the bills. (11-20-96)

House Bills 4624 and 4669 (11-21-96)

Analyst: W. Flory

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.