Legislative Analysis

Mitchell Bean, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

ACKNOWLEDGEMENT OF PARENTAGE FORM

House Bill 4161 (Substitute H-2)
Sponsor: Rep. John Pastor
Committee: Judiciary

First Analysis (5-4-05)

BRIEF SUMMARY: The bill would revise the information required to be on an acknowledgment of parentage form and would specify that signing the form would give initial custody of a minor child to the mother without prejudice to a court's determination of each parent's custodial rights.

FISCAL IMPACT: The bill would have no direct fiscal impact.

THE APPARENT PROBLEM:

An affidavit of parentage (or acknowledgement of parentage form) can be signed by a mother and father in order to establish the parentage of a child born out of wedlock or a child born into a marriage but conceived by someone other than the spouse. Reportedly, hospitals rely on a signed parentage form to avoid disputes regarding to whom to release a baby born out of wedlock – the mother or the father. Though signing the form is completely voluntary, in practice fathers of children born out of wedlock report that they are often forced by hospital staff to sign the form immediately, sometimes as a condition of seeing the baby.

The form is required by law to contain several notices that inform the parents that the form is a legal document, that completion of the form is voluntary, that the mother has custody unless otherwise determined by the court or agreed to by the parties in writing, that either parent may assert a claim for parenting time or custody, that both parents have a right to notice and a hearing regarding the adoption of a child, and that both parents bear responsibility to support the child and comply with any court or administrative order for child support.

Despite the inclusion of these notices on the form and the underlying statutory authority for those notices, it is reported that some judges have interpreted the existence of a signed affidavit of parentage to mean that the father has voluntarily terminated his parental rights and so have used the signed form as a basis to deny custody and/or parenting time. Therefore, legislation is being offered to clarify the law regarding the meaning of the affidavit of parentage.

THE CONTENT OF THE BILL:

Currently, after the parents sign an acknowledgment of parentage form, the mother is presumed to have custody of the minor child unless otherwise determined by the court or

otherwise agreed upon by the parties in writing. House Bill 4161 would amend the Acknowledgment of Parentage Act to instead specify that after the acknowledgment of parentage form was signed, the mother would have initial custody of the minor child, without prejudice to the determination of either parent's custodial rights, until otherwise determined by the court or agreed upon by the parties in writing and acknowledged by the court.

A similar revision would also be made to one of the notices that must be included on the acknowledgment of parentage form. Instead of stating that the mother has custody of the child unless otherwise determined by the court or agreed by the parties in writing, the bill would instead require that the notice specify that the mother would have initial custody, without prejudice to the determination of either parent's custodial rights, until otherwise determined by the court or agreed by the parties in writing and acknowledged by the court. This grant of initial custody to the mother could not, by itself, affect the rights of either parent in a proceeding to seek a court order for custody or parenting time.

MCL 722.1006 and 722.1007

BACKGROUND INFORMATION:

The affidavit of parentage is required by law to include notices on the form that it is a legal document, that completion of the acknowledgment is voluntary, that the mother has custody of the child unless otherwise determined by the court or agreed by the parties in writing, that either parent may assert a claim in court for parenting time or custody, that both parents have a right to notice and a hearing regarding the adoption of the child, and that both parents have the responsibility to support the child and to comply with a court or administrative order for the child's support.

The statute and the notice on the form also specify that by signing the acknowledgment, both parents waive the right to blood or genetic testing to determine if the man is the biological father of the child; any right to a court appointed attorney, including the prosecuting attorney, to represent either party in a court action to determine if the man is the biological father of the child; and the right to a trial to determine if the man is the biological father of the child. Moreover, Section 4 of the Paternity Act (MCL 722.714) states that an action to determine paternity cannot be brought under the act if the child's father acknowledges paternity under the Acknowledgment of Parentage Act or if the child's paternity is established under the law another state.

Regarding inclusion on the child's birth certificate, if the affidavit of parentage is completed at the time of birth and provided to hospital staff before the birth certificate is prepared and filed, the birth certificate will include the father with no need for a separate application or fee. However, if the birth certificate is completed and filed before the affidavit of parentage, the birth certificate is not automatically changed when the affidavit is filed – a birth record correction must be requested on a separate form and a fee paid.

ARGUMENTS:

For:

When parents of a child are not married, or when a married woman gives birth to a child conceived by a man other than her husband, the parents may sign an affidavit of parentage. Signing the form establishes the paternity of the child and acts as consent for the father's name to be included on the birth certificate. It presumes that mothers have custody of the minor children; hospitals like it because it settles the question as to whom to release the baby and who to take direction from regarding medical decisions that might need to be made. The form is required by statute to include several notices of the rights set in motion by signing the form. Included is the "right" of either parent to assert a claim in court for parenting time or custody. The signed form also avoids court action to determine paternity by DNA testing or trial by waiving the "rights" to such an action under the Paternity Act.

The language of the form appears clear, but many involved in family law issues report that in practice, some judges are ignoring the "right" for both parents to seek custody and parenting time and interpreting the waiver for contesting paternity under the Paternity Act to mean that the father voluntarily gave up all his rights for custody and parenting time just by signing this form. Thus, according to advocates for fathers, signing the acknowledgement of parentage form for many men equates with saying "goodbye" to their children.

Reportedly, judges have asked advocates to seek legislation to clarify the intent of the Acknowledgment of Parentage Act. The bill as reported from committee would do just that. The bill amends the language to clarify that signing the acknowledgment of parentage form would give initial custody to the mother and would do so without prejudice to the court's determination of either parent's custodial rights, until the court determined otherwise or a written agreement between the parents was acknowledged by the court. Similar wording would be required to be included on the notices contained on the affidavit of parentage.

Some have raised a concern – especially in cases involving domestic violence – that the meaning of "initial" is unclear, and that mothers may be hesitant to sign the form if they believe their custody of the child is only temporary. However, it would appear that the use of the word "until" means that the mother would retain custody of the child until such time that a court order, or a court-approved agreement between the parents, altered that arrangement. And, it should be remembered that a court must base its decision to grant custody, joint custody, or parenting time to the father on what is in the child's best interest. The rewording of the statute should not erode a mother's rights.

It is believed that the bill's wording reflects the spirit and intent of the act, and should prevent the instances of judicial misinterpretation that have stripped some fathers of the ability to be involved in the lives of their children. It does not address all of the concerns of interested parties, but it does fairly open the door for fathers who have signed the form to seek judicial review of custody and parenting time requests.

Response:

The acknowledgment of parentage form is important in establishing paternity and therefore establishing child support orders. So, the wording, or rewording of the statute is important as there are aspects of the form that if manipulated could affect federal funding to the state's child support collection program. Any changes should be carefully scrutinized to avoid unintended consequences.

Against:

The bill as reported by the committee continues the gender bias evident in current law by giving initial custody to the mother without any form of judicial review regarding the best interest of the child. Unless the mother agrees in writing to immediate parenting time, it may be months before the father can obtain court-ordered parenting time, thus delaying opportunities to bond with the child and for the child to form a healthy attachment to the father.

Some, therefore, feel that the bill as introduced is superior to the H-2 version reported by the committee. As introduced, the bill repealed Section 6 of the Acknowledgment of Parentage Act which presumed the mother to have custody of the minor child unless otherwise determined by a court or by written agreement of the parents.

Further, rather than waiting until after the child is born to determine custody and parenting time, perhaps the issue could be explored to require, in the case of parents who are not married or living together, a pre-birth agreement, reviewed by the courts, as to initial custody and parenting time to cover the first few months after birth.

Response:

Just repealing Section 6 does not in and of itself remove all gender bias. Even if Section 6 was repealed, Section 7 would still need to be amended because it requires a notice to be included on the form that mirrors the language in Section 6.

Regarding the issue of gender bias, giving initial custody to the mother establishes the initial caretaker. Historically, mothers fill that role. The types of care provided by mothers, such as breastfeeding, also support the practicality of keeping this tradition. Also, hospital staffs do need to know which parent has the legal authority to make medical decisions for the child. When domestic violence is involved, the batterer often is not thinking about the child's best interest, but often how to use the child to gain power over the other parent.

Until alternative solutions to the issue can be explored, the bill as reported from committee still protects the traditional role of the mother as the early caretaker and represents a positive step forward in resolving the problems experienced by fathers who had judges terminate their parental rights or refuse to order parenting time by virtue of signing an acknowledgment of parentage form.

Against:

The bill as reported from committee would require <u>all</u> cases involving unmarried parents to go to court to either establish a custody and/or parenting time order or to have their

written agreement acknowledged. This would expand court dockets and disadvantage low-income parents who do not have the financial resources to pay the legal fees – reported to be thousands of dollars.

Response:

The bill primarily clarifies existing law – that signing the affidavit of parentage does not affect either parent's custodial rights. Currently, though, the written agreement between the parents does not have to be presented to the court where under the bill it would have to be. However, legal aid services around the state provide free or low cost legal services to low-income parents. And, parents can seek assistance from the statewide Community Dispute Resolution Program. Supported by the state supreme court, the centers provide free or low-cost mediation services. Mediation services are currently used in Michigan and other states to assist parents in a non-adversarial setting to resolve various family-related issues, including custody, child support, and parenting time plans. Mediation is not recommended for situations involving domestic violence. Mediation is very successful, with agreements reached in over 80 percent of cases (this includes all issues such as landlord/tenant, disputes between neighbors, etc.). Reportedly, compliance with agreements reached in mediation exceeds 90 percent. Additional information can be obtained from the Office of Dispute Resolution, State Court Administrative Office, by calling 517-373-4839 or on the web at http://courts.michigan.gov/scao/dispute/odr.htm.

Against:

The acknowledgment of parentage form (affidavit of parentage) also alerts the parents that by signing the acknowledgment, they waive the right under the Paternity Act to DNA testing to determine paternity, the right to representation by a court appointed attorney or prosecuting attorney in a court action to determine paternity, and the right to a trial to determine paternity. Many believe that the bill should amend this notice.

Proponents of the change argue that situations exist in which the mother wrongly identifies a man as the baby's father, and that information regarding the identity of the true birth father may not surface for months or years. However, once a man signs the acknowledgment of parentage form, his only recourse to is to file a petition with the court to have the acknowledgment form revoked, thus restoring his right to seek paternity testing or a paternity trial. According to fathers' rights advocates, this is an expensive course of action and courts rarely allow the revocation. The result is that some men are required to continue to pay for the support of a child who is not theirs, while the real father has no obligations. Some also argue that this is not fair to the child who is denied the opportunity to know the true identity of his or her biological father. Considering the importance of knowing a person's family medical history, this can be important knowledge.

In addition, though a man has a right to demand DNA testing before signing the acknowledgment of parentage form, the results would not be available before the deadline for filing the birth certificate. Therefore, some men feel rushed to sign the form so as to be included on the birth certificate, even though they could file at a later time to have the birth certificate corrected to include their names.

Further, demanding DNA testing immediately after the child's birth is problematic for relationships as the request can be viewed as an accusation of unfaithfulness. Added to this is pressure by hospital staff who want a signed form in order to avoid liability regarding to whom to release the baby. Instead of an outright waiver of the right to contest paternity, the statute should allow a parent to request DNA testing at any time.

Response:

Even if the language pertaining to waiving the rights to contest paternity were stricken from this section of law, the Paternity Act would still have to be amended, as Section 4 of that act, MCL 722.714(2), prohibits an action under its provisions to determine paternity if the child's father acknowledges paternity by signing the affidavit of parentage or if paternity was determined under the law of another state. Perhaps the issue could be explored further and both acts amended in separate legislation.

POSITIONS:

Dads of Michigan PAC supports the bill as reported from committee, but is interested in additional revisions to the Acknowledgment of Parentage Act. (5-3-05)

The Family Law Section of the State Bar of Michigan does not oppose a modification of the current statute to clarify that there is no legal presumption in favor of the mother in a custody dispute, but opposes the bill as introduced. (4-20-05)

A representative of the Department of Human Services (formerly Family Independence Agency) indicated a position of neutrality. (4-27-05)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson