

**Second Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 04-0458.01 Jennifer Gilroy

HOUSE BILL 04-1083

HOUSE SPONSORSHIP

Sinclair,

SENATE SPONSORSHIP

Jones,

House Committees

Information & Technology

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING TERMINATION OF CHILD SUPPORT OBLIGATIONS BASED**
102 **UPON DNA EVIDENCE OF NONPARENTAGE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Specifies that conclusive DNA genetic testing results demonstrating that a person is not the biological parent of a child shall constitute a substantial and continuing change in circumstances warranting modification of child support. Directs the court in such cases to terminate the child support installments accruing after the filing of the motion for modification based on the genetic testing results.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
February 27, 2004

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 4 of title 19, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW SECTION to read:

4 **19-4-107.3. Determination of parentage final - modifications -**
5 **exceptions.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF
6 THIS SECTION, AN ORDER DETERMINING PARENTAGE PURSUANT TO THIS
7 ARTICLE IS FINAL.

8 (2) (a) NOTWITHSTANDING THE PROVISIONS SET FORTH IN SECTION
9 19-4-107, AN ORDER DETERMINING PARENTAGE PURSUANT TO THIS
10 ARTICLE SHALL BE MODIFIED OR SET ASIDE IF GENETIC TEST RESULTS
11 BASED ON DNA TESTING, ADMINISTERED IN ACCORDANCE WITH SECTION
12 13-25-126, C.R.S., ESTABLISHES THE EXCLUSION OF THE INDIVIDUAL
13 NAMED AS THE FATHER IN THE ORDER AND ESTABLISHES THAT THE
14 DAMAGE TO THE PURPORTED FATHER THAT WOULD RESULT FROM
15 PRESERVING THE DETERMINATION OF PARENTAGE OUTWEIGHS THE HARM
16 TO THE CHILD THAT MAY RESULT FROM SETTING ASIDE THE
17 DETERMINATION OF PARENTAGE.

18 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (2),
19 A DETERMINATION OF PARENTAGE SHALL NOT BE MODIFIED OR SET ASIDE
20 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) IF:

21 (I) THE INDIVIDUAL NAMED IN THE ORDER ACKNOWLEDGED
22 PATERNITY KNOWING THAT HE WAS NOT THE FATHER OF THE CHILD;

23 (II) THE CHILD WAS ADOPTED BY THE INDIVIDUAL; OR

24 (III) THE CHILD WAS CONCEIVED BY MEANS OF ASSISTED
25 REPRODUCTION.

26 (3) IF THE COURT FINDS THAT THE GENETIC TEST RESULTS BASED
27 ON DNA TESTING CONCLUSIVELY DEMONSTRATE THAT AN INDIVIDUAL

1 NAMED AS THE FATHER IN THE ORDER IS NOT THE BIOLOGICAL PARENT OF
2 THE CHILD AND THAT THE DAMAGE TO THE PURPORTED FATHER THAT
3 WOULD RESULT FROM PRESERVING THE DETERMINATION OF PARENTAGE
4 OUTWEIGHS THE HARM TO THE CHILD THAT MAY RESULT FROM SETTING
5 ASIDE THE DETERMINATION OF PARENTAGE, THE COURT SHALL MODIFY THE
6 PROVISIONS OF ANY ORDER RESPECTING CHILD SUPPORT BY TERMINATING
7 THE CHILD SUPPORT OBLIGATION AS TO INSTALLMENTS ACCRUING
8 SUBSEQUENT TO THE FILING OF THE MOTION.

9 (4) FOR PURPOSES OF THIS SECTION, "DNA" MEANS
10 DEOXYRIBONUCLEIC ACID.

11 **SECTION 2.** 14-10-122, Colorado Revised Statutes, is amended
12 BY THE ADDITION OF A NEW SUBSECTION to read:

13 **14-10-122. Modification and termination of provisions for**
14 **maintenance, support, and property disposition - automatic lien.**

15 (6) (a) A PARTY MAY SEEK TO MODIFY OR SET ASIDE A COURT ORDER FOR
16 CHILD SUPPORT ENTERED PURSUANT TO THIS ARTICLE IF THE PARTY
17 ESTABLISHES THROUGH THE RESULTS OF A GENETIC TEST BASED ON DNA
18 TESTING, ADMINISTERED IN ACCORDANCE WITH SECTION 13-25-126,
19 C.R.S., THE EXCLUSION OF THE PARTY AS THE BIOLOGICAL PARENT OF THE
20 CHILD FOR WHOSE BENEFIT THE CHILD SUPPORT ORDER WAS ENTERED AND
21 ESTABLISHES THAT THE DAMAGE TO THE PURPORTED FATHER THAT WOULD
22 RESULT FROM CONTINUING THE COURT ORDER FOR CHILD SUPPORT
23 OUTWEIGHS THE HARM TO THE CHILD THAT MAY RESULT FROM
24 TERMINATING THE COURT ORDER FOR CHILD SUPPORT.

25 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (6),
26 A COURT ORDER FOR CHILD SUPPORT SHALL NOT BE MODIFIED OR SET
27 ASIDE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (6) IF:

1 (I) THE CHILD SUPPORT OBLIGOR ACKNOWLEDGED PATERNITY
2 KNOWING THAT HE WAS NOT THE FATHER OF THE CHILD;

3 (II) THE CHILD WAS ADOPTED BY THE INDIVIDUAL; OR

4 (III) THE CHILD WAS CONCEIVED BY MEANS OF ASSISTED
5 REPRODUCTION.

6 (c) IF THE COURT FINDS THAT THE GENETIC TEST RESULTS BASED
7 ON DNA TESTING CONCLUSIVELY DEMONSTRATE THAT A PARTY IS NOT THE
8 BIOLOGICAL PARENT OF THE CHILD AND THAT THE DAMAGE TO THE
9 PURPORTED FATHER THAT WOULD RESULT FROM CONTINUING THE COURT
10 ORDER FOR CHILD SUPPORT OUTWEIGHS THE HARM TO THE CHILD THAT
11 MAY RESULT FROM TERMINATING THE COURT ORDER FOR CHILD SUPPORT,
12 THE COURT SHALL MODIFY THE PROVISIONS OF ANY ORDER RESPECTING
13 CHILD SUPPORT BY TERMINATING THE CHILD SUPPORT OBLIGATION AS TO
14 INSTALLMENTS ACCRUING SUBSEQUENT TO THE FILING OF THE MOTION.

15 (d) FOR PURPOSES OF THIS SUBSECTION (6), "DNA" MEANS
16 DEOXYRIBONUCLEIC ACID.

17 **SECTION 3.** 13-25-126 (1) (a), Colorado Revised Statutes, is
18 amended to read:

19 **13-25-126. Genetic tests to determine parentage.** (1) (a) In any
20 action, suit, or proceeding in which the parentage of any child is at issue
21 OR IN ANY ACTION, SUIT, OR PROCEEDING IN WHICH A PERSON SEEKS TO
22 MODIFY OR SET ASIDE A DETERMINATION OF PARENTAGE AND AN ORDER
23 FOR CHILD SUPPORT PURSUANT TO SECTION 19-4-107.3, C.R.S., OR IN ANY
24 PROCEEDING IN WHICH A PERSON SEEKS TO MODIFY OR SET ASIDE AN
25 ORDER FOR CHILD SUPPORT PURSUANT TO SECTION 14-10-122 (6), C.R.S.,
26 upon motion of the court or any of the interested parties, the court shall
27 order the alleged mother, the child or children, and the alleged father to

1 submit to genetic testing and other appropriate testing of inherited
2 characteristics, including but not limited to blood and tissue type, for the
3 purpose of determining probability of parentage. If any party refuses to
4 submit to these tests, the court may resolve the question of parentage
5 against such party to enforce its order if the rights of others and the
6 interests of justice so require.

7 **SECTION 4. Effective date.** This act shall take effect at 12:01
8 a.m. on the day following the expiration of the ninety-day period after
9 final adjournment of the general assembly that is allowed for submitting
10 a referendum petition pursuant to article V, section 1 (3) of the state
11 constitution (August 4, 2004, if adjournment sine die is on May 5, 2004);
12 except that, if a referendum petition is filed against this act or an item,
13 section, or part of this act within such period, then the act, item, section,
14 or part, if approved by the people, shall take effect on the date of the
15 official declaration of the vote thereon by proclamation of the governor.