
WEST VIRGINIA CODE CHAPTER 48
ARTICLE 24

WV Legislature

§48-24-101. Paternity proceedings.

(a) A civil action to establish the paternity of a child and to obtain an order of support for the child may be instituted, by verified complaint, in the family court of the county where the child resides: Provided, That if such venue creates a hardship for the parties, or either of them, or if judicial economy requires, the court may transfer the action to the county where either of the parties resides.

(b) A "paternity proceeding" is a summary proceeding, equitable in nature and within the domestic relations jurisdiction of the courts, wherein a family court upon the petition of the state or another proper party may intervene to determine and protect the respective personal rights of a child for whom paternity has not been lawfully established, of the mother of the child and of the putative father of the child. The parties to a paternity proceeding are not entitled to a trial by jury.

(c) The sufficiency of the statement of the material allegations in the complaint set forth as grounds for relief and the grant or denial of the relief prayed for in a particular case shall rest in the sound discretion of the court, to be exercised by the court according to the circumstances and exigencies of the case, having due regard for precedent and the provisions of the statutory law of this state.

(d) A decree or order made and entered by a court in a paternity proceeding shall include a determination of the filial relationship, if any, which exists between a child and his or her putative father and, if such relationship is established, shall resolve dependent claims arising from family rights and obligations attendant to such filial relationship.

(e) A paternity proceeding may be brought by any of the following persons:

(1) An unmarried woman with physical or legal custody of a child to whom she gave birth;

(2) A married woman with physical or legal custody of a child to whom she gave birth, if the complaint alleges that:

(A) The married woman lived separate and apart from her husband preceding the birth of the child;

(B) The married woman did not cohabit with her husband at any time during such separation and that such separation has continued without interruption; and

(C) The respondent, rather than her husband, is the father of the child;

(3) The state of West Virginia, including the Bureau for Child Support enforcement;

(4) Any person who is not the mother of the child but who has physical or legal custody of the child;

- (5) The guardian or committee of the child;
- (6) The next friend of the child when the child is a minor;
- (7) By the child in his or her own right at any time after the child's eighteenth birthday but prior to the child's twenty-first birthday; or
- (8) A man who believes he is the father of a child born out of wedlock when there has been no prior judicial determination of paternity.
- (f) If a paternity proceeding is brought that names the father of the child as being someone other than the person whose name appears on the child's birth certificate, then the person bringing the action shall cause a copy of the verified complaint to be served on the person named as the father on the birth certificate. Service must be in accordance with rule 4 of the rules of civil procedure.
- (g) Blood or tissue samples taken pursuant to the provisions of this article may be ordered to be taken in such locations as may be convenient for the parties so long as the integrity of the chain of custody of the samples can be preserved.
- (h) A person who has sexual intercourse in this state submits to the jurisdiction of the courts of this state for a proceeding brought under this article with respect to a child who may have been conceived by that act of intercourse. Service of process may be perfected according to the rules of civil procedure.
- (i) When the person against whom the proceeding is brought has failed to plead or otherwise defend the action after proper service has been obtained, judgment by default shall be issued by the court as provided by the rules of civil procedure.

§48-24-102. Statute of limitations; prior statute of limitations not a bar to action under this article; effect of prior adjudication between husband and wife.

(a) Except for a proceeding brought by a child in his or her own right under the provisions of subdivision 24-101(e)(7), a proceeding for the establishment of the paternity of a child shall be brought prior to such child's eighteenth birthday.

(b) A proceeding to establish paternity under the provisions of this article may be brought by or on behalf of a child notwithstanding the fact that, prior to July 1, 1986, an action to establish paternity may have been barred by a prior statute of limitations set forth in this code or otherwise provided for by law.

(c) A proceeding to establish paternity under the provisions of this article may be brought for any child who was not yet eighteen years of age on August 16, 1984, regardless of the current age.

(d) A proceeding to establish paternity under the provisions of this article may be brought for any child who was not yet eighteen years of age on August 16, 1984, and for whom a paternity action was brought but dismissed because a statute of limitations of less than eighteen years was then in effect.

(e) Any other provision of law to the contrary notwithstanding, when a husband and wife or former husband and wife, in an action for divorce or an action to obtain a support order, have litigated the issue of the paternity of a child conceived during their marriage to the end that the husband has been adjudged not to be the father of such child, such prior adjudication of the issue of paternity between the husband and the wife shall not preclude the mother of such child from bringing a proceeding against another person to establish paternity under the provisions of this article.

§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.

§48-24-104. Establishment of paternity and duty of support.

(a) When the respondent, by verified responsive pleading, admits that the man is the father of the child and owes a duty of support, or if after a hearing on the merits, the court shall find, by clear and convincing evidence that the man is the father of the child, the court shall, subject to the provisions of subsection (c) of this section, order support in accordance with the support guidelines set forth in article 13-101, et seq., and the payment of incurred expenses as provided in subsection (e) of this section.

(b) Upon motion by a party, the court shall issue a temporary order for child support pending a judicial determination of parentage if there is clear and convincing evidence of paternity on the basis of genetic tests or other scientifically recognized evidence.

(c) Reimbursement support ordered pursuant to this section shall be limited to a period not to exceed thirty-six months prior to the service of notice of the commencement of paternity or support establishment, unless the court finds, by clear and convincing evidence:

(1) That the respondent had actual knowledge that he was believed to be the father of the child;

(2) That the respondent deliberately concealed his whereabouts or deliberately evaded attempts to serve process upon himself or herself; or

(3) That the respondent deliberately misrepresented relevant information which would have enabled the petitioner to proceed with the cause of action.

If the court finds by clear and convincing evidence that the circumstances in subsection (1), (2) or (3) exist, then the court shall order reimbursement support to the date of birth of the child, subject to the equitable defense of laches.

(d) The court shall give full faith and credit to a determination of paternity made by any other state, based on the laws of that state, whether established through voluntary acknowledgment or through administrative or judicial process.

(e) Bills for pregnancy, childbirth and genetic testing are admissible and constitute prima facie evidence of medical expenses incurred.

(f) The thirty-six month limitation on reimbursement support does not apply to the award of medical expenses incurred.

(g) For purposes of this section, "reimbursement support" means the amount of money awarded as child support for a period of time prior to the entry of the order which establishes the support obligation.

§48-24-105. Representation of parties.

Notwithstanding any provision of this code to the contrary, no parent in any proceeding brought pursuant to this article may have counsel appointed for them according to section one, article twenty-one, chapter twenty-nine of this code or otherwise receive legal services provided solely by the state in such action. The Bureau for Child Support enforcement providing representation to the State of West Virginia shall solely represent the State of West Virginia and does not provide any representation to any party.

§48-24-106. Establishing paternity by acknowledgment of natural father.

A written, notarized acknowledgment executed pursuant to the provisions of section ten, article five, chapter sixteen of this code legally establishes the man as the father of the child for all purposes and child support may be established in accordance with the support guidelines set forth in article 13-101, et seq.