

THE APPARENT PROBLEM:

Paternity actions in Michigan, once "quasi-criminal," are now fundamentally civil in nature; their object is to impose financial obligations on responsible parties. Over the years, the governing statutes have been stripped of various aspects that echoed criminal procedure. While at one time a purported father could be arrested and jailed pending posting of bond under Michigan paternity law, that is no longer the case. However, at least one vestige of criminal procedure remains: a provision that says that an alleged father may not be compelled to testify. Given the importance of ascertaining the facts in a paternity action, and the civil nature of that action, it has been suggested that the provision be eliminated.

In a related matter, the Supreme Court ruled in 1988 that a default judgment could not be issued against a putative father who refused to submit to a blood test, although he could be held in contempt of court (Bowerman v. MacDonald; 427 N.W. 2d 477; 431 Mich. 1). The court noted that the paternity law provided for the refusal to be disclosed at the trial, in addition to any other remedies available. Since a default judgment would preclude the need for a trial, the court reasoned, it could not be used in addition to the disclosure at trial, and therefore was not an available remedy. In other civil actions, the court may enter a default judgment against a party for failing to comply with a discovery order. Given that paternity actions are essentially civil actions, and that blood and tissue test results provide overwhelming evidence in paternity actions, it has been proposed that default judgments be allowed against parties in a paternity action who refuse blood or tissue typing tests.

THE CONTENT OF THE BILL:

Under the paternity act, if any party refuses to submit to a blood or tissue typing test, that refusal is to be disclosed at the trial, unless good cause is shown for not disclosing. Under the bill, if a party refused testing, the court could either enter a default judgement (at the request of the appropriate party), or, if a trial was held, allow the refusal to be disclosed at trial, unless there was good cause for not disclosing. In addition, the bill would delete a provision that says that an alleged father may not be compelled to testify.

MCL 722.715 and 722.716

FISCAL IMPLICATIONS:

Fiscal information is not available. (10-3-89)

ARGUMENTS:

For:

Consistent with judicial and legislative actions emphasizing the civil, as opposed to criminal, nature of paternity actions, the bill would authorize the use of certain procedures used to pry out the facts in civil cases. The need to protect against self-incrimination does not exist in civil

cases in the same way as in criminal cases, where a guilty verdict can deprive a defendant of his or her freedom. The bill thus would eliminate an unjustified provision in the paternity law that allows an alleged father to refuse to testify.

Similarly, in non-paternity civil actions, the court may enter a default judgment against a party who refuses to comply with court-ordered discovery procedures. The most important "discovery procedure" in paternity cases is compliance with court-ordered blood and tissue testing, but a recent Supreme Court decision barred the use of default judgments as a sanction against refusing to be tested. The bill would authorize a court to enter a default judgment against a party who refused that vitally important testing.

A determination of the facts is crucial to paternity actions, and the bill would improve those aspects of the paternity act aimed at establishing the facts. Further, the bill likely would diminish burdens on court resources: by applying greater pressure on parties to submit to blood tests, the bill would interfere with a party's ability to thwart a speedy resolution by refusing testing.

Against:

Some may find the bill's proposals, particularly with regard to forcing a person to submit to blood and tissue testing, an unacceptable infringement on an individual's rights. Although a court would not have to enter a default judgment against a person who refused testing, the bill places no explicit restraints on a court's ability to enter the judgment as long as the appropriate party requested it.

POSITIONS:

The Michigan Judges' Association supports the bill. (10-3-89)

The Prosecuting Attorneys Association of Michigan supports the bill. (10-3-89)