

# WEST VIRGINIA CODE: §48-24-103

## **§48-24-103. Medical testing procedures to aid in the determination of paternity.**

(a) Prior to the commencement of an action for the establishment of paternity, the Bureau for Child Support enforcement may order the mother, her child and the man to submit to genetic tests to aid in proving or disproving paternity. The bureau may order the tests upon the request, supported by a sworn statement, of any person entitled to petition the court for a determination of paternity as provided in section one of this article. If the request is made by a party alleging paternity, the statement shall set forth facts establishing a reasonable possibility or requisite sexual contact between the parties. If the request is made by a party denying paternity, the statement may set forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties or other facts supporting a denial of paternity. If genetic testing is not performed pursuant to an order of the Bureau for Child Support enforcement, the court may, on its own motion or shall upon the motion of any party, order such tests. A request or motion may be made upon ten days' written notice to the mother and alleged father without the necessity of filing a complaint. When the tests are ordered, the court or the bureau shall direct that the inherited characteristics, including, but not limited to, blood types, be determined by appropriate testing procedures at a hospital, independent medical institution or independent medical laboratory duly licensed under the laws of this state or any other state and an expert qualified as an examiner of genetic markers shall analyze, interpret and report on the results to the court or to the Bureau for Child Support enforcement. The results shall be considered as follows:

- (1) Blood or tissue test results which exclude the man as the father of the child are admissible and shall be clear and convincing evidence of nonpaternity and, if a complaint has been filed, the court shall, upon considering such evidence, dismiss the action.
- (2) Blood or tissue test results which show a statistical probability of paternity of less than ninety-eight percent are admissible and shall be weighed along with other evidence of the respondent's paternity.
- (3) Undisputed blood or tissue test results which show a statistical probability of paternity of more than ninety-eight percent shall, when filed, legally establish the man as the father of the child for all purposes and child support may be established pursuant to the provisions of this chapter.
- (4) When a party desires to challenge the results of the blood or tissue tests or the expert's analysis of inherited characteristics, he or she shall file a written protest with the family court or with the Bureau for Child Support enforcement, if appropriate, within thirty days of the filing of such test results and serve a copy of such protest upon the other party. The written protest shall be filed at least thirty days prior to any hearing involving the test results. The court or the Bureau for Child Support enforcement, upon reasonable request of a party, shall order that additional tests be made by the same laboratory or another

laboratory within thirty days of the entry of the order, at the expense of the party requesting additional testing. Costs shall be paid in advance of the testing. When the results of the blood or tissue tests or the expert's analysis which show a statistical probability of paternity of more than ninety-eight percent are confirmed by the additional testing, then the results are admissible evidence which is clear and convincing evidence of paternity. The admission of the evidence creates a presumption that the man tested is the father.

(b) Documentation of the chain of custody of the blood or tissue specimens is competent evidence to establish the chain of custody. A verified expert's report shall be admitted at trial unless a challenge to the testing procedures or a challenge to the results of test analysis has been made before trial. The costs and expenses of making the tests shall be paid by the parties in proportions and at times determined by the court.

(c) Except as provided in subsection (d) of this section, when a blood or tissue test is ordered pursuant to this section, the moving party shall initially bear all costs associated with the blood or tissue test unless that party is determined by the court to be financially unable to pay those costs. This determination shall be made following the filing of an affidavit pursuant to section one, article two, chapter fifty-nine of this code. When the court finds that the moving party is unable to bear that cost, the cost shall be borne by the State of West Virginia. Following the finding that a person is the father based on the results of a blood or tissue test ordered pursuant to this section, the court shall order that the father be ordered to reimburse the moving party for the costs of the blood or tissue tests unless the court determines, based upon the factors set forth in this section, that the father is financially unable to pay those costs.

(d) When a blood or tissue test is ordered by the Bureau for Child Support enforcement, the bureau shall initially bear all costs subject to recoupment from the alleged father if paternity is established.