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BILL ANALYSIS



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Senate Bill 858 (as introduced 3-17-16)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 6-17-16

CONTENT

The bill would amend the Revocation of Paternity Act to do the following:

- **Require a court to take an action revoking paternity if a child's mother proved by clear and convincing evidence that her child was conceived as a result of criminal sexual conduct.**
- **Excuse a mother who brought an action under the bill from a requirement that a person who files an action under the Act provide financial assurance that the costs of the action will be covered if the person does not prevail.**
- **Include a mother who was a nonprevailing party in an action brought under the bill in a provision allowing the court to order a nonprevailing party to pay the prevailing party's costs.**

The bill would take effect 90 days after its enactment.

Action to Show Conception by CSC

The Act allows various parties to bring an action to determine that a presumed father is not the father of a child or an action to set aside an acknowledgment of parentage or order of filiation.

(A presumed father is a man presumed to be a child's father by virtue of his marriage to the child's mother at the time of conception or birth. Under the Acknowledgement of Parenting Act, a man who has affirmatively held himself out to be a child's father may execute an acknowledgment of parentage; the man then is an acknowledged father. "Order of filiation" means a judicial order establishing an affiliated father, and "affiliated father" means a man who has been determined in a court to be a child's father.)

Under the bill, if an action were brought by a mother who proved by clear and convincing evidence that her child was conceived as a result of criminal sexual conduct, the court would have to do one of the following:

- Revoke an acknowledgment of parentage for an acknowledged father.
- Determine that a genetic father was 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 the alleged father.

(An alleged father is a man who by his actions could have fathered a child. "Genetic father" means a man whose paternity has been determined solely through genetic testing under the Paternity Act, the Summary Support and Paternity Act, or the Genetic Parentage Act.)

Costs of Action

The Revocation of Paternity Act authorizes a court, in its discretion, to order a person who files an action or motion under the Act to post an amount of money with the court, obtain a surety, or provide other assurances that in the court's determination will secure the costs of the action and attorney fees if the person does not prevail. That provision would not apply to an action brought by a mother under the bill.

The court, in its discretion, also may order a nonprevailing party to pay the reasonable attorney fees and costs of a prevailing party. The bill would include in this provision a mother who was a nonprevailing party in an action brought under the bill.

MCL 722.1443 & 722.1445

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill could have an indeterminate fiscal impact on State and local government. The provisions of the bill could lead to an increase in hearings to terminate parental rights. An increase in hearings could increase incremental resource demands on circuit court systems.

In 2015, the Federal government enacted the Rape Survivor Child Custody Act which, among other things, provided increased formula grants for states that have in place a law that allows the mother of any child who was conceived through rape to seek court-ordered termination of the parental rights of her rapist with regard to that child, which the court is authorized to grant upon clear and convincing evidence of rape. The maximum allowed grant increase is 10% of the average of the total amount of funding provided to the State in the past three years under the STOP Violence Against Women Formula Grant Program and the Sexual Assault Services Program. The increased funding is for a two-year period and can be reauthorized up to four times. For Michigan, the maximum increase would be approximately \$400,000 per year.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.