

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 07-0370.01 Brita Darling

SENATE BILL 07-056

SENATE SPONSORSHIP

Mitchell S.,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATION OF CHILD-RELATED ORDERS BASED ON**
102 **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.)

Allows for an order determining parentage to be modified or set aside in certain situations based on DNA test results.

Requires the court to terminate child support obligations in certain situations if DNA test results establish that the obligor is not the child's biological parent.

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.

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

8 (2) (a) AN ORDER DETERMINING PARENTAGE PURSUANT TO THIS
9 ARTICLE SHALL BE MODIFIED OR SET ASIDE IF GENETIC TEST RESULTS
10 BASED ON DNA TESTING, ADMINISTERED IN ACCORDANCE WITH SECTION
11 13-25-126, C.R.S., ESTABLISH THE EXCLUSION OF THE INDIVIDUAL NAMED
12 AS THE FATHER IN THE ORDER AS THE BIOLOGICAL PARENT OF THE CHILD.

13 (b) IF THE COURT MODIFIES OR SETS ASIDE AN ORDER DETERMINING
14 PARENTAGE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), THEN
15 THE COURT SHALL MODIFY THE PROVISIONS OF THE ORDER RESPECTING
16 CHILD SUPPORT FOR INSTALLMENTS ACCRUING SUBSEQUENT TO THE FILING
17 OF THE MOTION PURSUANT TO SECTION 14-10-122 (6), C.R.S.

18 (3) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF
19 THIS SECTION, NEITHER A DETERMINATION OF PARENTAGE NOR AN ORDER
20 RESPECTING CHILD SUPPORT SHALL BE MODIFIED OR SET ASIDE PURSUANT
21 TO THIS SECTION IF:

22 (a) THE INDIVIDUAL NAMED IN THE ORDER ACKNOWLEDGED
23 PATERNITY PURSUANT TO 19-4-105 (1) (c) (I) KNOWING THAT HE WAS NOT
24 THE FATHER OF THE CHILD;

25 (b) THE CHILD WAS ADOPTED BY THE INDIVIDUAL NAMED IN THE
26 ORDER; OR

27 (c) THE CHILD WAS CONCEIVED BY MEANS OF ASSISTED

1 REPRODUCTION.

2 (4) FOR PURPOSES OF THIS SECTION, "DNA" MEANS
3 DEOXYRIBONUCLEIC ACID.

4 **SECTION 2.** 19-4-105 (2) (c), Colorado Revised Statutes, is
5 amended to read:

6 **19-4-105. Presumption of paternity.** (2) (c) EXCEPT AS
7 OTHERWISE PROVIDED IN SECTION 19-4-107.3, a legal finding of paternity
8 may be challenged in court only on the basis of fraud, duress, or mistake
9 of material fact, with the burden of proof upon the challenger. Any legal
10 responsibilities resulting from signing an acknowledgment of paternity,
11 including child support obligations, shall continue during any challenge
12 to the finding of paternity, except for good cause shown.

13 **SECTION 3.** 19-4-105.5 (5), Colorado Revised Statutes, is
14 amended to read:

15 **19-4-105.5. Commencement of proceedings - summons.** (5) A
16 summons issued upon commencement of a proceeding under this article
17 shall contain the following ~~advisements~~ ADVISEMENT:

18 (a) That a request for genetic tests shall not prejudice the
19 requesting party in matters concerning allocation of parental
20 responsibilities pursuant to section 14-10-124 (1.5), C.R.S. ~~and~~

21 ~~(b) That, if genetic tests are not obtained prior to a legal~~
22 ~~establishment of paternity and submitted into evidence prior to the entry~~
23 ~~of the final order establishing paternity, the genetic tests may not be~~
24 ~~allowed into evidence at a later date.~~

25 **SECTION 4.** 19-4-107 (1), Colorado Revised Statutes, is
26 amended to read:

27 **19-4-107. Determination of father and child relationship - who**

1 **may bring action - when action may be brought.** (1) A child, his OR
2 HER natural mother, or a man presumed to be his OR HER father under
3 section 19-4-105 (1) (a), (1) (b), or (1) (c) or the state, the state
4 department of human services, or a county department of social services,
5 pursuant to article 13 or 13.5 of title 26, C.R.S., or article 5 of title 14,
6 C.R.S., may bring an action AT ANY TIME FOR THE PURPOSE OF DECLARING
7 THE EXISTENCE OR NONEXISTENCE OF THE FATHER AND CHILD
8 RELATIONSHIP PRESUMED UNDER SECTION 19-4-105 (1) (a), (1) (b), OR (1)
9 (c). AFTER THE PRESUMPTION HAS BEEN REBUTTED, PATERNITY OF THE
10 CHILD BY ANOTHER MAN MAY BE DETERMINED IN THE SAME ACTION, IF HE
11 HAS BEEN MADE A PARTY.

12 (a) ~~At any time for the purpose of declaring the existence OR~~
13 ~~NONEXISTENCE of the father and child relationship presumed under~~
14 ~~section 19-4-105 (1) (a), (1) (b), or (1) (c); or~~

15 (b) ~~For the purpose of declaring the nonexistence of the father and~~
16 ~~child relationship presumed under section 19-4-105 (1) (a), (1) (b), or (1)~~
17 ~~(c) only if the action is brought within a reasonable time after obtaining~~
18 ~~knowledge of relevant facts but in no event later than five years after the~~
19 ~~child's birth. After the presumption has been rebutted, paternity of the~~
20 ~~child by another man may be determined in the same action, if he has~~
21 ~~been made a party.~~

22 **SECTION 5.** 19-4-111 (1), Colorado Revised Statutes, is
23 amended to read:

24 **19-4-111. Pretrial proceedings.** (1) As soon as practicable after
25 an action to declare the existence or nonexistence of the father-child
26 relationship has been brought, an informal hearing shall be held if it is
27 determined by the court to be in the child's best interest. The court may

1 order that the hearing be held before a magistrate. The public shall be
2 barred from the hearing if it is determined by the court to be in the best
3 interest of any of the parties. A record of the proceeding or any portion
4 thereof shall be kept if any party requests or the court orders. Rules of
5 evidence need not be observed. At the informal hearing, the judge or
6 magistrate shall give a verbal advisement to the parties that a request for
7 genetic tests shall not prejudice the requesting party in matters concerning
8 allocation of parental responsibilities pursuant to section 14-10-124 (1.5),
9 C.R.S. ~~The judge or magistrate shall further advise the parties that, if
10 genetic tests are not obtained prior to the legal establishment of paternity
11 and submitted into evidence prior to the entry of the final order
12 establishing paternity, the genetic tests may not be allowed into evidence
13 at a later date.~~

14 **SECTION 6.** 19-6-101 (6), Colorado Revised Statutes, is
15 amended to read:

16 **19-6-101. Initiation of proceedings - support - repayment of**
17 **birth-related debt.** (6) A petition filed pursuant to this article shall
18 contain the following ~~advisements~~ ADVISEMENT:

19 (a) That a request for genetic tests shall not prejudice the
20 requesting party in matters concerning allocation of parental
21 responsibilities pursuant to section 14-10-124 (1.5), C.R.S. ~~and~~

22 (b) ~~That, if genetic tests are not obtained prior to a legal
23 establishment of paternity and submitted into evidence prior to the entry
24 of the final order establishing paternity, the genetic tests may not be
25 allowed into evidence at a later date.~~

26 **SECTION 7.** 19-6-104 (1.5), Colorado Revised Statutes, is
27 amended to read:

1 **19-6-104. Hearing - orders.** (1.5) At the hearing, the court shall
2 give a verbal advisement to the parties that a request for genetic tests shall
3 not prejudice the requesting party in matters concerning allocation of
4 parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S. ~~The~~
5 ~~judge or magistrate shall further advise the parties that, if genetic tests are~~
6 ~~not obtained prior to the legal establishment of paternity and submitted~~
7 ~~into evidence prior to the entry of the final order establishing paternity,~~
8 ~~the genetic tests may not be allowed into evidence at a later date.~~

9 **SECTION 8.** 14-10-107 (4) (b) (III), Colorado Revised Statutes,
10 is amended to read:

11 **14-10-107. Commencement - pleadings - abolition of existing**
12 **defenses - automatic, temporary injunction - enforcement.**

13 (4) (b) (III) The summons shall contain the following advisements
14 ADVISEMENT:

15 (A) That a request for genetic tests shall not prejudice the
16 requesting party in matters concerning allocation of parental
17 responsibilities pursuant to section 14-10-124 (1.5). ~~and~~

18 (B) ~~That, if genetic tests are not obtained prior to a legal~~
19 ~~establishment of paternity and submitted into evidence prior to the entry~~
20 ~~of the legal final decree of dissolution, the genetic tests may not be~~
21 ~~allowed into evidence at a later date.~~

22 **SECTION 9.** 14-10-122, Colorado Revised Statutes, is amended
23 BY THE ADDITION OF A NEW SUBSECTION to read:

24 **14-10-122. Modification and termination of provisions for**
25 **maintenance, support, and property disposition - automatic lien.**

26 (6) (a) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS ARTICLE, A
27 PARTY MAY SEEK TO MODIFY OR TERMINATE AN ORDER FOR CHILD

1 SUPPORT ENTERED PURSUANT TO THIS ARTICLE IF GENETIC TEST RESULTS
2 BASED ON DNA TESTING, ADMINISTERED IN ACCORDANCE WITH SECTION
3 13-25-126, C.R.S., ESTABLISH THE EXCLUSION OF THE INDIVIDUAL NAMED
4 AS THE FATHER IN THE ORDER AS THE BIOLOGICAL PARENT OF THE CHILD
5 FOR WHOSE BENEFIT THE CHILD SUPPORT ORDER WAS ENTERED.

6 (b) IF THE COURT FINDS PURSUANT TO PARAGRAPH (a) OF THIS
7 SUBSECTION (6) THAT THE INDIVIDUAL NAMED AS THE FATHER IN THE
8 ORDER IS NOT THE BIOLOGICAL PARENT OF THE CHILD FOR WHOSE BENEFIT
9 THE CHILD SUPPORT ORDER WAS ENTERED, THE COURT SHALL MODIFY THE
10 PROVISIONS OF THE ORDER FOR SUPPORT WITH RESPECT TO THAT CHILD BY
11 TERMINATING THE CHILD SUPPORT OBLIGATION AS TO INSTALLMENTS
12 ACCRUING SUBSEQUENT TO THE FILING OF THE MOTION FOR MODIFICATION
13 OR TERMINATION.

14 (c) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (a) AND
15 (b) OF THIS SUBSECTION (6), A COURT ORDER FOR CHILD SUPPORT SHALL
16 NOT BE MODIFIED OR TERMINATED PURSUANT TO THIS SUBSECTION (6) IF:

17 (I) THE CHILD SUPPORT OBLIGOR ACKNOWLEDGED PATERNITY
18 PURSUANT TO 19-4-105 (1) (c) (I), C.R.S., KNOWING THAT HE WAS NOT
19 THE FATHER OF THE CHILD;

20 (II) THE CHILD WAS ADOPTED BY THE CHILD SUPPORT OBLIGOR; OR

21 (III) THE CHILD WAS CONCEIVED BY MEANS OF ASSISTED
22 REPRODUCTION.

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

25 **SECTION 10.** 13-25-126 (1) (a), Colorado Revised Statutes, is
26 amended to read:

27 **13-25-126. Genetic tests to determine parentage.** (1) (a) In any

1 action, suit, or proceeding in which the parentage of ~~any~~ A child is at
2 issue, INCLUDING BUT NOT LIMITED TO ACTIONS OR PROCEEDINGS
3 PURSUANT TO SECTION 19-4-107.3 OR 14-10-122 (6), C.R.S., upon motion
4 of the court or any of the interested parties, the court shall order the
5 alleged mother, the child or children, and the alleged father to submit to
6 genetic testing and other appropriate testing of inherited characteristics,
7 including but not limited to blood and tissue type, for the purpose of
8 determining probability of parentage. If ~~any~~ A party refuses to submit to
9 these tests, the court may resolve the question of parentage against ~~such~~
10 THE party to enforce its order if the rights of others and the interests of
11 justice so require.

12 **SECTION 11.** 26-13.5-103 (1) (a.5), Colorado Revised Statutes,
13 is amended to read:

14 **26-13.5-103. Notice of financial responsibility issued -**
15 **contents.** (1) The delegate child support enforcement unit shall issue a
16 notice of financial responsibility to an obligor who owes a child support
17 debt or who is responsible for the support of a child on whose behalf the
18 custodian of that child is receiving support enforcement services from the
19 delegate child support enforcement unit pursuant to article 13 of this title.
20 The notice shall advise the obligor:

21 (a.5) That a request for genetic tests shall not prejudice the obligor
22 in matters concerning allocation of parental responsibilities pursuant to
23 section 14-10-124 (1.5), C.R.S. ~~and that, if genetic tests are not obtained~~
24 ~~prior to the legal establishment of paternity and submitted into evidence~~
25 ~~prior to the entry of the final order establishing paternity, the genetic tests~~
26 ~~may not be allowed into evidence at a later date.~~

27 **SECTION 12. Effective date.** This act shall take effect July 1,

1 2007.

2 **SECTION 13. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.