

9-1-1993

## DOMESTIC RELATIONS Parent and Child Relationship Generally: Revise Provisions Related to Determination of Paternity

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### Recommended Citation

Nicki N. Vaughan, *DOMESTIC RELATIONS Parent and Child Relationship Generally: Revise Provisions Related to Determination of Paternity*, 10 GA. ST. U. L. REV. (1993).

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## DOMESTIC RELATIONS

### *Parent and Child Relationship Generally: Revise Provisions Related to Determination of Paternity*

**CODE SECTIONS:** O.C.G.A. §§ 19-7-45, -46 (amended)  
**BILL NUMBER:** HB 90  
**ACT NUMBER:** 613  
**SUMMARY:** The Act provides for a rebuttable presumption of the paternity of a child born out of wedlock where scientifically credible genetic testing establishes at least a ninety-seven percent probability of paternity. The Act lists parentage-determination testing methods.  
**EFFECTIVE DATE:** July 1, 1993

#### *History*

The Act, part of Governor Zell Miller's welfare reform package, seeks to increase the State's ability to force fathers to be responsible for the support of their children born out of wedlock.<sup>1</sup> Although prior law had provided for admissibility of evidence of genetic testing, there was no presumption in law with respect to that evidence.<sup>2</sup>

#### *HB 90*

The Act amends Code sections 19-7-45 and 19-7-46,<sup>3</sup> which relate to determination of paternity, by striking the old sections and replacing them with new sections that change provisions relating to both testing methods and evidentiary procedures.

Code section 19-7-45,<sup>4</sup> substantively unchanged, provides that, after an action regarding paternity has been brought, the court may, upon motion of any interested party, including the Department of Human Resources as petitioner, order the mother, alleged father, and child to submit to reasonably accessible testing as specified in section 19-7-46.<sup>5</sup> Where the action is brought prior to the birth of the child, testing will

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1. Telephone Interview with Rep. Tom Bordeaux, House District No. 151 (Apr. 7, 1993) [hereinafter Bordeaux Interview]. Rep. Bordeaux is one of Governor Miller's Floor Leaders and co-sponsored the bill for the Governor. *Id.*

2. *Id.*

3. O.C.G.A. §§ 19-7-45, -46 (Supp. 1993).

4. *Id.* § 19-7-45 (Supp. 1993).

5. *Id.* § 19-7-46 (Supp. 1993).

be ordered as soon as medically feasible after birth.<sup>6</sup> Results of the testing must be made known to all interested parties as soon as they become available.<sup>7</sup>

The Act requires that the tests be performed by a qualified licensed physician, immunologist, or other qualified person as determined by the court.<sup>8</sup> The court may also, upon motion, order independent tests by other experts.<sup>9</sup> In all cases, the court has sole authority to determine the number and qualifications of the testing experts.<sup>10</sup> Court orders for testing issued pursuant to this Code section are enforceable by contempt, unless the petitioner refuses testing, in which case the court may dismiss the action on motion of the respondent.<sup>11</sup>

In addition, the Act amends Code section 19-7-46 relating to evidence at trial in paternity proceedings.<sup>12</sup> Subsection (a), which remained unchanged, provides for admissibility of the results of medical tests and comparisons, including the statistical likelihood of the alleged parent's parentage, as long as they are offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist, or other duly qualified person.<sup>13</sup>

As a significant change of the law, subsection (b) creates a rebuttable presumption of the paternity of a child born out of wedlock where scientifically credible parentage-determination genetic testing establishes at least a ninety-seven percent probability of paternity.<sup>14</sup> The bill originally proposed that this presumption could be overcome only by clear and convincing evidence as determined by the trier of fact.<sup>15</sup> This language tracked the language of the Georgia Intestacy Statute applicable to the establishment of the right to inherit by an illegitimate child, reasoning that the standard of proof required to establish the right to inherit should logically be the same as the standard to prove paternity.<sup>16</sup> However, a compromise on the bill, which was reflected in a floor amendment, resulted in a modification of this standard, allowing the presumption of paternity to be rebuttable by presentation of competent evidence as determined by the trier of

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6. *Id.* § 19-7-45 (Supp. 1993).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* § 19-7-46 (Supp. 1993).

13. *Id.* § 19-7-46(a) (Supp. 1993).

14. *Id.* § 19-7-46(b) (Supp. 1993). A House Judiciary Committee substitute bill clarified minor redundant language in the bill as introduced. HB 90 (HCS), 1993 Ga. Gen. Assem.

15. HB 90, as introduced, 1993 Ga. Gen. Assem.

16. Bordeaux Interview, *supra* note 1.

fact.<sup>17</sup> This change significantly weakens the presumption, but reflects the rebuttal standard most commonly used in Georgia law.<sup>18</sup>

Subsection (b) also specifies that acceptable parentage-determination testing includes, though is not limited to, red cell antigen, human leucocyte antigen (HLA), red cell enzyme, and serum protein elecophoresis tests, as well as tests performed by deoxyribonucleic acid (DNA) probes.<sup>19</sup> The addition of DNA testing to the list of acceptable testing methods makes the law conform to current state-of-the-art scientific methodology.<sup>20</sup>

The remainder of the Act, substantively unchanged from the prior law, relates to evidentiary rules. Refusal to submit to a court-ordered test is admissible to show that the alleged father is not precluded from being the father of the child.<sup>21</sup> An expert's opinion concerning time of conception is admissible,<sup>22</sup> as is testimony regarding sexual access to the mother by others around the probable time of conception.<sup>23</sup> The Act concludes with a broad subsection admitting other relevant evidence as appropriate.<sup>24</sup>

The Act facilitates establishment of paternity by both mothers and the Department of Human Resources. This should result in greater responsibility for support on the part of fathers, consequently easing the financial burden on the State. Changes by the floor amendment allowed the bill to be passed so that it was not controversial.<sup>25</sup>

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17. HB 90 (HCSFA), 1993 Ga. Gen. Assem.

18. Bordeaux Interview, *supra* note 1.

19. O.C.G.A. § 19-7-46(b) (Supp. 1993).

20. Bordeaux Interview, *supra* note 1.

21. O.C.G.A. § 19-7-46(c) (Supp. 1993).

22. *Id.* § 19-7-46(d) (Supp. 1993).

23. *Id.* § 19-7-46(e) (Supp. 1993).

24. *Id.* § 19-7-46(f) (Supp. 1993).

25. Bordeaux Interview, *supra* note 1.