

Senate File 2102 - Introduced

SENATE FILE 2102

BY HANCOCK

A BILL FOR

1 An Act relating to paternity proceedings and providing a
2 penalty.

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

1 Section 1. Section 600B.41A, Code 2009, is amended to read
2 as follows:

3 **600B.41A Actions to overcome paternity — applicability —**
4 **conditions — penalty.**

5 1. Paternity which is legally established may be overcome
6 as provided in this section if subsequent blood or genetic
7 testing indicates that the previously established father of
8 a child is not the biological father of the child. Unless
9 otherwise provided in this section, this section applies to the
10 overcoming of paternity which has been established according to
11 any of the means provided in section 252A.3, subsection 8, by
12 operation of law when the established father and the mother of
13 the child are or were married to each other, or as determined
14 by a court of this state under any other applicable chapter.

15 2. This section does not apply to any of the following:

16 a. A paternity determination made in or by a foreign
17 jurisdiction or a paternity determination which has been made
18 in or by a foreign jurisdiction and registered in this state in
19 accordance with section 252A.18 or chapter 252K.

20 b. A paternity determination based upon a court or
21 administrative order if the order was entered based upon blood
22 or genetic test results which demonstrate that the alleged
23 father was not excluded and that the probability of the alleged
24 father's paternity was ninety-five percent or higher, unless
25 the tests were conducted prior to July 1, 1992.

26 3. Establishment of paternity may be overcome under this
27 section if all of the following conditions are met:

28 a. The action to overcome paternity is filed with the court
29 prior to the child reaching majority.

30 (1) A petition to overcome paternity may be filed only by
31 the mother of the child, the established father of the child, a
32 putative father as defined in section 252A.2, the child, or the
33 legal representative of any of these parties.

34 (2) If paternity was established by court or administrative
35 order, a petition to overcome paternity shall be filed in the

1 county in which the order is filed.

2 (3) In all other determinations of paternity, a petition to
3 overcome paternity shall be filed in an appropriate county in
4 accordance with the rules of civil procedure.

5 *b.* The petition contains, at a minimum, all of the
6 following:

7 (1) The legal name, age, and domicile, if any, of the child.

8 (2) The names, residences, and domicile of the following:

9 (a) Living parents of the child.

10 (b) Guardian of the child.

11 (c) Custodian of the child.

12 (d) Guardian ad litem of the child.

13 (e) Petitioner.

14 (f) Person standing in the place of the parents of the
15 child.

16 (3) A plain statement that the petitioner believes that the
17 established father is not the biological father of the child,
18 any reasons for this belief, and that the petitioner wishes to
19 have the paternity determination set aside.

20 (4) A plain statement explaining why the petitioner does not
21 know any of the information required under subparagraphs (1)
22 and (2).

23 *c.* Notice of the action to overcome paternity is served on
24 ~~any parent of the child not initiating the action~~ necessary
25 party and any assignee of the support obligation, in accordance
26 with the rules of civil procedure and in accordance with the
27 following:

28 (1) If enforcement services are being provided by the child
29 support recovery unit pursuant to chapter 252B, notice shall
30 also be served on the child support recovery unit.

31 (2) The responding party shall have twenty days from the
32 date of the service of the notice to file a written response
33 with the court.

34 (3) "Necessary party" means any person whose name,
35 residence, and domicile is required to be included in the

1 petition as specified in paragraph "b", any putative father
2 including any putative father who files a declaration of
3 paternity pursuant to section 144.12A or any unknown putative
4 father, but does not include any living parent or putative
5 father if the court determines that a history of domestic abuse
6 involving any such living parent or putative father exists as
7 specified in section 598.41, subsection 3, paragraph "j".

8 d. A guardian ad litem is appointed for the child.

9 e. Blood or genetic testing is conducted in accordance with
10 section 600B.41 or chapter 252F.

11 (1) Unless otherwise specified pursuant to subsection 2 or
12 9 11, blood or genetic testing shall be conducted in an action
13 to overcome the establishment of paternity.

14 (2) Unless otherwise specified in this section, section
15 600B.41 applies to blood or genetic tests conducted as the
16 result of an action brought to overcome paternity.

17 (3) The court may order additional testing to be conducted
18 by the expert or an independent expert in order to confirm a
19 test upon which an expert concludes that the established father
20 is not the biological father of the child.

21 f. The court finds all of the following:

22 (1) That the conclusion of the expert as disclosed by the
23 evidence based upon blood or genetic testing demonstrates that
24 the established father is not the biological father of the
25 child.

26 (2) If paternity was established pursuant to section
27 252A.3A, the signed affidavit was based on fraud, duress, or
28 material mistake of fact, as shown by the petitioner.

29 4. If the court finds that the establishment of paternity is
30 overcome, in accordance with all of the conditions prescribed,
31 the court shall enter an order which provides all of the
32 following:

33 a. ~~That the~~ The established father is relieved of any and
34 all future support obligations owed on behalf of the child from
35 the date that the order determining that the established father

1 is not the biological father is filed.

2 ~~b. That any~~ Any unpaid support due prior to the date the
3 order determining that the established father is not the
4 biological father is filed, is satisfied.

5 c. Establishment of the biological father's support
6 obligation accruing from the date paternity is established, if
7 the biological father is made a party to the action.

8 ~~5. An action brought under this section shall be heard and~~
9 ~~decided by the court, and shall not be subject to a jury trial.~~

10 ~~6. a. 5.~~ If the court determines that test results
11 conducted in accordance with section 600B.41 or chapter 252F
12 exclude the established father as the biological father, the
13 court may dismiss the action to overcome paternity and preserve
14 the paternity determination ~~only~~ if all of the following apply:

15 ~~(1)~~ a. The established father or the child's guardian
16 ad litem requests that paternity be preserved and that the
17 parent-child relationship, as defined in section 600A.2, be
18 continued.

19 ~~(2)~~ b. The court finds that it is in the best interest
20 of the child to preserve paternity. In determining the best
21 interest of the child, the court shall consider all of the
22 following:

23 ~~(a)~~ (1) The age of the child.

24 ~~(b)~~ (2) The length of time since the establishment of
25 paternity.

26 ~~(c)~~ (3) The previous relationship between the child and the
27 established father, including but not limited to the duration
28 and frequency of any time periods during which the child and
29 established father resided in the same household or engaged in
30 a parent-child relationship as defined in section 600A.2.

31 ~~(d)~~ (4) The possibility that the child could benefit by
32 establishing the child's actual paternity.

33 ~~(e)~~ (5) Additional factors which the court determines are
34 relevant to the individual situation.

35 ~~(3) The biological father is a party to the action and does~~

1 ~~not object to termination of the biological father's parental~~
2 ~~rights, or the established father petitions the court for~~
3 ~~termination of the biological father's parental rights and the~~
4 ~~court grants the petition pursuant to chapter 600A.~~

5 ~~b. If the court dismisses the action to overcome paternity~~
6 ~~and preserves the paternity determination under this~~
7 ~~subsection, the court shall enter an order establishing that~~
8 ~~the parent-child relationship exists between the established~~
9 ~~father and the child, and including establishment of a support~~
10 ~~obligation pursuant to section 598.21B and provision of custody~~
11 ~~and visitation pursuant to section 598.41.~~

12 6. The court may dismiss the action to overcome paternity
13 if the biological father is a party to the action and does not
14 object to the termination of the biological father's parental
15 rights, or if the established father petitions the court for
16 termination of the biological father's parental rights and the
17 court grants the petition pursuant to chapter 600A.

18 7. If the court dismisses the action to overcome paternity
19 and preserves the paternity determination under subsection 5
20 or 6, the court shall enter an order establishing that the
21 parent-child relationship exists between the established father
22 and the child, and establish a support obligation pursuant to
23 section 598.21B and provide for custody and visitation pursuant
24 to section 598.41.

25 8. Notwithstanding any provision of law to the contrary,
26 a child, mother, or established father may have a fundamental
27 right to maintain the established family free from an action
28 to overcome paternity by a putative father. At any time in an
29 action to overcome paternity of a child under this section,
30 upon the motion of a party or guardian ad litem, the court may
31 refuse to order blood or genetic testing, if blood or genetic
32 testing has not yet been ordered, and dismiss the action if
33 the court, after hearing evidence, determines that it is not
34 in the best interest of the child to determine the identity of
35 the child's biological father.

1 ~~7.~~ 9. *a.* For any order entered under this section on
2 or before May 21, 1997, in which the court's determination
3 excludes the established father as the biological father but
4 dismisses the action to overcome paternity and preserves
5 paternity, the established father may petition the court to
6 issue an order which provides all of the following:

7 (1) That the parental rights of the established father are
8 terminated.

9 (2) That the established father is relieved of any and all
10 future support obligations owed on behalf of the child from the
11 date the order under this subsection is filed.

12 *b.* The established father may proceed pro se under this
13 subsection. The supreme court shall prescribe standard forms
14 for use under this subsection and shall distribute the forms to
15 the clerks of the district court.

16 *c.* If a petition is filed pursuant to this section and
17 notice is served on any parent of the child not filing the
18 petition and any assignee of the support obligation, the court
19 shall grant the petition.

20 ~~8.~~ 10. The costs of testing, the fee of the guardian ad
21 litem, and all court costs shall be paid by the person bringing
22 the action to overcome paternity.

23 ~~9.~~ 11. This section shall not be construed as a basis
24 for termination of an adoption decree or for discharging the
25 obligation of an adoptive father to an adoptive child pursuant
26 to section 600B.5.

27 ~~10.~~ 12. Unless specifically addressed in an order entered
28 pursuant to this section, provisions previously established by
29 the court order regarding custody or visitation of the child
30 are unaffected by an action brought under this section.

31 ~~11.~~ 13. Participation of the child support recovery unit
32 created in section 252B.2 in an action brought under this
33 section shall be limited as follows:

34 *a.* The unit shall only participate in actions if services
35 are being provided by the unit pursuant to chapter 252B.

1 *b.* When services are being provided by the unit under
2 chapter 252B, the unit may enter an administrative order for
3 blood and genetic tests pursuant to chapter 252F.

4 *c.* The unit is not responsible for or required to provide
5 for or assist in obtaining blood or genetic tests in any case
6 in which services are not being provided by the unit.

7 *d.* The unit is not responsible for the costs of blood or
8 genetic testing conducted pursuant to an action brought under
9 this section.

10 *e.* Pursuant to section 252B.7, subsection 4, an attorney
11 employed by the unit represents the state in any action
12 under this section. The unit's attorney is not the legal
13 representative of the mother, the established father, or the
14 child in any action brought under this section.

15 14. An action brought under this section shall be heard and
16 decided by the court, and shall not be subject to a jury trial.

17 15. The record and evidence in an action brought under this
18 section shall be subject to the following provisions:

19 *a.* Any hearing, discovery proceeding, or trial relating to
20 overcoming paternity shall be closed to any person other than
21 those persons necessary to the action or proceeding. Until an
22 order has been entered, the record and evidence shall be closed
23 to all but the court, its officers, and the child support
24 recovery unit of the department of human services pursuant to
25 section 252B.9. However, the payment records of any support
26 order, whether maintained by the clerk of the district court or
27 the department of human services, are public records and may
28 be released upon request. Payment records shall not include
29 address or location information. No other person shall permit
30 a copy of any of the testimony, pleadings, or the substance of
31 any testimony or pleadings, to be made available to any person
32 other than a party to the action or a party's attorney. This
33 paragraph shall not be construed to prohibit publication of the
34 original notice as provided by the rules of civil procedure.

35 *b.* The court may in its discretion grant a motion by a party

1 to require the sealing of any other information or evidence
2 which is part of the record of the case except for court
3 orders, decrees, and any judgments. If the court grants a
4 motion to require the sealing of information in the case, the
5 sealed information shall not subsequently be made available
6 to any person other than a party to the action or a party's
7 attorney except upon order of the court for good cause shown.

8 c. If an action is dismissed, judgment for costs shall be
9 entered in the judgment docket and lien index.

10 d. A violation of the provisions of this subsection is a
11 serious misdemeanor.

12 EXPLANATION

13 This bill relates to actions to overcome paternity. The
14 bill provides that in addition to the mother of the child,
15 the established father of the child, the child, or a legal
16 representative of any of these parties, a putative father may
17 petition to overcome paternity. A putative father is defined
18 as a man who is alleged to be or who claims to be the biological
19 father of a child born to a woman to whom the man is not married
20 at the time of the birth of the child. The bill also requires
21 that notice of an action to overcome paternity be served on
22 any necessary party, which is defined in the bill to mean any
23 person whose name, residence, and domicile is required to be
24 included in the petition to overcome paternity, any putative
25 father, and any unknown putative father, but does not include
26 any living parent or putative father if the court determines
27 domestic abuse involving any such living parent or putative
28 father exists as specified by law.

29 The bill provides that if the court finds that the
30 establishment of paternity is overcome, the court may enter an
31 order which, in addition to relieving the established father
32 of any and all future support obligations and satisfying any
33 unpaid support due to date, also establishes the support
34 obligation of the biological father from the date paternity is
35 established. The bill provides that in the alternative the

1 court may dismiss the action to overcome paternity and preserve
2 paternity of the established father if the court finds that the
3 established father or the child's guardian ad litem requests
4 that paternity be preserved and the parent-child relationship
5 be continued and that this is in the best interest of the
6 child. The court may also dismiss the action to overcome
7 paternity and preserve paternity of the established father if
8 the biological father is a party to the action and does not
9 object to the termination of the biological father's parental
10 rights or if the established father petitions the court for
11 termination of the biological father's parental rights and the
12 court grants the petition. If the court dismisses the action
13 and preserves paternity of the established father, the court is
14 also directed to enter an order establishing the parent-child
15 relationship between the child and the established father and
16 establishing a support obligation and provide for custody and
17 visitation.

18 The bill states that notwithstanding any provision of law to
19 the contrary, a child, mother, or established father may have a
20 fundamental right to maintain the established family free from
21 an action to overcome paternity by a putative father. At any
22 time in an action to overcome paternity of a child, upon the
23 motion of a party or guardian ad litem, the court may refuse
24 to order blood or genetic testing, if blood or genetic testing
25 has not yet been ordered, and dismiss the action if the court,
26 after hearing evidence, determines that it is not in the best
27 interest of the child to determine the identity of the child's
28 biological father.

29 The bill adds provisions relating to the record and evidence
30 in an action to overcome paternity to provide that any hearing,
31 discovery proceeding, or trial relating to overcoming paternity
32 shall be closed to any person other than those necessary to
33 the action or proceeding. Until an order has been entered,
34 the record and evidence shall be closed to all but the court,
35 its officers, and the child support recovery unit with the

1 exception of payment records of any support order, which are
2 public records and may be released upon request. The bill also
3 prohibits any other person from permitting a copy of any of
4 the testimony, pleadings, or the substance of any testimony
5 or pleadings, to be made available to any person other than a
6 party to the action or a party's attorney, but this provision
7 is not to be construed to prohibit publication of the original
8 notice as provided by the rules of civil procedure. The
9 bill also provides that the court may in its discretion
10 grant a motion by a party to require the sealing of any other
11 information or evidence which is part of the record of the case
12 except for court orders, decrees, and any judgments; provides
13 that if an action is dismissed judgment for costs shall be
14 entered in the judgment docket and lien index; and provides
15 that a violation of the provisions relating to disclosure of
16 this information is a serious misdemeanor.