

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

3

HOUSE BILL 1119
Committee Substitute Favorable 5/10/93
Third Edition Engrossed 5/12/93

Short Title: Paternity Establishment Changes.

(Public)

Sponsors:

Referred to:

April 19, 1993

A BILL TO BE ENTITLED

AN ACT REGARDING THE ESTABLISHMENT OF PATERNITY OF A CHILD BY
AFFIDAVIT, CHANGING THE LAWS OF EVIDENCE RELATING TO
PATERNITY TESTING IN CIVIL ACTIONS, AND GIVING PRIORITY TO THE
TRIAL OF PATERNITY ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-101(f) reads as rewritten:

"(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate ~~without written consent, under oath, of both the father and the mother. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.~~ unless the child's mother and father complete an affidavit acknowledging paternity, the completed affidavit acknowledging paternity is filed with the registrar, and the affidavit contains the following:

- (1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's only possible father;
- (2) A statement by the father declaring that he is the natural father of the child;

1 (3) Information explaining in plain language the effect of signing the
2 affidavit, including a statement of parental rights and responsibilities
3 and an acknowledgment of the receipt of this information; and

4 (4) The social security numbers of both parents.

5 Upon the execution of the affidavit, the declaring father shall be listed as and
6 presumed to be the natural father of the child. The presumption of paternity arising
7 under this section may be rebutted in a legal action only by clear and convincing
8 evidence. The surname of the child shall be determined by the mother, except if the
9 father's name is entered on the certificate, the mother and father shall agree upon the
10 child's surname. If there is no agreement, the child's surname shall be the same as that
11 of the mother."

12 Sec. 2. G.S. 8-50.1 reads as rewritten:

13 **"§ 8-50.1. Competency of blood tests; jury charge; taxing of expenses as costs.**

14 (a) In the trial of any criminal action or proceeding in any court in which the
15 question of parentage arises, regardless of any presumptions with respect to parentage,
16 the court before whom the matter may be brought, upon motion of the State or the
17 defendant, shall order that the alleged-parent defendant, the known natural parent, and
18 the child submit to any blood tests and comparisons which have been developed and
19 adapted for purposes of establishing or disproving parentage and which are reasonably
20 accessible to the alleged-parent defendant, the known natural parent, and the child. The
21 results of those blood tests and comparisons, including the statistical likelihood of the
22 alleged parent's parentage, if available, shall be admitted in evidence when offered by a
23 duly qualified, licensed practicing physician, duly qualified immunologist, duly
24 qualified geneticist, or other duly qualified person. Upon receipt of a motion and the
25 entry of an order under the provisions of this subsection, the court shall proceed as
26 follows:

27 (1) Where the issue of parentage is to be decided by a jury, where the
28 results of those blood tests and comparisons are not shown to be
29 inconsistent with the results of any other blood tests and comparisons,
30 and where the results of those blood tests and comparisons indicate
31 that the alleged-parent defendant cannot be the natural parent of the
32 child, the jury shall be instructed that if they believe that the witness
33 presenting the results testified truthfully as to those results, and if they
34 believe that the tests and comparisons were conducted properly, then it
35 will be their duty to decide that the alleged-parent is not the natural
36 parent; whereupon, the court shall enter the special verdict of not
37 guilty; and

38 (2) By requiring the State or defendant, as the case may be, requesting the
39 blood tests and comparisons pursuant to this subsection to initially be
40 responsible for any of the expenses thereof and upon the entry of a
41 special verdict incorporating a finding of parentage or nonparentage,
42 by taxing the expenses for blood tests and comparisons, in addition to
43 any fees for expert witnesses allowed per G.S. 7A-314 whose
44 testimonies supported the admissibility thereof, as costs in accordance

1 with G.S. 7A-304; G.S. Chapter 6, Article 7; or G.S. 7A-315, as
2 applicable.

3 ~~(b) In the trial of any civil action in which the question of parentage arises, the~~
4 ~~court before whom the matter may be brought, upon motion of the plaintiff, alleged-~~
5 ~~parent defendant, or other interested party, shall order that the alleged parent defendant,~~
6 ~~the known natural parent, and the child submit to any blood tests and comparisons~~
7 ~~which have been developed and adapted for purposes of establishing or disproving~~
8 ~~parentage and which are reasonably accessible to the alleged parent defendant, the~~
9 ~~known natural parent, and the child. The results of those blood tests and comparisons,~~
10 ~~including the statistical likelihood of the alleged parent's parentage, if available, shall be~~
11 ~~admitted in evidence when offered by a duly qualified, licensed practicing physician,~~
12 ~~duly qualified immunologist, duly qualified geneticist, or other qualified person. Upon~~
13 ~~receipt of a motion and the entry of an order under the provisions of this subsection, the~~
14 ~~court shall proceed as follows:~~

15 (1) ~~Where the issue of parentage is to be decided by a jury, where the~~
16 ~~results of those blood tests and comparisons are not shown to be~~
17 ~~inconsistent with the results of any other blood tests and comparisons,~~
18 ~~and where the results of those blood tests and comparisons indicate~~
19 ~~that the alleged parent defendant cannot be the natural parent of the~~
20 ~~child, the jury shall be instructed that if they believe that the witness~~
21 ~~presenting the results testified truthfully as to those results, and if they~~
22 ~~believe that the tests and comparisons were conducted properly, then it~~
23 ~~will be their duty to decide that the alleged parent defendant is not the~~
24 ~~natural parent; and~~

25 (2) ~~By requiring the plaintiff, alleged parent defendant or other interested~~
26 ~~party requesting blood tests and comparisons pursuant to this~~
27 ~~subsection to initially be responsible for any of the expenses thereof~~
28 ~~and upon the entry of a verdict of parentage or nonparentage, by taxing~~
29 ~~the expenses for blood tests and comparisons, in addition to any fees~~
30 ~~for expert witnesses allowed per G.S. 7A-314 whose testimonies~~
31 ~~supported the admissibility thereof, as costs in accordance with the~~
32 ~~provisions of G.S. 6-21.~~

33 (b1) In the trial of any civil action in which the question of parentage arises, the
34 court shall on motion of a party, and upon a proper showing, order the mother, the child,
35 and the putative father to submit to one or more blood or genetic marker tests, to be
36 performed by a duly certified physician or other expert. The court shall require the
37 person requesting genetic tests, including a blood test, to pay the costs of the test. If the
38 person requesting the test is indigent, the child support enforcement agency shall pay for
39 the test. The court may, in its discretion, tax as part of costs the expenses for blood or
40 genetic marker tests and comparisons. Verified documentary evidence of the chain of
41 custody of the blood specimens obtained pursuant to this subsection shall be competent
42 evidence to establish the chain of custody. The testing expert's completed and certified
43 report of the results and conclusions of the paternity blood test is admissible as evidence
44 without additional testimony by the expert if the laboratory in which the expert

1 performed the test is accredited for parentage testing by the American Association of
2 Blood Banks. Accreditation may be established by verified statement or reference to
3 published sources. The results of the blood or genetic tests shall have the following
4 effect:

- 5 (1) If the court finds that the conclusion of all the experts, as disclosed by
6 the evidence based upon the test, is that it is unlikely that the alleged
7 parent is the parent of the child, the alleged parent is presumed not to
8 be the parent and the evidence shall be admitted. This presumption
9 may be rebutted only by clear and convincing evidence;
- 10 (2) If the experts disagree in their findings or conclusions, the question of
11 paternity shall be submitted upon all the evidence;
- 12 (3) If the tests show that the alleged parent is not excluded and that the
13 probability of the alleged parent's parentage is less than ninety-seven
14 percent (97%), this evidence shall be admitted by the court and shall
15 be weighed with other competent evidence;
- 16 (4) If the experts conclude that the genetic tests show that the alleged
17 parent is not excluded and that the probability of the alleged parent's
18 parentage is ninety-seven percent (97%) or higher, the alleged parent is
19 presumed to be the parent and this evidence shall be admitted. This
20 presumption may be rebutted only by clear and convincing evidence."

21 Sec. 3. G.S. 49-14 reads as rewritten:

22 **"§ 49-14. Civil action to establish paternity.**

23 (a) The paternity of a child born out of wedlock may be established by civil
24 action at any time prior to such child's eighteenth birthday. A certified copy of a
25 certificate of birth of the child shall be attached to the complaint. Such establishment of
26 paternity shall not have the effect of legitimation.

27 (b) Proof of paternity pursuant to this section shall be ~~beyond a reasonable~~
28 ~~doubt~~ clear and convincing evidence.

29 (c) No such action shall be commenced nor judgment entered after the death of
30 the putative father.

31 (d) If the action to establish paternity is brought more than three years after birth
32 of a child, paternity shall not be established in a contested case without evidence from a
33 blood grouping test, ~~or evidence that the putative father has declined an opportunity for such~~
34 ~~testing-test."~~

35 Sec. 4. This act is effective on October 1, 1993, and Section 2 applies to civil
36 paternity actions filed on or after that date.