

- SUBJECT:** Ending parent and child support obligations in cases of mistaken paternity
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Hunter, Hughes, Hartnett, Jackson, Leibowitz, Lewis, Madden, Martinez
- 0 nays
- 3 absent — Alonzo, Branch, Woolley
- SENATE VOTE:** On final passage, April 2 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** (*On House companion bill, HB 2494:*)
For —Merrilee Harmon
- Against — None
- On — John J. Sampson; (*Registered, but did not testify:* Karl Hays, Texas Family Law Foundation)
- BACKGROUND:** Family Code, ch. 160, subch. D establishes rules for the voluntary acknowledgment of paternity of a child. Genetic testing to determine parentage is governed by subch. F. Subchs. H and I, respectively, govern paternity issues related to a child conceived by assisted reproduction and gestational agreements.
- The Family Code does not provide sufficient guidelines for situations where a man discovers that he mistakenly acknowledged paternity or was wrongly adjudicated to be the genetic father of a child. Under current law, a man who at the outset waives his right to genetic testing to determine parentage has little recourse to terminate a parent-child relationship or his duty to pay child support, even if the child is not genetically his.
- DIGEST:** SB 519 would amend the Family Code to authorize a court, under certain circumstances, to issue an order terminating the parent-child relationship and the duty to pay future child support if genetic testing disproved a man’s paternity of a child.

Genetic testing not required for initial filing of suit. SB 519 would allow a man to file a suit for termination of the parent-child relationship if the man had signed an acknowledgment of paternity of the child or had been determined to be the child's father in a previous legal proceeding in which genetic testing had not occurred. A man could file a suit regardless of whether he had obtained genetic testing. A suit would have to be verified and allege facts showing that the man:

- was not the child's genetic father; and
- had signed the acknowledgement of paternity or had failed to contest parentage in the previous proceeding because the petitioner had mistakenly believed that he was the child's genetic father based on misrepresentations that had led him to that conclusion.

A suit filed on or after September 1, 2010, would have to be filed not later than the first anniversary of the date on which a man learned of the acts alleged in the suit indicating that he was not the genetic father of his child. A suit filed before September 1, 2010, could be filed regardless of the date on which a man learned that he was not the genetic father of his child. The bill's provision regarding suits filed before September 1, 2010, would expire September 1, 2011.

Filing prohibited under certain circumstances. A man could not file a suit for termination of the parent-child relationship with his child if:

- the man was the child's adoptive father;
- the child was conceived by assisted reproduction and the man consented to the reproduction by his wife; or
- the man was the intended father of the child under a gestational agreement validated by a court.

Procedure for hearing suit. After the filing of a suit for the termination of a man's parent-child relationship based on mistaken paternity, the court would have to hold a pretrial hearing to determine whether the petitioner had established a meritorious prima facie (self-evident) case. If a prima facie case was established, the court would have to order the man and the child to submit to genetic testing.

If the genetic testing excluded the man as the child's genetic father, the court would terminate the parent-child relationship. If the genetic testing identified the man as the genetic father under the standards prescribed by

Family Code, sec. 160.505 and the results of any further court-ordered testing requested by the man did not exclude him as the genetic father, the could would have to deny the termination request.

Termination of duty to pay child support. A court order that terminated a man's parent-child relationship on the grounds of mistaken paternity also would terminate the man's obligation for future support of the child after the date the order was issued. The order would not terminate the man's obligations for child support incurred before the date of the order or an obligation to pay interest that had accrued on past-due child support existing on that date. The existing obligations could be enforced by any means available for the enforcement of child support other than contempt of court.

Subsequent proceedings and orders not prohibited. An order terminating the parent-child relationship based on mistaken paternity would not preclude:

- the initiation of a proceeding to determine whether another man was the child's parent; or
- if the other man subject to the proceeding was determined to be the child's parent, the issuance of an order requiring that man to pay child support for the child. This order could not require the other man to pay retroactive child support for any period preceding the date on which an order terminating the parent-child relationship based on mistaken paternity was issued, regardless of the retroactive child support provisions under Family Code, sec. 154.131.

Applicability and effective date. SB 519 would apply to an order for child support regardless of whether the order was issued before, on, or after the bill's effective date.

SB 519 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

NOTES:

The companion bill, HB 2494 by Dunnam, was heard by the Judiciary and Civil Jurisprudence Committee on April 15 and left pending.