

Introduced by Senator WrightFebruary 15, 2011

An act to amend Sections 7572, 7575, and 7577 of, and to add Section 4015 to, the Family Code, relating to paternity.

LEGISLATIVE COUNSEL'S DIGEST

SB 377, as introduced, Wright. Paternity.

Existing law establishes a presumption that a man is the natural father of a child if he signs a voluntary declaration of paternity. Under existing law, this presumption of paternity may be rebutted by genetic evidence that another man is the biological father of the child. Existing law requires that a motion for genetic tests to rebut this presumption be filed not later than 2 years after the birth of the child.

This bill would authorize a presumed father to file a motion for genetic tests within a reasonable time after he becomes aware of facts that lead him to reasonably believe that he may not be the biological father of the child.

Existing law requires that the Department of Child Support Services provide certain oral and written information to parents along with the voluntary declaration of paternity form. Under existing law, a voluntary declaration of paternity that is signed by a minor parent shall not establish paternity until 60 days after both parents have reached 18 years of age or are emancipated.

This bill would additionally invalidate a voluntary declaration of paternity that is signed by a minor parent if it is not also signed by the parent or guardian of the minor parent. The bill would also require the department to provide the oral and written information relating to the voluntary declaration of paternity to the parent or guardian of the minor parent.

Under existing law, a presumed father may be ordered to pay child support, the amount of which is determined pursuant to a formula that takes into account each party's income and time spent parenting the child. Existing law provides that a child support order may be retroactive to the date of filing the petition, complaint, or other initial pleading.

This bill would provide that if a presumed father has been paying child support for the child, and in an action to challenge his paternity it is established that another man is the father of the child, he may bring an motion to recover from the now-established father all or a portion of the child support he has paid since the initiation of the proceeding, as specified. The bill would authorize the recovery of child support by the presumed father only if the court determines that the now-established father knew or had reason to know that he was or might be the biological father.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Genetic testing, using DNA evidence, is recognized as
- 4 scientifically valid by the courts of this country.
- 5 (b) In the year 2000, the State of California recognized the
- 6 validity of DNA testing and created a procedure for an individual
- 7 convicted of certain crimes to petition a court to reopen his or her
- 8 case in order to reevaluate DNA evidence.
- 9 (c) A man who is adjudicated to be the father of a child by a
- 10 court in a paternity action when he is not actually the biological
- 11 father of the child may be financially liable for up to 18 years of
- 12 child support.
- 13 (d) The American Association of Blood Banks reported that out
- 14 of a total of more than 280,000 cases evaluated in 1999, almost
- 15 30 percent of the genetic samples excluded the tested individual
- 16 as the biological father.
- 17 (e) Thirty-seven states have more liberal and flexible statutes
- 18 than California and allow for paternity to be reevaluated using
- 19 DNA evidence.

1 (f) Data from the Department of Child Support Services shows
2 that judgments in more than 87 percent of cases challenging
3 paternity during a two-year period were established by default.

4 (g) Respect for the judicial system is greatly diminished when
5 the laws are inconsistent with regard to the use of scientifically
6 valid DNA testing and do not permit the correction of an injustice
7 in a paternity action, but do allow it in a criminal proceeding.

8 SEC. 2. Section 4015 is added to the Family Code, to read:

9 4015. (a) If a person presumed to be the father of a child
10 pursuant to Sections 7540, 7571, 7610, or 7611 has been paying
11 child support for the child, and in an action to challenge his
12 paternity the court determines that another man is the father of the
13 child, the presumed father may bring a motion, as part of the action
14 to challenge his paternity, to recover from the now-established
15 father all or a portion of the child support the presumed father has
16 paid since the filing of the petition, complaint, or other initial
17 pleading.

18 (b) A presumed father may recover child support payments from
19 the now-established father pursuant to subdivision (a) only if the
20 court determines that the now-established father knew or had reason
21 to know that he was or might be the biological father of the child.

22 (c) The amount of the child support reimbursement authorized
23 in subdivision (a) shall be limited to the amount that the
24 now-established father would have been ordered to pay if he had
25 previously been determined to be the father, as determined by the
26 court.

27 SEC. 3. Section 7572 of the Family Code is amended to read:

28 7572. (a) The Department of Child Support Services, in
29 consultation with the State Department of Health Care Services,
30 the California Association of Hospitals and Health Systems, and
31 other affected health provider organizations, shall work
32 cooperatively to develop written materials to assist providers and
33 parents in complying with this chapter. This written material shall
34 be updated periodically by the Department of Child Support
35 Services to reflect changes in law, procedures, or public need.

36 (b) The written materials for parents which shall be attached to
37 the form specified in Section 7574 and provided to unmarried
38 parents, *or if a parent is a minor, to the parents and to the parent*
39 *or guardian of the minor parent*, shall contain the following
40 information:

1 (1) A signed voluntary declaration of paternity that is filed with
2 the Department of Child Support Services legally establishes
3 paternity.

4 (2) The legal rights and obligations of both parents and the child
5 that result from the establishment of paternity.

6 (3) An alleged father's constitutional rights to have the issue of
7 paternity decided by a court; to notice of any hearing on the issue
8 of paternity; to have an opportunity to present his case to the court,
9 including his right to present and cross-examine witnesses; to have
10 an attorney represent him; and to have an attorney appointed to
11 represent him if he cannot afford one in a paternity action filed by
12 a local child support agency.

13 (4) That by signing the voluntary declaration of paternity, the
14 father is voluntarily waiving his constitutional rights.

15 (c) Parents shall also be given oral notice of the rights and
16 responsibilities specified in subdivision (b), *and if a parent is a*
17 *minor, oral notice shall additionally be provided to the parent or*
18 *guardian of the minor parent.* Oral notice may be accomplished
19 through the use of audio or video recorded programs developed
20 by the Department of Child Support Services to the extent
21 permitted by federal law.

22 (d) The Department of Child Support Services shall, free of
23 charge, make available to hospitals, clinics, and other places of
24 birth any and all informational and training materials for the
25 program under this chapter, as well as the paternity declaration
26 form. The Department of Child Support Services shall make
27 training available to every participating hospital, clinic, local
28 registrar of births and deaths, and other place of birth no later than
29 June 30, 1999.

30 (e) The Department of Child Support Services may adopt
31 regulations, including emergency regulations, necessary to
32 implement this chapter.

33 SEC. 4. Section 7575 of the Family Code is amended to read:

34 7575. (a) Either parent may rescind the voluntary declaration
35 of paternity by filing a rescission form with the Department of
36 Child Support Services within 60 days of the date of execution of
37 the declaration by the attesting father or attesting mother,
38 whichever signature is later, unless a court order for custody,
39 visitation, or child support has been entered in an action in which
40 the signatory seeking to rescind was a party. The Department of

1 Child Support Services shall develop a form to be used by parents
2 to rescind the declaration of paternity and instruction on how to
3 complete and file the rescission with the Department of Child
4 Support Services. The form shall include a declaration under
5 penalty of perjury completed by the person filing the rescission
6 form that certifies that a copy of the rescission form was sent by
7 any form of mail requiring a return receipt to the other person who
8 signed the voluntary declaration of paternity. A copy of the return
9 receipt shall be attached to the rescission form when filed with the
10 Department of Child Support Services. The form and instructions
11 shall be written in simple, easy to understand language and shall
12 be made available at the local family support office and the office
13 of local registrar of births and deaths. The department shall, upon
14 written request, provide to a court or commissioner a copy of any
15 rescission form filed with the department that is relevant to
16 proceedings before the court or commissioner.

17 (b) (1) Notwithstanding Section 7573, if the court finds that
18 the conclusions of all of the experts based upon the results of the
19 genetic tests performed pursuant to Chapter 2 (commencing with
20 Section 7550) are that the man who signed the voluntary
21 declaration is not the father of the child, the court may set aside
22 the voluntary declaration of paternity unless the court determines
23 that denial of the action to set aside the voluntary declaration of
24 paternity is in the best interest of the child, after consideration of
25 all of the following factors:

26 (A) The age of the child.

27 (B) The length of time since the execution of the voluntary
28 declaration of paternity by the man who signed the voluntary
29 declaration.

30 (C) The nature, duration, and quality of any relationship between
31 the man who signed the voluntary declaration and the child,
32 including the duration and frequency of any time periods during
33 which the child and the man who signed the voluntary declaration
34 resided in the same household or enjoyed a parent-child
35 relationship.

36 (D) The request of the man who signed the voluntary declaration
37 that the parent-child relationship continue.

38 (E) Notice by the biological father of the child that he does not
39 oppose preservation of the relationship between the man who
40 signed the voluntary declaration and the child.

1 (F) The benefit or detriment to the child in establishing the
2 biological parentage of the child.

3 (G) Whether the conduct of the man who signed the voluntary
4 declaration has impaired the ability to ascertain the identity of, or
5 get support from, the biological father.

6 (H) Additional factors deemed by the court to be relevant to its
7 determination of the best interest of the child.

8 (2) If the court denies the action, the court shall state on the
9 record the basis for the denial of the action and any supporting
10 facts.

11 (3) (A) The notice of motion for genetic tests under this section
12 may be filed not later than two years from the date of the child's
13 birth by a local child support agency, the mother, the man who
14 signed the voluntary declaration as the child's father, or in an action
15 to determine the existence or nonexistence of the father and child
16 relationship pursuant to Section 7630 or in any action to establish
17 an order for child custody, visitation, or child support based upon
18 the voluntary declaration of paternity.

19 *(B) Notwithstanding subparagraph (A) or Section 7577, a*
20 *motion for genetic tests may be filed by the man who signed the*
21 *voluntary declaration as the child's father within a reasonable*
22 *time after he becomes aware of facts that lead him to reasonably*
23 *believe that he is not the biological father of the child.*

24 ~~(B)~~

25 (C) The local child support agency's authority under this
26 subdivision is limited to those circumstances where there is a
27 conflict between a voluntary acknowledgment of paternity and a
28 judgment of paternity or a conflict between two or more voluntary
29 acknowledgments of paternity.

30 (4) The notice of motion for genetic tests pursuant to this section
31 shall be supported by a declaration under oath submitted by the
32 moving party stating the factual basis for putting the issue of
33 paternity before the court.

34 (c) (1) Nothing in this chapter shall be construed to prejudice
35 or bar the rights of either parent to file an action or motion to set
36 aside the voluntary declaration of paternity on any of the grounds
37 described in, and within the time limits specified in, Section 473
38 of the Code of Civil Procedure. If the action or motion to set aside
39 a judgment is required to be filed within a specified time period
40 under Section 473 of the Code of Civil Procedure, the period within

1 which the action or motion to set aside the voluntary declaration
2 of paternity must be filed shall commence on the date that the court
3 makes an initial order for custody, visitation, or child support based
4 upon a voluntary declaration of paternity.

5 (2) The parent or local child support agency seeking to set aside
6 the voluntary declaration of paternity shall have the burden of
7 proof.

8 (3) Any order for custody, visitation, or child support shall
9 remain in effect until the court determines that the voluntary
10 declaration of paternity should be set aside, subject to the court's
11 power to modify the orders as otherwise provided by law.

12 (4) Nothing in this section is intended to restrict a court from
13 acting as a court of equity.

14 (5) If the voluntary declaration of paternity is set aside pursuant
15 to paragraph (1), the court shall order that the mother, child, and
16 alleged father submit to genetic tests pursuant to Chapter 2
17 (commencing with Section 7550). If the court finds that the
18 conclusions of all the experts, as disclosed by the evidence based
19 upon the genetic tests, are that the person who executed the
20 voluntary declaration of paternity is not the father of the child, the
21 question of paternity shall be resolved accordingly. If the person
22 who executed the declaration as the father of the child is not
23 excluded as a possible father, the question of paternity shall be
24 resolved as otherwise provided by law. If the person who executed
25 the declaration of paternity is ultimately determined to be the father
26 of the child, any child support that accrued under an order based
27 upon the voluntary declaration of paternity shall remain due and
28 owing.

29 (6) The Judicial Council shall develop the forms and procedures
30 necessary to effectuate this subdivision.

31 SEC. 5. Section 7577 of the Family Code is amended to read:

32 7577. (a) Notwithstanding Section 7573, a voluntary
33 declaration of paternity that is signed by a minor parent or minor
34 parents ~~shall~~ *is invalid unless it is also signed by a parent or*
35 *guardian of the minor parent or parents.*

36 (b) *A voluntary declaration of paternity that is signed by a minor*
37 *parent or minor parents as well as by his or her parent or guardian*
38 *shall not establish paternity until 60 days after both parents have*
39 *reached the age of 18 years of age or are emancipated, whichever*
40 *first occurs.*

1 ~~(b)~~
2 (c) A parent who signs a voluntary declaration of paternity when
3 he or she is a minor may rescind the voluntary declaration of
4 paternity at any time up to 60 days after the parent reaches ~~the age~~
5 ~~of 18 years of age~~ or becomes emancipated whichever first occurs.

6 ~~(c)~~
7 (d) A voluntary declaration of paternity signed by a minor
8 creates a rebuttable presumption of paternity until the date that it
9 establishes paternity as specified in subdivision (a).

10 ~~(d)~~
11 (e) A voluntary declaration of paternity signed by a minor shall
12 be admissible as evidence in any civil action to establish paternity
13 of the minor named in the voluntary declaration.

14 ~~(e)~~
15 (f) A voluntary declaration of paternity that is signed by a minor
16 shall not be admissible as evidence in a criminal prosecution for
17 violation of Section 261.5 of the Penal Code.