

MAR 1 1999

HUMAN RESOURCES

HOUSE FILE  
BY BRADLEY

425

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act establishing a procedure to overcome paternity for a  
2 person claiming to be the biological father of a child and  
3 providing for the establishment of related child support,  
4 custody, and visitation rights.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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H/S 425

1 Section 1. Section 598.35, Code 1999, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 8. The paternity of an established father  
4 has been overcome pursuant to section 600B.41B; the court has  
5 entered an order establishing the parent-child relationship,  
6 support obligations, and visitation rights between the person  
7 alleging to be the biological father of the child and the  
8 child; and the biological father as established under the  
9 order is the child of the grandparent or the grandchild of the  
10 great-grandparent.

11 Sec. 2. NEW SECTION. 600B.41B ACTION TO OVERCOME  
12 PATERNITY -- CHILD OF MARRIAGE.

13 1. Notwithstanding section 600B.41A and any other law or  
14 operation of law to the contrary, an action to overcome  
15 paternity, which has been established by operation of law  
16 based upon the mother and established father of the child  
17 being married or having been married to each other at the time  
18 of the conception or birth of the child, may be brought by the  
19 filing of a petition by a person alleging to be the biological  
20 father of the child, if all of the following conditions are  
21 met:

22 a. The petition is filed with the court prior to the child  
23 reaching majority.

24 b. The person alleging to be the biological father of the  
25 child submits blood or genetic test results which demonstrate  
26 that the alleged biological father is not excluded and that  
27 the probability of the alleged biological father's paternity  
28 is ninety-five percent or higher.

29 c. The person alleging to be the biological father had  
30 established a substantial relationship with the child prior to  
31 the filing of the petition.

32 2. The petition shall contain, at a minimum, all of the  
33 following:

34 a. The legal name, age, and domicile, if any, of the  
35 child.

1 b. The names, residences, and domicile of all of the  
2 following, as applicable:

- 3 (1) The living established parents of the child.
- 4 (2) The guardian of the child.
- 5 (3) The custodian of the child.
- 6 (4) The guardian ad litem of the child.
- 7 (5) The petitioner.
- 8 (6) The person standing in place of the parents of the  
9 child.

10 c. A plain statement that the petitioner believes that the  
11 established father is not the biological father of the child,  
12 any reasons for this belief, and that the petitioner wishes to  
13 have the paternity determination overcome.

14 d. A plain statement explaining why the petitioner does  
15 not know any of the information required under paragraphs "a"  
16 and "b".

17 3. Notice of the action to overcome paternity shall be  
18 served on any established parent of the child in accordance  
19 with the rules of civil procedure. The responding party shall  
20 have thirty days from the date of service of the notice to  
21 file a written response to the court.

22 4. If the court determines that the conditions and  
23 requirements of subsections 1 through 3 are met, the court may  
24 order additional testing, pursuant to section 600P.41, to  
25 determine if the established father is excluded as the  
26 biological father of the child. If the test results and any  
27 evidence presented by the expert approved by the court to  
28 analyze and interpret the test results demonstrate that the  
29 established father is excluded as the biological father, the  
30 court shall determine if overcoming paternity of the  
31 established father is in the best interest of the child. In  
32 determining the best interest of the child, the court shall  
33 consider all of the following:

- 34 a. The age of the child.
- 35 b. The length of time since the establishment of

1 paternity.

2 | c. The previous relationship between the child and the  
3 established father, and the previous relationship between the  
4 child and the alleged biological father, including but not  
5 limited to the duration and frequency of any time periods  
6 during which the child and established or alleged biological  
7 father resided in the same household or engaged in a parent-  
8 child relationship as defined in section 600A.2 and, based  
9 upon the age of the child, considering any attempts by the  
10 alleged biological father in assuming the responsibilities of  
11 the parent-child relationship.

12 | d. The affect on the child from establishing the child's  
13 actual paternity.

14 | e. Additional factors which the court determines are  
15 relevant to the individual situation.

16 | 5. If the court dismisses the action to overcome paternity  
17 and preserves the paternity of the established father, the  
18 court shall enter an order establishing that the parent-child  
19 relationship exists between the established father and the  
20 child.

21 | 6. If the court determines that the established father is  
22 excluded as the biological father and overcomes paternity, the  
23 court shall enter an order which provides that the established  
24 father is relieved of any and all future support obligations  
25 owed on behalf of the child from the date that the order is  
26 filed, and shall enter an order establishing that the parent-  
27 child relationship exists between the petitioner and the  
28 child, and including establishment of a support obligation  
29 pursuant to section 598.21 and provision of custody and  
30 visitation pursuant to section 598.41.

31

#### EXPLANATION

32 | This bill provides that notwithstanding the establishment  
33 of paternity by operation of law when the mother of the child  
34 and established father of the child are married or were  
35 married at the time of conception or birth of the child, and

1 notwithstanding any other law to the contrary, an alleged  
2 father may petition the court to overcome paternity of the  
3 established father. In order for an alleged biological father  
4 to bring an action to overcome paternity of the established  
5 father, the alleged biological father must file the petition  
6 prior to the child reaching majority, must submit blood or  
7 genetic test results that demonstrate a probability of 95  
8 percent or greater that the alleged biological father is the  
9 biological father of the child, and the alleged biological  
10 father must have established a substantial relationship with  
11 the child prior to the filing of the petition. The bill  
12 specifies the information to be included in the petition and  
13 requires that any established parent of the child be served  
14 notice and have 20 days after service of the notice to  
15 respond. If the requirements relating to the petition and  
16 notice are met, the court may order additional testing to  
17 demonstrate that the paternity of the established father is  
18 overcome, and the court must find that overcoming paternity is  
19 in the best interest of the child. The bill provides criteria  
20 for determining the best interest of the child. If the court  
21 dismisses the action to overcome paternity, the court is to  
22 enter an order preserving the paternity of the established  
23 father and establishing that the parent-child relationship  
24 exists between the established father and the child. If the  
25 court determines that the paternity of the established father  
26 should be overcome, the court is to enter an order  
27 establishing the paternity of the alleged biological father  
28 and relieving the established father of any support obligation  
29 due after the date that the order is filed, establishing the  
30 support obligation of the alleged father, and providing for  
31 custody and visitation rights.

32 The bill also provides that a grandparent or great-  
33 grandparent of the child involved in the action to overcome  
34 paternity under the bill, who is the parent of the biological  
35 father of the child as established by order of the court, may

1 petition the court for visitation. Current law requires that  
2 in order to grant such a petition the court must find that it  
3 is in the best interest of the child to do so and that the  
4 grandparent or great-grandparent had established a substantial  
5 relationship with the grandchild or great-grandchild prior to  
6 the filing of the petition.

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