

REVOCAION OF PATERNITY IN ALLEGED RAPE CASES

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Senate Bill 858 (Substitute S-1) as reported by the Senate
Sponsor: Sen. Rick Jones
House Committee: Criminal Justice
Senate Committee: Judiciary
Complete to 5-23-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill provides a mechanism by which a mother could bring an action to have a court revoke paternity if the child had been conceived by nonconsensual sexual penetration.

The bill amends the Revocation of Paternity Act. The act allows various parties (the mother, acknowledged father, alleged father, or a prosecuting attorney) to bring an action to determine that a presumed father is not a child's father. An action may also be filed to set aside an acknowledgment of parentage or an order of filiation.

Currently, if an action is brought by an alleged father who proves by clear and convincing evidence that he is the child's father, the court may make a determination of paternity and enter an order of filiation. SB 858 would add that if an action is brought by a mother who, after a fact-finding hearing, proves by clear and convincing evidence that the child was conceived as a result of nonconsensual sexual penetration, the court would have to do one of the following:

- Revoke an acknowledgment of parentage for an acknowledged father.
- Determine that a genetic father is not the child's father.
- Set aside an order of filiation for an affiliated father.
- Make a determination of paternity regarding an alleged father and enter an order of revocation of paternity for that alleged father.

This would not apply if, after the child was conceived by the nonconsensual penetration, the biological parents cohabit and establish a mutual custodial environment for the child. "Sexual penetration" would mean that term as defined in Section 520a of the Michigan Penal Code.

In addition, the act allows the court to order a nonprevailing party in an action to pay the prevailing party's costs of the action and attorney fees. The bill would include a mother who brought an action under the bill; thus, a mother who did not prevail in an action to prove the child was conceived as a result of nonconsensual sexual penetration could be ordered to pay the other party's legal costs and fees. However, the bill excludes a mother who brought an action under the bill from a provision requiring an assurance (e.g., posting a surety bond) that the costs of the action and attorney fees if the person does not prevail will be covered.

Further, the act prohibits a court from issuing an order setting aside a judgment or determination of a court or administrative agency of another state, even if the judgment or determination is being enforced in Michigan. The bill would also prohibit a court from setting aside a judgment or determination that is inconsistent with federal law pertaining to full faith and credit being given to child custody determinations.

The bill would take effect 90 days after enactment.

MCL 722.1443 and 722.1445

FISCAL IMPACT:

The bill would have no fiscal on the judiciary.

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