

# Modifications to Federal Statutes Required to Disincentive Paternity Fraud

## Statutory Modifications Required to Disincentive Paternity Fraud

The following changes are the needed modifications to the United States Code Title 42 to end funding that has proven to incentive the states to ignore or even assist in perpetuating paternity fraud.

Document Key:

~~Red Strikethrough~~ = deleted text and paragraphs

**Bolded Blue** = new, added text

### TITLE 42 - THE PUBLIC HEALTH AND WELFARE CHAPTER 7 - SOCIAL SECURITY SUBCHAPTER IV - GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES Part D - Child Support and Establishment of Paternity

#### § 652. Duties of Secretary

Reference:

[http://www4.law.cornell.edu/uscode/html/uscode42/usc\\_sec\\_42\\_00000652----000-.html](http://www4.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00000652----000-.html)

#### (a) Establishment of separate organizational unit; duties

(1) establish such standards for State programs for locating noncustodial parents, establishing paternity **through genetic tests**, and obtaining child support and support for the spouse (or former spouse) with whom the noncustodial parent's child is living as he determines to be necessary to assure that such programs will be effective;

(7) provide technical assistance to the States to help them establish effective systems for collecting child and spousal support and establishing paternity **through genetic tests**, ~~and specify the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity which shall include the social security number of each parent and,~~ after consultation with the States, other common elements as determined by such designee;

(10) not later than three months after the end of each fiscal year, beginning with the year 2008, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

(G) data, by State, on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made **through genetic tests** and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government;

#### (g) Performance standards for State paternity establishment programs

(2) For purposes of this section -

(A) the term "IV-D paternity establishment percentage" means, with respect to a State for a fiscal year, the ratio (expressed as a percentage) that the total number of children—

(iii) the paternity of whom has been established **through genetic tests** ~~or acknowledged,~~

**(B)** the term “statewide paternity establishment percentage” means, with respect to a State for a fiscal year, the ratio (expressed as a percentage) that the total number of minor children—

**(ii)** the paternity of whom has been established **through genetic tests** ~~or acknowledged,~~

For purposes of subparagraphs (A) and (B), the total number of children shall not include any child with respect to whom assistance is being provided under the State program funded under part A of this subchapter by reason of the death of a parent unless paternity is established **through genetic tests** for such child or any child with respect to whom an applicant or recipient is found by the State to qualify for a good cause or other exception to cooperation pursuant to section 654 (29) of this title.

**(3)**

**(B)** The Secretary shall submit an annual report to the Congress that sets forth the data upon which the paternity establishment percentages for States for a fiscal year are based, lists any additional variables the Secretary has identified under subparagraph (A), and describes State performance in establishing paternity **through genetic tests**.

#### **(h) Prompt State response to requests for child support assistance**

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must accept and respond to requests (from States, jurisdictions thereof, or individuals who apply for services furnished by the State agency under this part or with respect to whom an assignment pursuant to section 608 (a)(3) of this title is in effect) for assistance in establishing and enforcing support orders, including requests to locate noncustodial parents, establish paternity **through genetic tests**, and initiate proceedings to establish and collect child support awards.

#### **§ 654. State plan for child and spousal support**

Reference:

[http://www4.law.cornell.edu/uscode/html/uscode42/usc\\_sec\\_42\\_00000654----000-.html](http://www4.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00000654----000-.html)

A State plan for child and spousal support must—

**(4)** provide that the State will—

**(A)** provide services relating to the establishment of paternity or the establishment **through genetic tests**, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to—

**(9)** provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

**(A)** in establishing paternity **through genetic tests**, ~~if necessary;~~

**(13)** provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity **through genetic tests**, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan;

(16) provide for the establishment and operation by the State agency, in accordance with an (initial and annually updated) advance automated data processing planning document approved under section 652 (d) of this title, of a statewide automated data processing and information retrieval system meeting the requirements of section 654a of this title designed effectively and efficiently to assist management in the administration of the State plan, so as to control, account for, and monitor all the factors in the support enforcement collection and paternity determination **through genetic tests** ~~process~~ under such plan;

(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained and will publicize the availability and encourage the use of procedures for ~~voluntary~~ establishment of paternity **through genetic tests** and child support by means the State deems appropriate;

(26) have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including—

(A) safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity **through genetic tests**, or to establish, modify, or enforce support, or to make or enforce a child custody determination;

(29) provide that the State agency responsible for administering the State plan—

(A) shall make the determination (and redetermination at appropriate intervals) as to whether an individual who has applied for or is receiving assistance under the State program funded under part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 2012 (h) of title 7, is cooperating in good faith with the State in establishing the paternity of **through genetic tests**, or in establishing, modifying, or enforcing a support order for, any child of the individual by providing the State agency with the name of, and such other information as the State agency may require with respect to, the noncustodial parent of the child, subject to good cause and other exceptions which—

~~(D) may request that the individual sign a voluntary acknowledgment of paternity, after notice of the rights and consequences of such an acknowledgment, but may not require the individual to sign an acknowledgment or otherwise relinquish the right to~~ **must require establishment of paternity through genetic tests** as a condition of cooperation and eligibility for assistance under the State program funded under part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 2012 (h) of title 7; and

(33) provide that a State that receives funding pursuant to section 628 of this title and that has within its borders Indian country (as defined in section 1151 of title 18) may enter into cooperative agreements with an Indian tribe or tribal organization (as defined in subsections (e) and (l) of section 450b of title 25), if the Indian tribe or tribal organization demonstrates that such tribe or organization has an established tribal court system or a Court of Indian Offenses with the authority to establish paternity **through genetic tests**, establish, modify, or enforce support orders, or to enter

support orders in accordance with child support guidelines established or adopted by such tribe or organization, under which the State and tribe or organization shall provide for the cooperative delivery of child support enforcement services in Indian country and for the forwarding of all collections pursuant to the functions performed by the tribe or organization to the State agency, or conversely, by the State agency to the tribe or organization, which shall distribute such collections in accordance with such agreement.

## **§ 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement**

Reference:

[http://www4.law.cornell.edu/uscode/html/uscode42/usc\\_sec\\_42\\_00000666----000-.html](http://www4.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00000666----000-.html)

### **(a) Types of procedures required**

In order to satisfy section 654 (20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

(2) Expedited administrative and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity **through genetic tests** and for establishing, modifying, and enforcing support obligations. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement or paternity establishment **through genetic tests** within the political subdivision (in accordance with the general rule for exemptions under subsection (d) of this section).

### **(5) Procedures concerning paternity establishment.—**

#### **(A) Establishment and exclusion process available from birth until age 18.—**

(i) Procedures which permit the establishment **or exclusion** of the paternity of a child **through the use of genetic tests** at any time before the child attains 18 years of age.

(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

#### **(B) Procedures concerning genetic testing.—**

(i) Genetic testing required in certain contested cases.— Procedures under which the State is required, in a contested paternity case ~~(unless otherwise barred by State law)~~ to require the child and all other parties (other than individuals found under section 654 (29) of this title to have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon the request of ~~any such party~~ **child support**, if the request is supported by a sworn statement by the party—

(I) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(II) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(ii) Other requirements.— Procedures which require the State agency, in any case in which the agency orders genetic testing—

(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established **through genetic tests**; and

(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

~~(C) Voluntary paternity acknowledgment.—~~

~~(D) Status of signed paternity acknowledgment.—~~

~~(E) Bar on acknowledgment ratification proceedings.—~~

~~(F)~~ (C) **Admissibility of genetic testing results.**— Procedures—

(i) requiring the admission into evidence, for purposes of establishing paternity **through genetic tests**, ~~of the results of any genetic test~~ that is—

(I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and

(II) performed by a laboratory approved by such an accreditation body;

(ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and

(iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

~~(G)~~ (D) **Presumption of paternity in certain cases.**— Procedures which create a rebuttable or, ~~at the option of the State,~~ conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

~~(H)~~ (E) **Default orders.**— Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law **following establishment of paternity through genetic tests**.

~~(F)~~ **(F) No right to jury trial.**— Procedures providing that the parties to an action to establish paternity **through genetic tests** are not entitled to a trial by jury.

~~(G)~~ **(G) Temporary support order based on probable paternity in contested cases.**— Procedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests ~~or other evidence~~).

~~(H)~~ **(H) Proof of certain support and paternity establishment costs.**— Procedures under which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child **upon establishment of paternity of the putative father through genetic tests**.

~~(I)~~ **(I) Standing of putative fathers.**— Procedures ensuring that the putative father has a reasonable opportunity to initiate a paternity action.

~~(M)~~ **(J) Filing ~~of acknowledgments and adjudications~~ in state registry of birth records.**— Procedures under which ~~voluntary acknowledgments and adjudications of~~ paternity **establishment through genetic tests** ~~by judicial or administrative processes~~ are filed with the State registry of birth records for comparison with information in the State case registry.

**(11)** Procedures under which a State must give full faith and credit to a determination of paternity made **through genetic tests** by any other State, ~~whether established through voluntary acknowledgment or through administrative or judicial processes~~.

**(13) Recording of social security numbers in certain family matters.**— Procedures requiring that the social security number of—

**(B)** any individual who is subject to a divorce decree, support order, or paternity determination **through genetic tests** ~~or acknowledgment~~ be placed in the records relating to the matter; and

**(16) Authority to withhold or suspend licenses.**— Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity **determination** or child support proceedings **upon a showing of service of process on the defendant**.

### **(c) Expedited procedures**

The procedures specified in this subsection are the following:

#### **(1) Administrative action by State agency**

Procedures which give the State agency the authority to take the following actions relating to establishment of paternity **through genetic tests** or to establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other States to take the following actions:

## **(2) Substantive and procedural rules**

The expedited procedures required under subsection (a)(2) of this section shall include the following rules and authority, applicable with respect to all proceedings to establish paternity **through genetic tests** or to establish, modify, or enforce support orders:

### **(A) Locator information; presumptions concerning notice**

Procedures under which—

**(i)** each party to any paternity **determination** or child support proceeding is required (subject to privacy safeguards) to file with the State case registry upon entry of an order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of employer; and

### **(B) Statewide jurisdiction**

Procedures under which—

**(i)** the State agency and any administrative or judicial tribunal with authority to hear child support and paternity **determination** cases exerts statewide jurisdiction over the parties; and