



**House  
Legislative  
Analysis  
Section**

House Office Building, 9 South  
Lansing, Michigan 48909  
Phone: 517/373-6466

**LET NONBIOLOGICAL FATHERS  
END CHILD SUPPORT**

**House Bill 4635 as passed by the House  
Sponsor: Rep. James Koetje**

**House Bill 4636 as passed by the House  
Sponsor: Rep. Doug Hart**

**House Bill 4637 as passed by the House  
Sponsor: Rep. Sue Tabor**

**House Bill 4638 as passed by the House  
Sponsor: Rep. Andrew Raczkowski**

**Second Analysis (7-24-01)  
Committee: Civil Law and the Judiciary**

***THE APPARENT PROBLEM:***

The advent of genetic testing that can accurately establish paternity, the high modern rates of divorce, and the vigorous state and federal efforts in recent years to enforce child support payments, have challenged 500 years of common law that presumes that all children born within marriage are fathered by the husband. Some men who are subject to child support orders have discovered that they are not the biological fathers of some or all of the children born in a former marriage or during a former sexual relationship with the children's mother. Apparently at the request of such "deceived fathers," legislation has been introduced that would allow nonbiological fathers recourse when they discovered that they were paying child support for children who were not their biological offspring.

***THE CONTENT OF THE BILLS:***

House Bills 4535 and 4636 would allow requests to vacate paternity determinations, the termination of certain child support orders, and the cancellation of child support arrearages under certain circumstances. House Bill 4637 would allow the transfer of Friend of the Court documents under certain circumstances. And House Bill 4638 would make it a misdemeanor punishable by imprisonment for not more than two years or a fine of up to \$1,000 to knowingly misidentify a man as a biological father with the intent to deceive certain parties in an adoption proceeding. If enacted, the bills would take effect on October 1, 2001.

House Bill 4635 would add a new section to the Support and Parenting Time Enforcement Act (MCL 710.5) to allow a man to file a motion for relief from a court order that stated that he was a child's father or that required him to pay child support, and require the court to order the child, the child's mother, and the man filing the motion to submit to genetic testing. The order for genetic testing could be made by or on behalf of either party; the man, woman, and child would have to submit to genetic testing (blood or tissue typing, or DNA identification profiling, as described in, and subject to the same procedures as genetic testing ordered under, the Paternity Act) within 30 days after the order were issued. An individual filing a motion under the bill would have to file with the court that issued the order from which he sought relief.

Motion granted. Except as otherwise provided in the bill (see below), a court would be required to vacate an order stating that a man were a child's father or to terminate a child support order if the court found both that the man was not the child's adoptive father and genetic testing results were admitted into evidence excluding the man as the child's biological father. If the court granted a motion under the bill to vacate paternity or terminate a child support order, and if the man filing the motion and the child also were the subjects of a parenting time order, the court would determine if the parenting time order were terminated, modified, or continued based on the best interests of the child. If a court granted a motion to

House Bill 4635-4638 (7-24-01)

terminate a child support order and a child support arrearage existed under the order, the court could retroactively “correct” the arrearage.

Motion denied. The bill would prohibit a court from granting a motion filed under the bill if it found either that:

- The individual filing the motion knew of genetic or blood test results that excluded him as the child’s father more than six months before the motion was filed and he could not show good cause why he had not filed the motion within six months after getting the test results; or
- After a man knew that he was not a child’s biological father, any of five things had occurred: (1) the man acknowledged paternity of the child in writing; (2) he consented to his name being entered as the child’s biological father on the child’s birth certificate; (3) he had been determined to be the child’s father in an action under the Paternity Act; (4) the state registrar filed an acknowledgement of parentage in which the man declared himself to be the child’s biological father; or (5) he otherwise admitted that he was, or acknowledged himself as, the child’s biological father.

If a motion made under the bill were to terminate a child support order and the court did not grant the motion, the court would be required to order the moving party to pay the costs of the action and each opposing party’s reasonable attorney fees.

[Note: The bill rather confusingly also says that the provisions prohibiting a court from granting a motion under the bill if the court finds any of a number of things occurred after a man knew he wasn’t a child’s biological parent would not apply “if the court [found] that an event listed . . . occurred before the individual knew that he [was] not the child’s biological father.”]

House Bill 4636 would amend the Support and Parenting Time Enforcement Act (MCL 710.603) to specify that a “retroactive correction” of child support arrearages as a result of the termination of a support order under the provisions of House Bill 4635 (above) would be considered to be a retroactive correction of a mistake and not a retroactive modification of the order. (The act does not allow retroactive modifications of court orders.) House Bill 4636 could not be enacted unless House Bill 4635 were enacted.

House Bill 4637 would add a new section to the Friend of the Court Act (MCL 552.517f) to require a

court to transfer a domestic relations matter to a different county office under certain circumstances, and to require the transferring office to send to the receiving office all records related to the transferred domestic relations matter.

If a recipient or payer of child support filed a postjudgment motion to transfer a domestic relations matter to a different county office, the court would be required to transfer the matter if the court found all of the following:

- The transfer would serve the convenience of the parties and be consistent with the child’s best interests;
- Neither party resided in the county of current jurisdiction for at least six months before the motion were filed;
- At least one party had resided in the county to which the transfer were requested for at least six months before the motion was filed; and
- The county to which the transfer was requested were not contiguous to the county of current jurisdiction.

If the court transferred a domestic relations matter, the transferring office would be required to send to the receiving office all of the records related to the domestic relations matter according to the procedure established by the Michigan Supreme Court. The court could charge a \$20 fee for a motion filed under the bill, but would have to waive the filing fee for an indigent individual as provided in the Michigan Court Rules.

However, a court would not be required to transfer a domestic relations matter more than once in a 12-month period, though it would be allowed to do so under the conditions set forth in the bill.

House Bill 4638 would add a new section (MCL 710.69a) to the Michigan Adoption Code (chapter 10 of the Probate Code) to prohibit knowingly misidentifying someone, with the intent to deceive certain parties, as the biological father of a child and to add misdemeanor penalties for such violations.

More specifically, an individual would be prohibited from knowingly misidentifying someone as the child’s biological father, intending to deceive one or more of the following:

- A court, or one of its employees or agents;

- The Family Independence Agency;
- A child placing agency;
- An interested party.

Someone who knowingly misidentified a man as the biological father of a child with the intent to deceive the above parties the would be guilty of a misdemeanor punishable by imprisonment for up to two years or a fine of up to \$1,000, or both. A criminal penalty allowed by the bill could be imposed in addition to any penalty that might be imposed for any other criminal offense arising from the same conduct.

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, House Bills 4635, 4636 and 4638 would have no fiscal implications. House Bill 4637 could result in a small indeterminate increase in administrative costs for local courts. (5-18-01)

### ***ARGUMENTS:***

#### ***For:***

It is manifestly unfair to require men to pay child support for children who are not theirs. For some 500 years, English common law has presumed that any children born during a marriage are the husband's biological offspring. This doctrine was formulated at a time not only when there were no effective ways to determine biological fatherhood, but also when children and wives were considered the man's chattel or property. The situation has changed greatly since then, however. Not only are wives and children no longer the legal property of their husbands and fathers, but there are reliable ways to determine whether or not a child is the genetic offspring of a particular man. As men have been discovering they have been paying child support for children born in their former marriages (or during former sexual liaisons) to whom they aren't biologically related, they also have been trying to divest themselves of the unfair financial burden of children who are not their biological offspring.

House Bills 4635 and 4636 would provide legal recourse to men who proved that children from a former marriage or sexual relationship, and for whom the men were paying child support, were not their biological offspring. Under House Bill 4635 such men could legally request that an order of paternity be vacated, child support be terminated, and any past

child support arrearages be cancelled. And mandatory genetic testing would provide confirmation of – or, as the case may be – refute any such claims. Given the zeal with which the state and federal governments have been pursuing child support from the fathers of children in recent years, surely it is only fair to ensure that the correct biological father is held financially responsible for his biological children.

#### ***For:***

House Bill 4638 would complement House Bills 4635 and 4636 by criminalizing fraudulent behavior by women who lied about who their children's father was. For a woman to deceive a man (and others) about the paternity of her children is fraud, plain and simple, and should be treated like the crime it is. The bill would put teeth behind the other bills in the package by making it a misdemeanor, punishable by imprisonment and a fine, to knowingly misidentify a man as the biological father of a child born out of wedlock and put up for adoption with the intent to deceive a court, the Family Independence Agency, an adoption agency, or any other interested party.

#### ***Response:***

While the bill does not explicitly state that it would apply only in adoption cases (and therefore not to the problems of men paying child support for children who were not biologically related), it would amend the Adoption Code (Chapter X of the Probated Code). Thus it would appear unlikely that the bill would apply to cases involving nonbiological fathers seeking to terminate court-ordered child support.

#### ***Against:***

The bills don't go far enough. Not only should men be able to legally terminate existing child support payments, they should be able to recover past child support paid for children not biologically related to them. Reportedly, as of October 2000, Ohio, Colorado, Iowa, and Louisiana had passed laws allowing men to sue to end their child support payments if genetic testing proves they are not the father. And the Ohio law, at least, also reportedly allows men to sue a mother for back payments of child support.

#### ***Against:***

House Bill 4636 would allow a man who had managed to terminate child support because a child from a former marriage or sexual relationship was not his biological offspring nevertheless to continue to have "parenting time" with the child he had successfully sought to abandon financially. This seems grotesquely unfair to the child, who would be given the painful and conflicting messages that this

man – whom the child heretofore had considered to be his or her father – wanted to make it clear that he was not the child’s father and yet wanted to continue “parenting time” with the child. It would be far better for the child to terminate the relationship entirely once the man moved to legally terminate his parental financial responsibilities to the child, rather than force the child to continue seeing a man who did not value him or her enough to provide the child with concrete financial support. As the Massachusetts Supreme Court indicated, in a decision in which the court refused to allow a man to terminate child support for his seven-year-old child once the man discovered that he was not the child’s biological father, it is in the best interests of a child for a father figure to continue in the role of a father, which includes financial support. To allow court-ordered “parenting time” to a man who clearly wishes to divest himself of the role of father to the child would ultimately be contrary to the child’s best interests.

**Response:**

In fact, the bills would provide a fair and equitable solution to a difficult problem. It would fairly relieve nonbiological fathers of the continued financial drain of child support for children who were not biologically related, while at the same time allowing the possibility that some kind of relationship between the child and the man might continue. Continuity in relationships is important to the psychological and emotional health of children, and while the bills would rightly relieve certain men of the financial burden of child support, they would also allow for some kind of continued relationship between the man and the child or children to continue.

**Against:**

House Bills 4635 and 4636 would contravene 500 years of common law doctrine, which presumes that a man is the legal father of any child born to his wife during their marriage. Although the law was originally designed to protect children from the lack of rights accorded to “illegitimate” children, it actually also accords with the current view that a man’s status as a father is not just, or even primarily, dependent on his genetic contribution to a child. Not only has genetic testing allowed for more accurate biological paternity determinations, advances in reproductive technologies also have greatly expanded the notion of what it means to be a “parent,” not all of which are dependent on a genetic connection. It has become questionable whether, in fact, it is true any longer that only genetic fatherhood can, or should be, counted as the only kind of “real” fatherhood. Many people would argue that just as adoptive parents are as “real” as biological parents, so, too, “social”

fathers – fathers who have established emotional, affectional, and financial ties to children – are as “real” and legitimate as fathers whose only contribution to their children’s lives is genetic material. In fact, according to the 1999 Michigan appeals court decision upon which the package of bills reportedly is based, the U.S. Supreme Court has recognized that there is a distinction between an established relationship between a parent and a child and the existence of a biological link, and that the biological link is entitled to less constitutional protection than the established relationship (*Lehr v Robertson*, 463 US 248).

Some opponents of House Bills 4635 and 4636 also object to their intrusion into the sanctity of marriage, while others argue that judges still should have the ability to protect a child’s interests by requiring child support even if genetic testing disproves biological paternity. At the very least, House Bill 4635 should include a “good cause” requirement for challenging paternity after any significant time or after a paternity order had been entered, or provide for a specific statute of limitations. Delay in raising this issue also often complicates identifying and locating the biological father, which may in fact have been why the Massachusetts Supreme Court ruled as it did.

Though it may be understandable that a man who had been cuckolded would resent his former wife’s (or unmarried sexual partner’s) actions, should this resentment against the mother be taken out on the children of a man who has been the only father they have known? Isn’t parenting a social relationship that is not reducible simply to a biological relationship? Shouldn’t “social” fatherhood be the overriding criterion in modern society, where children no longer are just their father’s property, for determining who a child’s father “really” is? What kind of a man would abandon children he had been parenting simply because he discovered there was no genetic connection between them? Surely any mature responsible adult would wish to support a child whom he loved and who loved him, regardless of their genetic relationship, no matter how he felt about his ex-wife or sexual partner.

**Against:**

The bills seem to be potentially contrary to a movement on the part of many people to make it more difficult rather than easier to terminate marriages, such as proponents of so-called “covenant” marriages. Surely one powerful incentive for remaining in a marriage and working problems out would be to avoid the often painful and exhausting battles over child support once a marriage

is ended. One way to avoid such battles would be by avoiding divorce in the first place. Would the bill have the unintended effect of further weakening marriages by providing an incentive for some men to abandon their marriages when they knew or suspected that they were not the biological fathers of the children born in that marriage?

***Against:***

House Bill 4638 would discourage birth mothers from naming all potential fathers, and makes no exceptions to prosecution in cases of domestic violence, incest, or other extenuating circumstances. In such cases, for a mother to even name a potential father may subject her to further abuse, which is why the Family Independence Agency regulations reportedly have an exception for domestic violence survivors to the agency's general requirement that mothers applying for assistance cooperate with the state in seeking child support from putative fathers. Finally, the bill is unnecessary, since under existing law, someone who deliberately lies to the court (including in the course of adoption proceedings) is subject to contempt of court or perjury sanctions.

***Against:***

Although House Bill 4637 has been presented as part of the package of paternity bills, it is unclear how allowing the transfer of Friend of the Court documents on domestic matters fits in with the package.

***POSITIONS:***

DADS of Michigan support the bills. (5-15-01)

The Family Law Section of the State Bar of Michigan supports House Bill 4637 (which would allow the transfer of Friend of the Court documents between counties) and 4638 (which would amend the Michigan Penal Code to add criminal penalties for knowingly misidentifying someone as a biological father with the intent to deceive) and opposes House Bills 4635 and 4636. (5-17-01)

Adoption Associates opposes the bills. (5-16-01)

The Michigan Advocacy Project opposes the bills. (5-21-01)

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.