

BACKGROUND PAPERS

Prepared for the Working Group on

Welfare Reform, Family Support and Independence

CHILD SUPPORT ENFORCEMENT AND ASSURANCE

**Background Papers Prepared for the Working Group
on Welfare Reform, Family Support and Independence**

Child Support and Assurance

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Divider Title: _____

PATERNITY ESTABLISHMENT:

UNIVERSAL OPPORTUNITY

Welfare Reform Task Force:
Paternity Subcommittee

prepared by:

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June 29, 1993
(revised)

PURPOSE:

The purpose of this paper is to discuss a "continuum of options" for establishing paternity for all children born out-of-wedlock by comparing two approaches or a combination thereof: 1) **Conditional Approach**: this approach would encourage parents to establish paternity establishment based on financial incentives and/or disincentives; and 2) **Outreach Approach**: this approach would explore a broad range of options designed to promote, on a national scale, the voluntary acknowledgment of paternity. The issue of whether or not paternity establishment should be decoupled from a child support order and/or welfare is also examined in addition to the due process and legal rights of unwed parents.

BASIC ASSUMPTIONS:

- Child support is a two-parent responsibility.
- Paternity should be established for all children born out-of-wedlock unless it can be proven that the biological father poses a real threat to the mother's or child's physical well-being.
- Paternities should be established at birth for as many children as possible.
- Children are entitled, by law, to a certain level of financial support from their biological parents regardless of whether they are divorced, separated, or unwed.
- The government has a responsibility to encourage and, in some instances, require that a child's paternity be established as a possible first step toward child support and financial security.
- The government has a responsibility to provide basic information to unwed mothers regarding the economic benefits that their children are entitled to -- under the law -- from their biological fathers once paternity has been established.

A SUMMARY OF PROPOSALS

"CONDITIONAL APPROACH"

Fiscal Incentives:

- #1: Revise tax structure to provide a paternity establishment tax credit for parents.
- #2: Pay a flat incentive for cooperation.
- #3: Provide incentives for hospitals to take an aggressive role.
- #4: Pay a percentage of hospital costs or co-payments.
- #5: Provide government financed or subsidized costs for all expenses associated with establishment.

Fiscal Disincentives:

- #6: Lost dependent exemption for tax purposes.
- #7. Lost child care tax credit.
- #8. Lost Earned Income Tax Credit.
- #9. Sanction hospitals in the form of lost Medicaid and Medicare funding for not participating in a national, in-hospital paternity establishment program.

Strategies to Influence Participation:

- #10. A presumption is made that paternity will be established and all out-of-wedlock births automatically entered into a State system of paternity establishment. Cases are not eliminated from the system until the party(ies) fully understand the benefits they are withholding from their children.
- #11: All States are required to enact laws separating the issues of paternity establishment from custody and visitation issues.

A SUMMARY OF PROPOSALS

Condition of Federal Assistance

- #12. As a condition of receipt of any form of government assistance, parties (mother and/or putative father) must cooperate in the establishment of paternity.
- #13. Receipt of public assistance hinges on applicant's immediate cooperation.
- #14. Loss of benefit for non-cooperation.
- #15. Incremental benefit reductions to the extent that cooperation is not completely forthcoming, (i.e., missed interviews).
- #16. Rethink and redefine "good cause" - rules need to be tightened up; penalties should be assessed when perjury found.
- #17. Train in-take workers on optimal interview techniques and benefits of paternity establishment.
- #18. Provide payments to informers with information leading to paternity establishment.

"OUTREACH" APPROACH

Hospital-Related Paternity

(based on the presumed passage of the Administration's proposed legislation on paternity establishment)

- #19. Fiscal incentives/reimbursements to hospitals per paternity established for each out-of-wedlock child born.
- #20. Paternity establishment in all birthing centers.
- #21. Senior-level Administration briefings with national hospital, health-related, and vital statistics organizations on the new law's requirements on in-hospital paternity establishment.

A SUMMARY OF PROPOSALS

- #22.** Comprehensive public education / public affairs strategy for dissemination information on the availability of in-hospital paternity establishment.
- #23.** Development of a model training guide or curriculum on hospital-based paternity establishment.
- #24.** Development of a Federal brochure on in-hospital paternity establishment.

Creating Additional Opportunities

- #25.** As a condition of funding, the Federal government could require that other health-related facilities or programs (e.g., pre-natal clinics, "well baby" programs, family planning centers, etc.) provide unwed mothers and fathers the opportunity to establish or initiate paternity establishment proceedings.
- #26.** State child support agencies could be encouraged or required to unwed mothers -- who were unable or unwilling to establish paternity in the hospital -- with information on paternity establishment and an application for child support services.
- #27.** Information on the benefits of paternity establishment and an application for child support services could be included along with the automatic issuance of a child's social security number following birth.
- #28.** Pediatrician's could be encouraged or required to display information materials on paternity establishment/child support -- as provided by the State IV-D office -- in a visible place in their waiting rooms.
- #29.** Obstetricians and/or gynecologists could be encouraged to inform pregnant, unwed mothers of the option of establishing or expediting paternity establishment via genetic testing at the time of their child's birth.
- #30.** Efforts could be undertaken by the ACF Assistant Secretary to establish a focal point within the organization that would be responsible for "marketing" the Administration's welfare reform initiative, ensuring coordination between child support and other Federal programs, and developing national outreach strategies.

A SUMMARY OF PROPOSALS

- #31. The Administration for Children and Families -- in conjunction with the Department of Education -- could assume a leadership role in developing a national model that would encourage paternity and child support education via the schools.
- #32. The Department of Health and Human Services, via the Administration for Children and Families, could take the lead in developing a comprehensive media campaign to reinforce the importance of having a child's paternity established and that child support is a "two parent" responsibility.
- #33. The Administration could develop an Executive Order or proposed legislation which would designate one month of every year as "National Child Support Month" in order to underscore the national importance of paternity establishment and child support.

DECOUPLING PATERNITY FROM WELFARE / CHILD SUPPORT

- #34. Could establish a separate administrative component for paternity establishment services which is independent of the welfare and child support office and which serves all families equally. The entity's focus would be purely to provide paternity establishment services. However, referral would be made to the child support agency to the extent that such services are desired or participation required.
- #35. A related option would be to establish a paternity establishment-only function within the current child support agency.
- #36. A third option would be a hybrid of the first two. A separate entity could be established to pursue paternity in cases of voluntary acknowledgement perhaps in the form of some simple registration or paternity stipulation process but all other actions would remain with the child support agency (or courts). This would incorporate the hospital based program advanced by the Administration in Budget Reconciliation as well as parents who decide to pursue paternity establishment at some point after the birth.

A SUMMARY OF PROPOSALS

DUE PROCESS ISSUES AND LEGAL RIGHTS

- #37. The Federal Government could require states to have legislation which would allow natural fathers to bring a paternity action. This would be accomplished through Federal legislation.
- #38. The Federal Government could encourage (rather than require) states to have laws which allow the father to bring a paternity action.
- #39. The Federal Government could require states to have laws which require all paternity acknowledgement programs have procedures in effect that require fathers to sign a written statement acknowledging he understands his rights and waives them. This would be accomplished through Federal legislation.
- #40. The Federal Government could require states to have laws which specify that all paternity voluntary establishment programs must require mothers to sign a form stating that they clearly and knowingly understand their rights and the consequences of paternity establishment. This would be accomplished through Federal legislation.
- #41. The Federal Government could require states to have laws in effect which require that the parent who has been the child's primary caretaker prior to the determination of paternity shall receive a custody order when a paternity acknowledgement is made. This would be accomplished through Federal legislation.

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ATTACHMENT: Summary of the Administration's proposed legislation on paternity establishment.

OUT-OF-WEDLOCK BIRTHS: STATEMENT OF THE PROBLEM

INTRODUCTION

As we embark upon the 21st century, we find that the American family -- as we once knew it -- is undergoing phenomenal, structural change. The dramatic rise in out-of-wedlock births and an increase in the number divorces has (and will continue to have) a profound impact on the social and economic well-being of our nation's children and, in the long term, the health of our nation.

Unfortunately for millions of American children, these very same changes have subjected them to a **childhood of poverty** as many adults reject their basic parental responsibility to financially provide for their children.

In 1991, there were 65.9 million children under the age of 18 living in the U.S.; 14.6 million of these children lived in single parent homes headed by a female. These children are also more likely to experience poverty. In 1991, the poverty rate for children (under 18) living in a female-headed home was 55.5% compared to a poverty rate of 10.6% for children under 18 in married couple families.

Sidenote: In 1973, children surpassed the elderly (65 years +) in terms of percentages and actual numbers living in poverty.

Children of unwed mothers, as compared to divorced mothers, are particularly vulnerable to a life of poverty. When a child is born outside of marriage, the child's legal paternity must first be established before a claim for financial assistance or child support from the other biological parent can be pursued via the courts or the state. Unfortunately (and for a variety of reasons that will be discussed in greater depth later in this report) the best data available indicates that only 20 - 40 percent of children born out of wedlock have paternity established. According to 1989 data, 14.5% of unwed mothers receive child support compared to 53.5% of divorced mothers.

The point of this discussion is not to pass judgment on the morality of an individual's personal decision on family-related matters but rather to focus on the need - on behalf of the child and the general public -- to protect a child's needs. While our society has grown more permissive of alternative family lifestyles, we have yet to establish a social intolerance for those parents who abandon their parental responsibilities for the legal establishment of paternity and support for children born outside of marriage.

OUT-OF-WEDLOCK BIRTHS: STATEMENT OF THE PROBLEM

Across the face of America, 15.5 million children are being raised in households where only one of two natural parents is residing. Eighty-seven percent (or 14 million) of these households are headed by the mother; approximately 13 percent are headed by the father. In 1990, 4.4 million children under 18 were living with a never-married mother.

As mentioned before, the dramatic increase in the number of out-of-wedlock births and the number of divorces during the last couple of decades is largely responsible for this social phenomenon.

OUT-OF-WEDLOCK BIRTHS

- #1: In 1990, the number of children born to unwed mothers in the United States soared to an all-time record high — 28% percent of all live births.**

On February 25, 1993, the National Center for Health Statistics (NCHS) reported that 28 percent (1.2 million) of all live births (4.2 million) in 1990 were to unwed mothers. These figures have more than tripled over the past 30 years. In 1960, less than 5.5 percent of all births occurred outside of marriage.

- #2: In 1990, the majority of black mothers (67%) gave birth to children outside of marriage compared to 20% for white mothers and 37% for Hispanic mothers.**

Despite the large number of out-of-wedlock births among black women, NCHS figures reveal that births to unmarried women rose faster for white rather than black women during the 1980's -- doubling for white women during the decade while rising 43 percent for black women (see Table A).

A breakout of the Hispanic population, by ethnicity, shows that there is also wide variance in the out-of-wedlock birth rate. For example, the out-of-wedlock birth rate was highest among Puerto Rican (56%) and Central/South American women (41%); mid-range were Mexican mothers at 33%; and the lowest out-of-wedlock birth rate among Hispanics was maintained by Cuban mothers at 18%. Last, Native Americans show a high out-of-wedlock birth rate of 54% followed by a 45% unwed birth rate among Hawaiian mothers.

This information will be important to keep in mind if and when efforts are undertaken to develop a National Child Support Education/Outreach Initiative.

**TABLE A: FAMILIES WITH CHILDREN UNDER 18 YEARS:
CHANGING TRENDS, OUT-OF-WEDLOCK BIRTHS, AND DIVORCE RATES,
1960, 1970, 1980, 1988, AND 1990**

Year and No. of Children in U.S.	Family Composition			Unwed Mothers: % of Total Births	Divorces (actual no.)
	Two Parent	One Parent	Other		
1960 63.7 million	White 90.9% Black 67.0% Hispanic *no data	White 7.1% Black 21.9% Hispanic *no data	White 1.9% Black 11.1% Hispanic *no data	5.5%	393,000
1970 69.3 million	White 89.5% Black 58.5% Hispanic *no data	White 8.7% Black 31.8% Hispanic *no data	White 1.8% Black 9.7% Hispanic *no data	10.7%	708,000
1980 63.4 million	White 82.7% Black 42.2% Hispanic 75.4%	White 15.1% Black 45.8% Hispanic 21.1%	White 2.2% Black 12.0% Hispanic 3.5%	18.4%	1,189,000
1988 63.2 million	White 78.9% Black 38.6% Hispanic 66.3%	White 18.9% Black 54.1% Hispanic 30.2%	White 2.2% Black 7.4% Hispanic 3.5%	25.7%	1,183,000
1990 69.3 million	White 20.0% Black 67.0% Hispanic 37.0%			28.0%	1,175,000

Sources: Census Bureau's Current Population Reports (Series P-23, No. 163) and "Statistical Abstract of the United States: 1991".

OUT-OF-WEDLOCK BIRTHS: STATEMENT OF THE PROBLEM

- #3: An increase in poverty is related to an increase in female, single-parent families. In 1991, the overall poverty rate for children in female-headed households was 55.5%.**

Poverty rates among black and Hispanic children living in female-headed households is higher than for white children in similar homes. In 1991, 68.2% of all black children (under 18) living in a home headed by a single woman were poor. The rate for Hispanic children in these households was 68.6% where as the rate for white children in single-parent, female-headed households was 47.2% (see Table B).

- #4: Unwed mothers are less likely to receive child support than divorced or separated mothers.**

Poverty among unwed mothers is also associated with the appallingly small number who actually receive child support. Based on 1989 data, only 14.5% of never-married mothers received child support compared to 54% of divorced mothers (see Table C). According to Ellwood and Legler, "...for the majority of never-married mothers who do not get support, there is no award in place. And for the vast majority of those, paternity has never been established."

- #5: Unwed teen mothers are likely to end up on AFDC and/or other assistance programs.**

According to a 1988 report issued by the Childrens Defense Fund, 73 percent of unmarried teens receive welfare within 4 years of giving birth. In 1988, AFDC, food stamps, and Medicaid for families that were formed as the result of births to unwed teen mothers cost nearly \$20 billion.

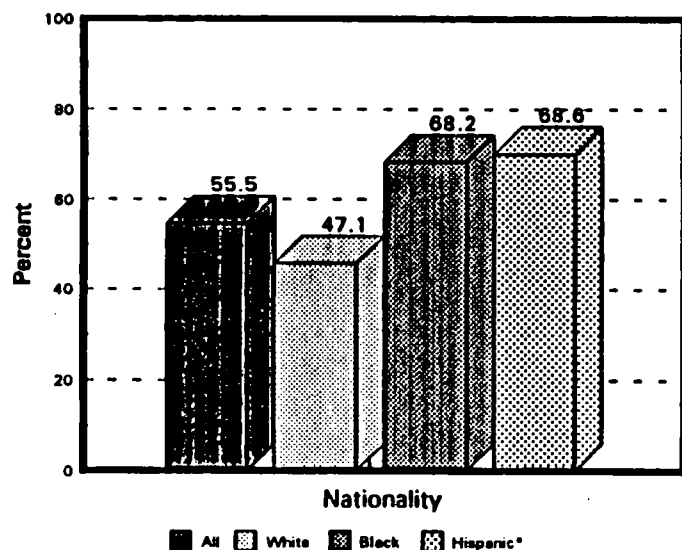
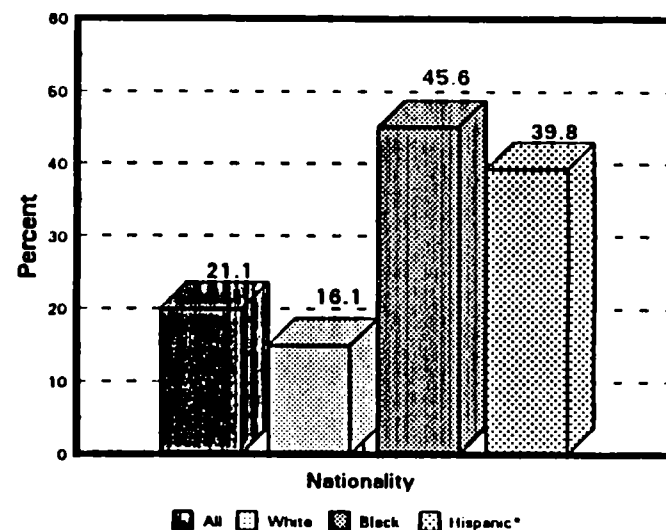
- #6: Unwed teen mothers have been documented as the least likely group of women to receive child support and paternity services.**

The results of a Wisconsin study (as cited in the final report of the U.S. Interstate Commission on Child Support) reveals that only 20 percent of young mothers who are single when their child is born pursue paternity establishment. The study also found that only 1 in 10 young mothers ever receives child support compared with 1 in 4 for older mothers.

Table B: Poverty Status of Related Children Under 18 Years in Families, by Type of Family, Race, and Hispanic Origin: 1991

Point #1: Children in Poverty

Approximately 21.1% of all children in all families were in poverty in 1991; 45.6% of the children in all Black families were in poverty and 39.8% of children in all Hispanic families were living in poverty.



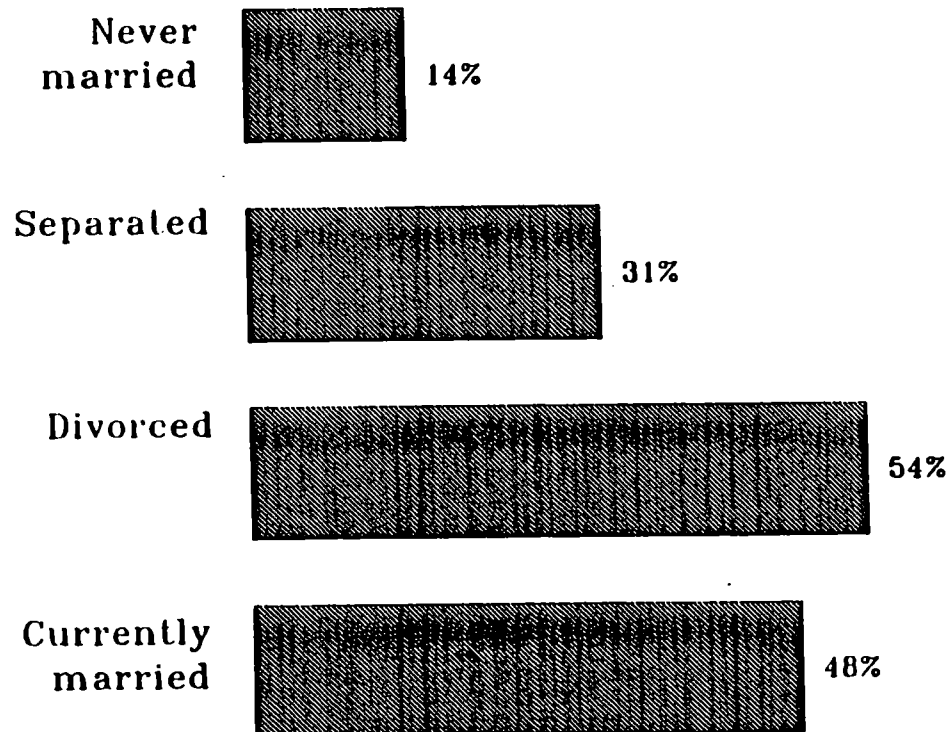
Point #2: Female-Headed Households

More than half (55.5% under age 18; 65.9% under age 6) of all children in families headed by a woman with no husband were living in poverty.

* Persons of Hispanic origin may be any race.

Source: Current Population Reports, Department of Commerce
Poverty in the United States: 1991, P-60, #181.

**Percent of Custodial Mothers Receiving
Child Support Payments from Absent Fathers,
by Current Marital Status, 1989**



Source: Kristin A. Moore, "Our Nation's Children: Trends." Testimony before the U.S. House of Representatives Committee on Post Office and Civil Service, Subcommittee on Census and Population, June 23, 1992. Compiled by Child Trends, Inc., Washington, DC, from data from the US Bureau of the Census.

OUT-OF-WEDLOCK BIRTHS: STATEMENT OF THE PROBLEM

- #7: Out-of-wedlock births are more likely to occur among teens whose mothers have less education, whose mothers received welfare, and who experience stressful events (i.e., parental separation and geographic moves) while growing up.**

Based on twenty years of longitudinal data on nearly 900 children, researchers with the University of Wisconsin's Institute for Research on Poverty are measuring the influence of family background, individual characteristics, the availability of economic resources while growing up, and particular disruptive family events on the probability of both teen out-of-wedlock births and the receipt of AFDC if such births occur. Their analysis and results, to date, highlights: 1) the potentially important roles of parental education and separations in influencing teen behavior; and 2) that policies intended to reduce the incidence of women dropping out of school would reduce the incidence of out-of-wedlock births for the next generation.

- #8. More older mothers are having children outside of marriage. In 1990, only 25% of unmarried women who had a child were under 20, while another 39% were 20 - 24, and the remaining 36% were 25 and over.**

While the actual number of out-of-wedlock births among teenage mothers have remained consistently high over the years, there has been a dramatic increase in the birth rates among older mothers which surpasses the increase in birth rates among the 15-19 year olds. For example:

Births to Unmarried Women (in thousands)

<u>Age Group</u>	<u>1970</u>	<u>1989</u>	<u>Percentage Difference</u>
Under 15 years	9.5	10.6	+ 12%
15 - 19 years	190.4	337.3	+ 77%
20 - 24 years	126.7	378.1	+ 198%
25 - 29 years	40.6	215.5	+ 431%
30 - 34 years	19.1	106.3	+ 457%
35 years and over	12.4	46.3	+ 273%

**OUT-OF-WEDLOCK BIRTHS:
STATEMENT OF THE PROBLEM**

#9: After birth, the chances of successful paternity establishment decline as the child grows older.

There is mounting evidence that while virtually every mother knows the identity of the father, and the vast majority are still in contact with him at the time of birth, the intensity and frequency of contact falls off rapidly in many cases (Ellwood and Legler). For example, in the State of Washington, the courts have traditionally succeeded in establishing paternity in 32 percent of cases where the child is under six months old. That percentage decreases to 14 percent by the time the child reaches age 4. This information underscores the importance of paternity establishment at birth or shortly thereafter.

UNIVERSAL PATERNITY, IN GENERAL: PROS / CONS

The concept of **UNIVERSAL PATERNITY** is based upon the belief that:

1. children born outside of marriage are entitled to a decent standard-of-living that both biological parents can provide, to the extent possible, despite the fact they are not married;
2. a child's paternity should be established at birth or even earlier;
3. paternity establishment (and subsequent child support) is an important strategy to combat the high incidence of poverty among children born out of wedlock;
4. the Federal government and States must expand their efforts to encourage parental responsibility for out-of-wedlock children;
5. the Federal government, in conjunction with the States, must make a concerted effort to dramatically increase the number of paternities established for out-of-wedlock children. Currently, paternities are established for only 20% - 40% of the total number of children born outside of marriage;
6. the Federal government and States must provide a "continuum of opportunities" -- outside of the traditional child support (IV-D) network -- for mothers and/or fathers to establish paternity in the simplest possible manner while protecting a father's due process and rights;
7. the public, at large, should be educated on the legal and financial consequences and responsibilities of having a child outside of marriage; and
8. States are held to a high standard of paternity performance based on the total number of out-of-wedlock births.

PROS:

- o Would potentially result in a significant reduction in number of out-of-wedlock children living in poverty.

UNIVERSAL PATERNITY, IN GENERAL: PROS / CONS

- o Would likely result in a greater number of child support orders once paternity is established, thereby increasing the possibility for an out-of-wedlock child to experience a more financially secure future.
- o Would likely result in a reduction in the number of unwed mothers dependent upon the government for financial assistance and social services and, as a consequence, a reduction in taxpayer funds used to support these programs;
- o Could alter public attitudes which, in turn, could have a positive effect upon a number of factors attributable to poverty including teen pregnancy, family violence, child abuse, and crime.
- o Put a halt to the disenfranchisement of the father from the American family by examining, reinforcing, and enhancing the notion that America's children need their fathers for their emotional as well as financial support.

CONS:

- o **Custody:** Often times, there are incidences when a biological, unwed father will deter the biological mother from seeking child support services based on the threat the he will seek custody of their child in retaliation. A universal approach to paternity establishment may exacerbate this kind of behavior.

However, this potential "threat" could be countered by publicizing the facts that the vast majority of unwed mothers who have physical custody of the child, are the child's primary caretaker, are granted legal custody unless it can be proven that a mother is unfit to care for the child (see Section VI on Due Process Rights and Legal Issues for further discussion). While most State laws are neutral on their face regarding the custody rights of each parents, courts -- in the best interest of the child -- lean heavily in favor of the parent who has done the majority of the nurturing.

UNIVERSAL PATERNITY, IN GENERAL: PROS / CONS

- o **Potential for Physical Violence:** In extreme instances, the pursuit of paternity establishment could provoke a biological father -- who is emotionally or psychologically unstable -- to threaten or actually carry out acts of physical violence towards the biological mother and/or child. If universal paternity establishment is promoted on a national level, it would be critical to publicize the "good cause" provision which exempts a custodial parent from custody or visitation by the non-custodial parent in cases where there is potential harm to either mother or child.
- o **Due Process Issues and Rights:** Both parents may not be adequately informed about the advantages and disadvantages of establishing paternity although many States have developed routine procedures for advising putative fathers of the rights and obligations that accrue from the establishment of paternity (see Section VI on Due Process/Rights for further discussion).
- o **Additional Fiscal Costs:** In FY 1992, there were an estimated 1.3 million out-of-wedlock births. To the best of our estimates, paternities for 40% of these births were established via the child support (IV-D) program. If paternity is to be established for, let's say, 70% of all children born out of wedlock, we would need to establish an additional 400,000 paternities per year. There are obvious cost implications in promoting "universal paternity" which may require additional Federal funds.
- o **Incentive Payments to Hospitals:** A number of States which have hospital-based paternity programs reimburse their hospitals \$20 per paternity established. Should the Administration's proposal on in-hospital paternity clear be enacted, additional costs might be incurred.
- o **Incentive Payments to Unwed Parents:** It has been suggested that in order to encourage paternity establishment, unwed parents be "rewarded" with a small cash payment.

UNIVERSAL PATERNITY, IN GENERAL: PROS / CONS

- o **Improvement Awards to States Based on Performance:** It has been suggested that the Federal government provide States with financial rewards for improvements made and/or performance outcomes in the area of paternity establishment. This could be accomplished through a new financial incentive program for paternity establishment or through the restructuring of the current child support incentive grants to States.
- o **Organizational Impact:** The impact of universal paternity establishment upon the State-administered child support (IV-D) program is unknown at this time and dependent, in part, upon the resolution of a number of issues (i.e., whether or not paternity establishment is decoupled from welfare and/or child support; whether or not the existent IV-D program would be the designated state agency responsible for paternity cases -- both within and outside the IV-D program, etc.). It is also not clear there is the infrastructure to handle the increased number of genetic testings which may result.
- o **Perception of Government Interference:** There will be those who view any Administration policy (and practices) advocating universal paternity establishment as an example of government intrusion into the personal affairs of private citizens.

UNIVERSAL PATERNITY: "Conditional" Approach

CURRENT ENVIRONMENT

The advent of Government involvement in paternity establishment was driven by growing welfare rolls directly attributable to the rise in single parent families and the lack of parental support. Enacted in 1975, title IV-D of the Social Security Act created a federal-state program for the location of absent parents, establishment of paternity and support, and enforcement and collection of support.

All families receiving Aid to Families with Dependent Children (AFDC) payments due to the absence of a parent from the home are required to cooperate in the establishment of paternity and the collection of child support and to assign their rights to such support to the State. Since 1987, applicants and recipients of Medicaid have been similarly required to cooperate in the establishment of paternity as a condition of eligibility. However, these cooperation rules were later relaxed to exclude pregnant women and women with newborns of less than two months old. This action was taken because of concern that women would not obtain essential prenatal and early infant care if forced to cooperate with child support agencies.

In FY 1991, of those required to cooperate as a condition of Federal assistance, paternity was established on behalf of 346,007 children.

EXPANSION OF PATERNITY COOPERATION TO OTHER FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

In the last few years several proposals extending the requirement to cooperate with child support enforcement agencies as a condition of eligibility for other Federal and Federally assisted programs have surfaced. Food Stamp benefits and HUD subsidies are the two most frequently mentioned. (SSI has also been mentioned but because the vast majority of these children are eligible for Medicaid and thus would for the most part be receiving services, these proposals have been largely disregarded).

Similar to the concerns prompting the relaxation of the requirement for Medicaid cooperation, past proposals before Congress to extend the requirement for cooperation as a condition of Food Stamp benefits have met with substantial opposition from Food

UNIVERSAL PATERNITY: "Conditional" Approach

Stamp advocacy groups. These groups were concerned that the nutritional needs of pregnant women and children would suffer in cases where custodial parents chose to do without Food Stamp benefits rather than cooperate with the Child Support agency.

However, the Food and Nutrition Services (FNS) of the Department of Agriculture has undertaken a study to evaluate options for increasing the use of child support enforcement services among food stamp households, focusing on cases which do not receive AFDC. The study was conducted in five States and will concentrate on current patterns of child support among food stamp households; reasons for non-participation among child support eligible non-AFDC food stamp households; and the benefits and costs of actions that FNS might take to promote child support participation among non-AFDC food stamp households. Their draft report is expected sometime during the summer.

In addition to the mandated participation of families receiving public assistance, any other family may obtain paternity establishment services from the state Child Support agency by making application and payment of an application fee. States may also charge fees for services and recover costs not otherwise covered by such fees.

Private Actions

All remaining nonmarried mothers must rely on the willingness of the putative father to assert paternity or seek private assistance in its establishment. Pursuing paternity through private avenues can be expensive. There are attorney's fees, court filing costs and possibly genetic tests to pay for which could cost several hundred dollars.

Included in this group are those parents who have no inclination for whatever reason to initiate paternity establishment proceedings on behalf of their children. Although we know very little about these parents and their apprehension to initiate paternity proceedings, this option will focus primarily on what actions the government could take to effectuate cooperation of these parents in the establishment of paternity for their children.

Move toward universal services

The Administration's 1994 proposal for in-hospital paternity establishment takes a big step forward in removing the distinction between public and private paternity cases (refer to Appendix for summary of legislation).

UNIVERSAL PATERNITY: "Conditional" Approach

Under the proposal, States will be required to establish in-hospital paternity establishment programs aimed at securing the voluntary establishment of paternity of all children. Recognizing that often public assistance is not needed or sought until sometime after the birth of a child, the proposal was not limited to current public support cases but rather is directed at all out of wedlock births in the State.

Discussion

Child support can make the difference between a childhood in poverty and a better quality of life. Paternity establishment, alone, can be of lasting value to the children by creating a greater sense of identity, providing important health-related information, and conferring rights to dependents' benefits and inheritance. While public policy cannot address the emotional and behavioral effects changes in family structure have on children, it can lessen the consequences by insuring that parents acknowledge their children and take responsibility for their needs.

Before family structure underwent dramatic change in the 60's, out-of-wedlock birth and other forms of family disruption were held in check by social and legal sanctions. Marriages at the end of a shotgun and hushed adoptions were common responses to nonmarital birth at that time. They carried a strong message about the risks of premarital sex and created an intact family for the child.

While few would want to return to a time when individuals were forced by society to redress individual choices in behavior by such a draconian response, the effects of such choices may in fact be hurting children by not providing them with what should perhaps be a universal right to know both of their parents.

Following are options for taking a forceful approach in extending paternity establishment services to the maximum incidents of nonmarital birth.

There will always remain those cases which cannot be captured under an alleged universal system. Clearly, when a child is conceived by a single woman as a result of artificial insemination or where a mother, not dependent on any form of government assistance, will fight the system at all costs and refuse to cooperate, action by the state is foreclosed. However, to the extent that a forceful approach can be taken under which society embraces the message that failure to establish paternity hurts the child and cannot not be dismissed by a blind eyed approach, universal paternity acknowledgement and establishment can become more of a reality.

UNIVERSAL PATERNITY: "Conditional" Approach

However, care must be exercised that the message we are sending is not one which questions choices in family structure but one which protects the child regardless of family structure.

The approaches are broken down between those which may influence the establishment of paternity in the private community (those with no ties to government assistance) and those which would expand and clarify the connection between paternity establishment and the receipt of public assistance.

Private Community

With respect to the private community, the Federal government has very limited leverage to influence the behavior of parents who would otherwise ignore the paternity establishment rights of their children. While these children would clearly benefit from the non-financial benefits of paternity establishment to the same extent as children in families receiving public assistance (and may in fact benefit from the financial aspects as well), the only clear attachments their parents may have to the government is through the tax system. Thus, the options addressed with respect to these families focus primarily on a tax-based strategy to paternity establishment. Options include elimination of the dependent exemption and the dependent care tax credit when paternity is not established and the introduction of a tax credit when paternity is established.

Some rationale currently exists, however tenuous, between failure to establish paternity and the tax policies of the United States, given the high costs to taxpayers associated with out of wedlock birth and failure to establish paternity. Limiting the tax benefits associated with dependents to those who have sought paternity establishment for their children could produce a two-pronged benefit -- first, the risk of losing tax benefits may induce a greater number of families to seek paternity establishment services on behalf of their children, and second, savings to the Federal government resulting from the higher tax liabilities of families unwilling to pursue paternity establishment could be targeted to reduce costs of providing assistance to such at-risk families. Such a strategy may also produce an indirect benefit by sending a strong message that parents are expected to protect the rights of their children by establishing paternity on their behalf.

UNIVERSAL PATERNITY: "Conditional" Approach

However, consideration must be given to the relative effects such tax policy changes would actually have in influencing the incidence of paternity establishment. Families living on the margin may have a relatively greater financial interest in protecting their right to claim dependent exemptions and child care credits than higher income families who may view such sanctions as meaningless in view of their overall income and tax liability. Analysis by Treasury Department tax policy staff may be necessary to insure that an approach is not advanced which treats lower income families unfairly while doing little to assist children in other families, or which ultimately hurts those the government is attempting most to protect in this arena--at-risk children.

Recipients of Federal Assistance

While the Government has some leverage over families receiving Government assistance, the scope and breadth of such leverage is not clear on its face. As previously indicated, families receiving AFDC and Medicaid are currently required to cooperate with the State Child Support Enforcement agency in establishing paternity and securing support. However, cooperation in the AFDC and Medicaid programs is generally a subjective determination made by the caseworker.

The statute provides for purposes of AFDC eligibility that applicants and recipients are required to cooperate in establishing paternity and obtaining support unless good cause for refusing to cooperate is found, as determined by the State agency in accordance with standards prescribed by the Secretary which take into consideration the best interests of the child.

The implementing regulations interpret cooperation to mean: appearing at a child support office to provide information or documentary evidence; appearing as a witness; providing information or attesting to the lack of information under the penalty of perjury; and payment of any support received directly from the noncustodial parent to the child support agency. Good cause for refusal to cooperate is provided in circumstances indicating that cooperation would be "against the best interests of the child" including: reasonable anticipation of physical or emotional harm to the child; physical harm to the parent or caretaker relative, emotional harm to the parent or caretaker relative of such nature or degree it reduces such persons capacity to care for the child; cases where the child was conceived as a result of rape or incest; or, situations where adoption proceedings or adoption considerations are pending.

UNIVERSAL PATERNITY: "Conditional" Approach

In the limited number of cases sanctioned for refusal to cooperate, the caretaker's needs are excluded from the grant award and protective payments are made on behalf of the child.

The above definition of cooperation and the related sanction for failure to do so have been criticized as being so weak and inconsistent that they are of questionable value in promoting the establishment of paternity and the pursuit of child support. The options provided in this paper with respect to recipients of Federal benefits thus speak to a tighter cooperation standard and suggest a tougher sanction and perhaps incremental benefit reductions when cooperation is not completely forthcoming.

It is worth noting that a stricter cooperation requirement is, in fact, provided in Senator Bradley's Interstate Child Support Act of 1993, with respect to child support assurance demonstration projects. Under that proposal which links paternity establishment to eligibility, good cause for noncooperation is limited to the danger of physical abuse to the custodial parent. The only other exception provided are cases in which failure to establish paternity result from circumstances which are beyond the control of the custodial parent.

Cooperation is defined specifically in the bill as naming the father, providing information to verify his identity, including address, employment, and education information, the identity of relatives and friends, his telephone number, SSN, date of birth, or any other specific information that with reasonable effort could lead to the identity of such person to serve with process. Further, the custodial parent would be required to continue to provide all relevant information required by the State, appear at required interviews, conferences, hearings or legal proceedings if notified in advance and unless illness or injury doesn't prevent attendance and, submission to genetic tests.

While this appears to be a stricter standard than provided under the AFDC program and one which may produce better results in establishing paternity, it is important to keep in mind that under such demonstrations, a safety net is provided if such parent fails to meet this standard, i.e., AFDC. No such safety net currently exists should a harsher sanction than exclusion of the caretaker relatives needs in the AFDC grant be established. A separate issue paper addresses the issue of noncooperation, however, very little information is currently available on the actual magnitude of the problem.

UNIVERSAL PATERNITY: "Conditional" Approach

Also provided under the options for an aggressive approach to paternity establishment is an option for extending the requirement to cooperate with the child support agency as a condition of eligibility for other forms of government assistance, like food stamps and housing assistance.

However, the breadth of such an expansion is worth considering in terms of current program capacity as well as potential increases in the number of paternities established. It has been estimated that approximately 700,000 - 750,000 custodial parents who receive Food Stamp and Housing assistance benefits may benefit from the establishment of paternity and the receipt of child support services, after excluding recipients who are already receiving services from the State child support agencies because of AFDC eligibility or because they have voluntarily sought such services.

This number, however, includes families who are currently or may become eligible for Medicaid benefits (but not AFDC) and thus have been or would be automatically referred to State child support agencies. Further, the Medicaid expansions enacted between 1988 and 1990 will mean, according to a Special Report on Children and Health Insurance, that by the year 2002, all poor children under age 19 will be eligible for benefits (Rosenbaum, Hughes, Harris and Leiu, January 1992). Since cooperation with the child support agency is a condition of Medicaid eligibility, the overlap between these families and food stamp and housing assistance recipients can be expected to be substantial and to grow over the next ten years. The tax policy staff needs to look at relative increases and decreases to both segments of the populations.

AGGRESSIVE ACTION TO INFLUENCE UNIVERSAL PATERNITY ESTABLISHMENT

PRIVATE COMMUNITY

(i.e., families receiving no form of government assistance, private institutions, hospitals, etc.)

Incentives

- #1: Revise tax structure to provide a paternity establishment tax credit for parents
- #2: Pay a flat incentive for cooperation

UNIVERSAL PATERNITY: "Conditional" Approach

- #3: Provide incentives for hospitals to take an aggressive role
- #4: Pay for a percentage of hospital costs or co-payments
- #5: Provide government financed or subsidized costs for all expenses associated with establishment

Sanctions (or Disincentives)

- #6: Lost dependent exemption for tax purposes
- #7: Lost child care tax credit
- #8: Lost EITC
- #9: Sanction hospitals in the form of lost Medicare and Medicaid funding for not participating (separately, could also do this to enforce hospital cooperation with voluntary paternity establishment legislation)

Strategies to Influence Participation

- #10: A presumption is made that paternity will be established and all out-of-wedlock births automatically entered into a State system of paternity establishment. Cases are not eliminated from the system until the party(ies) fully understand the benefits they are withholding from their children
- #11: All States are required to enact laws separating the issues of paternity establishment from custody and visitation issues (advance detail later in the paper)

PROS

- o Tax incentives/losses apply regardless of the age of the child when paternity is established, benefiting older children as well as newborns. Message is sent that all families -- regardless of their economic circumstances or tax bracket -- have a responsibility to establish the paternity of their children

UNIVERSAL PATERNITY: "Conditional" Approach

- o Payment of a cash incentive, particularly if the amount is substantial, or a portion of the birthing costs could induce families already concerned about the costs of hospitalization and caring for their newborn to participate
- o Offering to pay costs of testing combined with information that such costs would be borne by the putative father later if initial offer was refused could compel some to cooperate
- o Aggressive hospital involvement has been shown to have significant impact.
- o Opening a "case" immediately and putting burden on parent to reject services could send message that society expects paternity to be established and that paternity establishment is a routine step in all cases of out-of-wedlock births. Message that paternity establishment is routine next step after nonmarital birth could diminish putative father's ability to exert control over mother to not apply for services
- o Eliminates immediate concerns regarding custody and visitation, especially if decoupled from other child support services
- o Sends message that paternity establishment is not a gender-specific issue but a child's right - mothers as well as fathers will be pursued to uphold this right for their children
- o Opposition may be overcome through education and growing public experience

CONS

- o Significant costs may be associated with providing additional tax benefits, incentive and hospital payments, and costs of paternity establishment
- o Lost dependent's tax exemption or child care credit or EITC could hurt people on the margin while having little effect on those in higher income brackets
- o May be viewed as discriminating against cases of marital birth. Could produce perverse incentive of causing families to delay marriage or to delay paternity establishment until family can receive benefits

UNIVERSAL PATERNITY: "Conditional" Approach

- o Costs and resources that would be necessary to operate a system of presumed cooperation may be significant
- o Would undoubtedly be controversial and may be viewed as coercive
- o Sanctions against hospitals may cause them to drop from Medicaid program participation resulting in decreased accessibility of needy families to medical care
- o May induce paternity establishment in cases where it is not in the child's best interest
- o Paternity will still not be established for all children
- o Attitudinal changes take time, benefits will not be immediate
- o Exacerbates current problems associated with lack of staffing/funding

As a Condition of Receipt of Federal Assistance

Incentive

#12: As a condition of receipt of any form of government assistance, parties must cooperate in the establishment of paternity

--this includes the mother and a putative father who is being sought for paternity establishment

--assistance includes food stamps, housing assistance, and if implemented, child support insurance

#13: Receipt of assistance hinges on applicant's immediate cooperation (could be viewed as sanction)

UNIVERSAL PATERNITY: "Conditional" Approach

Sanctions

- #14: Loss of benefit for noncooperation - With respect to cash assistance, may want to think of a sanction with more monetary influence than denial of caretakers needs
- #15: Incremental benefit reductions to the extent that cooperation is not completely forthcoming, i.e., missed interviews

Strategies to Influence

- #16: Rethink and redefine good cause - rules need to be tightened up. Penalties should be assessed when perjury found
- #17: Train in-take workers on optimal interview techniques and benefits of paternity establishment
- #18: Provide payments to informers with information leading to paternity establishment

PROS

- o To the extent that cooperation in paternity establishment is made a condition of receipt of other benefits, incidence of paternity establishment should increase
- o Similarly, to the extent that sanctions are directed at putative fathers who have failed to cooperate in State actions to establish paternity (contempt cases), incidence of paternity establishment could increase
- o Interview technique has been shown to have a positive impact on outcome
- o Unemployment compensation program has found the use of informants to be a valuable method in determining fraud

UNIVERSAL PATERNITY: "Conditional" Approach

CONS

- o Harsher sanctions could diminish family's ability to meet the needs of the child
- o To the extent that caseworker discretion remains in determining "cooperation" and "good cause", effectiveness can be lost

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UNIVERSAL PATERNITY: "Outreach" Approach

The "outreach" approach to paternity establishment encourages the voluntary acknowledgment of paternity via public education, incentives, and expanded opportunities for establishing paternity within and outside of the IV-D program.

The objectives of this approach are:

1. to change public attitudes and behavior towards paternity establishment and child support for out-of-wedlock children;
2. to underscore the legal and financial consequences of out-of-wedlock births;
3. to make the system more "user friendly" for establishing paternity;
4. to create a climate of social intolerance for those parents who neglect their responsibilities; and, most importantly,
5. to reinforce and publicly recognize the efforts of all unwed parents -- particularly non-custodial fathers -- who assume responsibility for their children.

IN-HOSPITAL PATERNITY ESTABLISHMENT

Paternity establishment should begin at birth for the single most important reason that an unwed father is likely to be present at the time of his child's birth. In a study conducted by Esther Wattenberg, over two-thirds of unwed fathers were present for the birth of their children.

Unfortunately, as time goes on and the novelty of a child's birth wears thin, the contact between the unwed mother and father rapidly deteriorates. Consider the following data compiled by researchers Price and Williams:

UNIVERSAL PATERNITY: "Outreach" Approach

<u>Time Frame</u>	<u>Contact Between Parents Maintained</u>
Prior to Birth	84 percent
26 months after birth	64 percent
36 months after birth	55 percent

When the unwed mother is no longer in contact with the unwed father, the State has a more difficult job in locating the father. Locating the father in paternity establishment proceedings is the biggest obstacle encountered by the child support agency.

It is for precisely this reason that a number of States are providing unwed parents with the opportunity to establish paternity in the hospital at the time of birth. As of December, 1992, an estimated 15 States had in-hospital programs that were fully operational, pending legislative approval, and/or in the planning stages. Washington State, which pioneered the concept of in-hospital paternity, has one of the highest in-hospital paternity establishment rates at 40 percent.

And it is for precisely this reason that the Administration has before Congress a legislative proposal which would require that all States provide unwed mothers and unwed fathers with the opportunity to establish paternity at the time of their child's birth. If this legislation is approved, as drafted, by Congress, it would take effect October 1, 1993.

Therefore, the assumption has been made that the aforementioned legislation will be approved by Congress — along with procedures for expediting paternity establishment — and will not be singled out as a separate option.

What will be explored are options that could be undertaken by the Federal government and/or States in terms of facilitating a smooth transition to and acceptance of a national, hospital-based paternity establishment program.

UNIVERSAL PATERNITY: "Outreach" Approach

- #19: A number of States which have hospital-based paternity programs reimburse their hospitals \$20 per paternity established. One option would be to consider adopting this policy on a national level.**

Hospitals tend to be large, conservative, strapped-for-cash institutions, especially the ones which serve low-income populations. We have noted in a handful of the hospital based programs that there has been a traditional, institutional resistance to change. They are also experiencing staff shortages. Nurses, social workers and Vital Statistics staff are overworked and with a Federal mandate and universal program of paternity establishment, their workload will increase. A cash reimbursement for each paternity established may ease the tendency to resist efforts of a new hospital-based program initiative.

The cost of paying hospitals \$20 per paternity establishment could be significant. For purposes of discussion, if you assume the Federal government would pay the entire \$20 for each paternity established and that, on average, you would establish 40% of the out-of-wedlock births (using Washington State's experience), the cost could be substantial.

- #20: Given the growth in the number of women electing to deliver their children at birthing centers vs. the hospital, the Administration might want to consider extending the reach of the proposed legislation to birthing centers via program regulations or guidelines once paternity legislation is approved by Congress.**
- #21: The Federal government could take the lead in briefing all relevant national organizations (i.e., American Hospital Association, National Association of Nurse Practitioners, National Association of Public Hospitals, Vital Statistics Association, National Association of Hospital Admitting Managers, etc.) regarding a national hospital-based paternity program, to thwart initial resistance, and to elicit their support in disseminating critical information to their affiliates at the local level on the benefits and requirements of the new paternity legislation.**

UNIVERSAL PATERNITY: "Outreach" Approach

According to reports from the States, many of the hospital-based programs have encountered resistance in start-up phases. Part of this resistance has been attitudinal on the part of staff. Nurses, social workers and others are concerned about driving away the mother by mentioning the father in context of child support.

- #22. Immediately following passage of the Administration's proposed legislation requiring in-hospital paternity programs, the Federal government could develop a comprehensive media strategy that would provide information on the new law, and for unwed parents, the opportunity to establish a child's paternity at the hospital.**

An "information blitz" on the opportunity to establish paternity in the hospital via the mainstream media (print and radio), State and local public organizations, national associations, and other government programs (i.e., Head Start, Maternal and Child Health Services, etc.), may assist in maximizing the legislation's potential impact.

- #23. The Federal government could develop appropriate training curricula and information materials that States could use in working with hospital staff, notary publics, vital statistics staff, etc., in the development of a hospital-based paternity program.**
- #24. The Federal government could develop a national brochure on "in-hospital" paternity designed for unwed mothers and unwed fathers on what to expect when either IV-D staff, social workers, hospital personnel, and/or notary publics approach them regarding their option to establish paternity immediately following the birth of their child.**

CREATING ADDITIONAL OPPORTUNITIES

As mentioned previously, the best of the in-hospital paternity establishment programs -- Washington State -- has a success rate of about 40 percent. They are also getting 20 percent of their affidavits from parents outside of the hospital setting (which means they waited more than 10 days to sign or that the affidavits were for older children).

UNIVERSAL PATERNITY: "Outreach" Approach

Washington's experiences in the paternity establishment arena are encouraging since they provide evidence that the paternity of older children can be picked up under the program. Likewise, research conducted by Esther Wattenberg points to the fact that teen mothers need help about three years after the birth of their children -- a time when the father is gone and they are no longer living with parents.

Even if all States were able to replicate Washington State's success rate for in-hospital paternity establishments, we have to recognize the reality that 60 percent of the unwed mothers and unwed fathers are choosing NOT to establish paternity at the time of their child's birth.

The point of this discussion, thus far, is to emphasize the importance of providing an unwed mother/father a "continuum of opportunities" to establish paternity at birth AND to maintain a high level of program efforts directed to unwed parents of older children as well.

Federal and State governments can expand their "point-of-contacts" with unwed parents in order provide maximum opportunity for paternity establishment AND to promote the norm that paternity establishment is "doing the right thing" for their children.

#25: As a condition of funding, the Federal government could require that other health-related facilities (i.e., pre-natal clinics, "well-baby" programs, family planning centers, etc.) inform and provide unwed parents with the opportunity to establish legal or initiate paternity establishment proceedings.

There is a dearth of information, as well as experience, on the potential impact that other health-related facilities might have on the rate of paternities established for out-of-wedlock children.

The State of Delaware is currently experimenting with one such approach. In a cooperative effort between Delaware Health and Social Services Divisions of Public Health (DPH) and Child Support Enforcement (DCSE), a pilot project was implemented at the Northeast State Service Center on January 2, 1992. The project involves integrating the paternity establishment process into the education component of DPH's comprehensive prenatal care program. This pilot was envisioned as providing another non-adversarial, voluntary consent opportunity in the process of paternity establishment.

UNIVERSAL PATERNITY: "Outreach" Approach

While the pilot was overwhelming successful in disseminating information on the benefits of paternity establishment and child support, it was less successful in producing actual outcomes. Within the first year of the pilot, 84 percent of the 125 women receiving pre-natal services agreed to accept counseling on paternity establishment/child support. However, there were only three admissions of paternity out of 62 actual births.

This simply indicates that more information is may be needed with regard to alternative sites for voluntary paternity establishment. National demonstration projects might be warranted before a final decision is made as to whether this should be a mandatory requirement of health-related programs and facilities.

AFTER BIRTH: DEVELOPING STRATEGIES FOR IMMEDIATE FOLLOW-UP AND LONG-TERM OUTREACH

It can be argued that a woman, immediately following the birth of her child, is not always in the best physical or emotional state to be exercising her best judgment in making major decisions such as her child's legal paternity status.

She also may resist any attempts made to persuade her to initiate action on her child's paternity for three important reasons: 1) the likelihood that the biological father of her child is present at the time of birth; 2) the likelihood that she is hoping for a permanent commitment from the father; and 3) that custody and visitation rights will be raised by the father.

Unfortunately, as the data indicates, relationships between over half of unwed mothers and unwed fathers (see page 24) begins to deteriorate within the first year of their child's life.

Six months, a year, or two years following the birth of her child, an unwed mother may be in a totally different frame of mind and circumstances compared to the time of her child's birth. This is typically applicable to teen mothers. The realities of single parenting may make her think twice about paternity establishment and child support. It is at this point that the State IV-D agencies could seize upon this "window of opportunity" by providing follow-up information on paternity establishment and, should she so desire, access to child support services. Despite the current emphasis on paternity at birth, we must not curtail our efforts to reach unwed mothers of older children and/or to take advantage of those "windows of opportunity" for conducting targeted outreach.

UNIVERSAL PATERNITY: "Outreach" Approach

- #26: State Child Support (IV-D Agencies) could be encouraged or required to contact unwed mothers, who were unable or chose not to establish paternity in the hospital, with information on the benefits of paternity establishment and child support along with an application for services.**

It could be left up to the discretion of States as to how this contact would take place (i.e., mail, in-home visits). However, in order to ensure a uniform effort nationwide, the Federal government might want to specify the exact time-lines for follow-up with an unwed mothers (i.e., 6 months, 1 year, or 2 years) after her child's birth.

- #27: Information on the benefits of paternity establishment and an application for child support services could be included along with the automatic issuance of a child's social security number following birth.**

In today's society, 60 percent of America's children will experience life in single parent home before they reach the age of 18 years. Including information on paternity establishment and child support services along with the issuance of SSN's may be an extremely practical action to take -- one that holds the potential for a wide-range impact.

- #28: Pediatricians could either be encouraged or required to display information materials on paternity establishment/child support -- as provided by the State IV-D office -- in a visible place in their waiting rooms.**

After birth, the next sure point-of-contact with an unwed mother is the pediatrician's office. Voluntary cooperation rather than a mandate would probably be the preferred route to follow in this instance. The American Academy of Pediatricians might be able to coalesce support for this option.

- #29: Obstetricians and/or gynecologists could be encouraged or required to advise unwed mothers of the possibility of establishing or expediting paternity establishment via genetic testing at the time of their child's birth.**

UNIVERSAL PATERNITY: "Outreach" Approach

This option is geared primarily to those unwed mothers who are either estranged from the biological father of their unborn child and/or those who have a good idea that efforts to have her child's paternity established will be contested after birth. Genetic testing at birth speeds up the paternity process by a minimum of 6 months -- the minimum age that a child must be before most labs are willing to analyze blood samples.

- #30. Efforts could be undertaken by the ACF Assistant Secretary to establish a focal point within the organization that would be responsible for "marketing" the Administration's welfare reform initiative, ensuring coordination between child support and other Federal programs, and developing national outreach strategies.**

There is an overwhelming need to reach and inform unwed mothers about the benefits of paternity establishment and child support.

As cited in a 1992 focus group study conducted by the Women's Legal Defense Fund, one of the major reasons why a significant number of female single-parents do not receive child support and/or have paternity established for their children is based on the widespread absence of information or misinformation on child support services.

There exist innumerable opportunities to disseminate information on paternity establishment and child support services to potential IV-D clients through existing Federal programs (i.e., DHHS programs, WIC, Food Stamps, etc.). Yet, there is an institutional barrier or professional mind-set that we sometimes encounter when coordination attempts are made which underscores the need to "educate" professional staff as well. A focal point in the Assistant Secretary's office would provide the leadership necessary to implement an effective program coordination and outreach strategy.

PATERNITY / CHILD SUPPORT EDUCATION VIA THE SCHOOLS

- #31. The Administration for Children and Families, in conjunction with the Department of Education, could assume a leadership role in developing a national model that would encourage paternity and child support education via schools for State and local communities to emulate.**

UNIVERSAL PATERNITY: "Outreach" Approach

The purpose of this outreach effort is two-fold: 1) prevention -- to reach adolescents before they become parents; and 2) intervention -- to engage a greater number of unwed parents as recipients of paternity and child support services. Development of this proposed model could build upon existing educational programs such as "family life education curriculums" and "teen pregnancy services."

The bottom line is that unwed teen mothers are more likely to end up on AFDC than older unwed mothers. According to a 1988 report issued by the Childrens Defense Fund, 73 percent of unmarried teens receive welfare within 4 years. In 1988, AFDC, Food Stamps, and Medicaid for families that were formed as the result of a birth to unwed teen mothers cost nearly \$20 billion in taxpayer funds.

Unwed teen mothers also have been the least likely to receive child support and paternity services. For example, the results of a Wisconsin study (as cited in the final report of the U.S. Interstate Commission on Child Support) reveals that only 20 percent of young mothers who are single when their child is born pursue paternity. The study also found that only 1 in 10 young mothers ever received child support compared with 1 in 4 for older mothers. Most young mothers never reach a child support agency.

Part of the explanation for the low participation rates of teen mothers in the child support program could possibly be attributed to a general feeling on the part of the IV-D network that teen fathers aren't worth pursuing since they have very little to no earning power at the time of their child's birth. However, according to the results of research findings compiled by David Ellwood and Paul Legler in a draft paper entitled "Getting Serious About Paternity", this is no excuse. Apparently, several bodies of research studies strongly suggest that "...incomes of fathers, particularly young fathers, are often low initially, but that the incomes often grow dramatically over time."

NATIONAL PATERNITY AND CHILD SUPPORT MEDIA CAMPAIGN

Most would argue that today's record number of out-of-wedlock births is symptomatic of a much larger social disorder. This disorder entails a weakening of social responsibility and individual accountability, crime and poverty, and the waning influence of our social institutions to teach and encourage responsible behavior.

UNIVERSAL PATERNITY: "Outreach" Approach

The time has come to reverse this trend by having government hold biological parents accountable for the children they create. As President Clinton has remarked, "Governments don't raise children, people do. And even people who aren't around ought to do their part to raise the children they bring into the world".

It is also time to create an atmosphere of social intolerance for those individuals who intentionally avoid their responsibilities to their children. Unfortunately, public attitudes do not "change overnight". Nonetheless, we have evidence that long-term efforts which continuously repeat a social message (e.g., anti-cigarette smoking, Mothers Against Drunk Driving, etc.). can produce dramatic changes in behavior and attitudes.

#32: The Department of Health and Human Services, via the Administration for Children and Families, could take the lead in developing a comprehensive media campaign to reinforce the importance of having a child's paternity established and that child support is a "two parent" responsibility. Other "sub-messages" that could be communicated are as follows:

- o Do the Right Thing! Avoiding parental responsibility is not socially acceptable.**
- o Consequences of teen pregnancy mean legal and financial responsibilities whether you are married or not.**
- o Put the needs of your child first, ESTABLISH PATERNITY!**
- o Children are entitled, by law, to a certain level of financial support until they reach at least 18 years of age.**
- o Society really does value the important role that fathers can and do play in the lives of their children!**
- o Societal recognition of the hundreds of thousands of "good dads" who fulfill their parental responsibilities.**
- o Child support services, including paternity establishment, is NOT a welfare program -- it is a public service!**

UNIVERSAL PATERNITY: "Outreach" Approach

NATIONAL CHILD SUPPORT MONTH

#33: The Administration could develop an Executive Order or proposed legislation which would designate one month of every year as "National Child Support Month" in order to underscore the national importance of paternity establishment and child support.

The advantages of establishing a National Child Support Month would:

- o enable the Administration and OCSE to launch a major media campaign on the importance of paternity establishment and the availability of child support services; the President and/or cabinet officials could use their offices as the bully pulpit from which to direct public attention to the plight of single parent families and the importance of parental responsibility;**
- o enable State and local communities to launch, simultaneously, public affairs campaigns including outreach activities via the schools; OCSE could make this a part of it's state plan requirements for child support funds; and**
- o draw media and public attention to the fact that the Administration on Children and families, DHHS, is the focal point in the Federal government primarily responsible for the welfare of the American family.**

DECOUPLING PATERNITY FROM CHILD SUPPORT / WELFARE

DECOUPLING FROM WELFARE

The benefits of paternity establishment to society are nearly always couched in terms of reducing taxpayer liability rather than protecting the needs of children. While inarguably a respectable goal, the message which has been sent is that paternity establishment is only important and expected when indigent children are involved and then only to the extent that government coffers can be replenished. The non-financial benefits of paternity in this environment as well as the benefits to children not reliant on public assistance, while well established, are often viewed as secondary or nonexistent.

Some believe that the link between paternity establishment and welfare, or more generally paternity establishment and financial liability have served to create a serious obstacle to more universal paternity establishment, effectively ignoring the needs of children born out of wedlock unless or until government assistance is required. Families that have no connection to government assistance are isolated from the process and in turn perceive establishment of paternity as a link to the welfare community to which they have no interest or as a combative process whose primary goal is to exact a financial return.

In turn, the message received by welfare families is that paternity establishment is not a social norm or benefit which is automatically provided to their child through the welfare system but rather a repercussion of their reliance on public assistance and a tool to alleviate the government from providing such assistance.

Esther Wattenberg has been a major proponent of decoupling the issue of paternity establishment from the strategy of financial inducement. Her studies find that 80 percent of parents believe that it is important to have both names on the birth certificate and that selling paternity establishment as a first step to financial responsibility alienates many who would otherwise willingly acknowledge. Since public assistance in many cases may not be necessary until some time after birth, decoupling the financial aspects may better provide for paternity establishment early in the child's life when it is easiest to secure while also providing for immediate support order establishment if it is later sought.

DECOUPLING PATERNITY FROM CHILD SUPPORT / WELFARE

These and other research findings suggest that paternity establishment efforts would be better received and more productive if decoupled from the issue of welfare. The approach as presented most often is two-fold:

- o first, to refocus the goal of paternity establishment from one that benefits the government to one which benefits the child and,
- o second, to separate and eliminate the adversarial approach associated with a system that is sanction-based and non-friendly.

These strategies are not independent but causal -- to the extent that attitudinal and institutional changes are made to focus on the needs of the child rather than to recoup government assistance, the less the program will be viewed as adversarial and legalistic. Similarly, to the extent that a less antagonistic approach is pursued, the more those involved will perceive that they are benefiting their child, rather than the bureaucracy.

Following are options which could be pursued to effectuate the decoupling process. A more extensive list of pros and cons has been provided for option 1 which is the most extreme approach. Many of these would also apply, to a more limited extent, to the other two options.

- #34. Could establish a separate administrative component for paternity establishment services which is independent of the welfare and child support office and which serves all families equally. The entity's focus would be purely to provide paternity establishment services. However, referral would be made to the child support agency to the extent that such services are desired or participation required.**

Advantages

- o Eliminating the focus of the financial aspects of paternity establishment may invite greater voluntary acknowledgement. In cases where the parents are still intimate, advocating protection of the child's financial needs may be meaningless since they would undoubtedly view their child as having the support of both parents.

DECOUPLING PATERNITY FROM CHILD SUPPORT / WELFARE

Similarly, may invite the cooperation of fathers who do not currently have the means to provide financial support for their child but who want to remain involved with the child.

- o Would create a more positive attitude about paternity establishment which does not alienate the father or induce his withdrawal from the child.
- o Research evidence indicates that the most powerful incentive for getting paternity established may not be financial. Especially at birth, when hopes for the child's future are the focal point, the benefits of establishing lineage and providing a commitment and connection between father and child may be the most compelling incentive. To the extent that action is perceived to be legalistic and evasive may undermine the connection between the child and the concern and pride of parents.
- o Providing a universal and centralized response to paternity establishment sends the message that paternity establishment is a routine and fundamental next-step to nonmarital birth rather than a responsibility limited to those dependent on government assistance.
- o Would remove paternity from an adversarial bureaucratic structure under which fathers typically become defendants and mothers plaintiffs. Some contend that the more the process looks and feels like an adversarial one, as opposed to one designed to help and protect the child, the less willing fathers and mothers may be to cooperate.
- o May receive more respect and invite better cooperation from the hospital community. All of the hospital-based paternity establishment programs have encountered resistance in start-up phases. Part of this resistance has been attitudinal on the part of staff. Nurses, social workers and others are concerned about driving away the mother by mentioning the father in the context of child support.

Disadvantages

- o Problems currently encountered because of fragmentation in paternity establishment may be magnified.
- o Many advocate establishment of paternity and support as a single action. Congresswoman Kennelly's, Interstate Child Support Act of 1993 would require such a single action, with provision for temporary support.

DECOUPLING PATERNITY FROM CHILD SUPPORT / WELFARE

- o Would be resisted by those who believe in a diametrically opposed approach to welfare and paternity establishment, ie., co-location. Utah developed a pilot project in Ogden and Provo to increase the number and timeliness of paternity establishment through co-location of the IV-D and AFDC offices.

They cite numerous cases where a welfare applicant appears with the alleged father and can be referred directly to the IV-D offices one floor below where the couple can stipulate to paternity. Staff believe that the instant referral to the IV-D agency which can do the more probing interviews necessary to paternity establishment, the strong encouragement they offer (including holding the welfare form), the immediate review of the stipulation, and the interaction between programs helps immensely.

- o Link between welfare and paternity establishment provides additional power and incentive for inducing cooperation. If completely decoupled, sticks may be lost for cooperation, (though rules could be changed to require that such families first receive 'referral' from office of paternity signaling cooperation).
- o May raise due process issues if parents are not fully and clearly advised of the financial liability which may later result from paternity stipulation. In two States' voluntary establishment programs, no link was made between child support and paternity to avoid resistance. However, the approach has been viewed as deceptive or misleading and one which violates the fathers rights.

#35. A related option would be to establish a paternity establishment-only function within the current child support agency.

Advantages

- o As discussed above, if support order establishment was decoupled from paternity, additional parents may actively seek such services or be willing to stipulate.
- o To a more limited extent than the first option, may establish the perception that the primary objective is to benefit and protect the child.

- o Effectiveness of attitudinal changes may be lost. A paternity establishment program which remains closely tied to welfare receipt, continues to send the message that the real beneficiary is not the parents or the child but the government.
- o May require States to establish a dual approach to paternity establishment, particularly to the extent that paternity establishment and support order establishment involve a single hearing/action.
- o May have very little effect since parents can now apply for services and request case closure prior to the State's pursuit of support award establishment or enforcement action.

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36. A third option would be a hybrid of the first two. A separate entity could be established to pursue paternity in cases of voluntary acknowledgement perhaps in the form of some simple registration or paternity stipulation process but all other actions would remain with the child support agency (or courts). This would incorporate the hospital based program advanced by the Administration in Budget Reconciliation as well as parents who decide to pursue paternity establishment at some point after the birth.

- ☐ May influence increased voluntary acknowledgment as provided under option 1.
- ☐ May provide for better cooperation of hospitals (also discussed in option 1).

- o Would continue dual approach to paternity establishment.
- o Does not send strong message for universality. May only ease process for those who would have established paternity anyway (through child support agency or privately).

DUE PROCESS ISSUES AND LEGAL RIGHTS

Introduction

The following is a discussion of some of the legal concerns that arise when considering a universal paternity establishment system. After highlighting the issues, the discussion turns to a review of each issue in more depth and identifies options or potential actions to address these issues.

Overview of Major Issues

There are a number of issues related to the legal rights of both the biological father and mother when discussing paternity establishment programs or procedures. These include the following:

- o Who is or should be entitled to bring a paternity establishment action?
- o How are the due process rights of fathers protected in a paternity establishment program?
- o Should mothers have the right to refuse to participate in a universal paternity establishment system?
- o How does paternity establishment affect the visitation and custody rights of parents? What protection, if any, should custodial parents have with regard to visitation and custody?

RIGHT TO BRING A PATERNITY ACTION

State law defines who has legal standing to bring a paternity action. The U.S. Commission on Interstate Child Support indicates that almost all states have laws which allow a person claiming to be the father to bring a parentage action to determine if he is the child's father. In addition, 17 states have adopted the Uniform Parentage Act (UPA), which specifies that the child, the natural mother, all presumptive fathers, and all alleged fathers have standing to bring a paternity action. The UPA also grants "any interested party" (i.e., a state agency or another

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third party acting on behalf of the mother or child) the right to bring action where a presumption arises because the alleged father has held the child out to be his.

An issue related to who has standing to bring a paternity action is that of joinder. Joinder is a legal concept related to parties who are involved in an action which results in litigation and whether these parties can or should file suit together. In the case of a paternity proceeding, the issue is whether the mother, the child, and the state agency can and should jointly file suit against the alleged father. State laws vary as to whether the child must be joined in the case and whether a child who is not joined as a party is bound in the outcome of the case.

In many states, "privity" can be established between the suing party (the mother and/or the state agency) and the child. Privity is a legal doctrine that prohibits a party from being named in the case because there is sufficient commonality of interest between the parties. Privity findings can bar a child from bringing a separate action if the mother or state agency has already initiated a paternity action, regardless of whether the child is joined in the action.

The U.S. Commission on Interstate Child Support has recommended that states bring action against an alleged father without joinder of the child and that state privity laws govern the effect of nonjoinder. The Commission noted that the child should be given a chance to relitigate the parentage issue if his or her interests are not adequately represented and the state tribunal does not find privity.

With regard to children born while the mother is married, state law generally presumes that the husband is the child's father. In situations where the child's natural father is not the husband, state law varies about the ability of the natural parent to bring a paternity action. For example, California law includes a conclusive presumption that a child born in wedlock is a child of the marriage. This law was upheld in a 1989 U.S. Supreme Court decision. In *Michael H. v. Gerald D.*, the U.S. Supreme Court upheld the California statute which specifies that a child born to a married woman cohabitating with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage. A plurality of the court ruled that it is not unconstitutional for California to prefer the husband over the biological father as the child's legal father and to prohibit inquiries into the child's paternity.

DUE PROCESS ISSUES AND LEGAL RIGHTS

While California's law makes it a conclusive presumption, most states still have a rebuttable presumption which may be challenged with clear and convincing evidence that the husband is not the biological father. In these cases, courts may examine what is in the best interests of the child with regard to changing legal paternity.

- #37. The Federal Government could require states to have legislation which would allow natural fathers to bring a paternity action. This would be accomplished through Federal legislation.**

PROS:

- o This would ensure that all states allow alleged fathers standing to bring a paternity action and give alleged fathers the same legal rights and opportunities as mothers.
- o Allowing alleged fathers to bring a paternity suit may increase the number of voluntary paternities established because some mothers who may have been hesitant to voluntarily establish paternity may be more willing to do so, rather than be drawn into a paternity suit.
- o Overall, more paternities (voluntary and non-voluntary) may be established because fathers prohibited from bringing suit will now be able to do so.

CONS:

- o While it is not clear how many paternities will actually be established as a result of giving alleged fathers standing to bring suit in the states which currently prohibit him from doing so, it may not be a large number since there are only a few states which currently prohibit a father from bringing suit.
- o States without such laws may consider this an intrusion into their authority to determine state law and policy according to state needs and interests.
- o This may not resolve the issue in all cases because courts can still rule in individual cases that it may not be "in the best interests of the child" to determine or change paternity.

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- #38. The Federal Government could encourage (rather than require) states to have laws which allow the father to bring a paternity action.**

PROS:

- o In addition to the pros outlined in the first option, this would eliminate the issue of the Federal Government intruding into state authority.

CONS:

- o In addition to those specified above, the additional problem with only encouraging states to change their laws is that states may not change them.

RIGHTS AND PROTECTION OF ALLEGED FATHERS IN UNIVERSAL PATERNITY ESTABLISHMENT

There are two basic types of protection for fathers which must be addressed when developing a universal paternity acknowledgment program. First, it is essential that any universal paternity establishment system, whether it is a mandatory or voluntary system, guarantee protection of the alleged father's due process rights. Second, paternity acknowledgment programs must clearly explain to the father the financial and other responsibilities he will assume and rights he may have as a result of legally establishing paternity.

Many states operating voluntary acknowledgment programs have developed procedures to ensure that fathers are both fully informed of their due process rights and clearly understand the implication of admitting paternity prior to his voluntarily acknowledging paternity. Due process rights include the right to be notified of paternity proceedings, the right to be represented by an attorney, the right to genetic testing, and, in some states, the right to trial by jury. Some states also guarantee the alleged father the right for a court appointed attorney if he cannot afford one on his own.

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Some states require the father to sign a document indicating that he is aware of his rights and that he agrees to waive them when voluntarily acknowledging paternity. A 1979 California Court of Appeals decision re-enforces the necessity of clearly presenting and explaining to the alleged father his rights before asking him to waive these rights.

In *County of Ventura v. Castro*, the California Court of Appeals concluded that alleged fathers must clearly and knowingly understand their statutory and due process rights before being asked to waive them. Specifically, the court found the state's law unconstitutional because it did not adequately provide for the protection of due process rights of the noncustodial parent and it did not address the manner in which the alleged father may waive those rights.

In addition, some states require a judicial determination to establish paternity even after the father signs a waiver, while other states require testimony from both parents before the court enters a judgment of paternity. This judgment, or "consent judgment" is the final resolution of the question of paternity. By signing the consent form, the alleged father is acknowledging paternity and agreeing to pay support.

The HHS legislative proposal to improve paternity establishment, currently before the Congress, would ensure that all states provide for the protection of the alleged father's due process rights. The HHS proposal requires states to have a simple civil process for voluntarily acknowledging paternity under which the rights and responsibilities of acknowledging paternity are explained and due process safeguards are afforded.

- #39. The Federal Government could require states to have laws which require all paternity acknowledgement programs have procedures in effect that require fathers to sign a written statement acknowledging he understands his rights and waives them. This would be accomplished through Federal legislation.**

PROS:

- o This would ensure that alleged fathers are properly informed of, and clearly understand their rights in all paternity acknowledgment programs.

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- o This could speed up the actual acknowledgment process because alleged fathers would know at the front end of a case what they are being asked to do and would not be able to delay the process later by bringing litigation for lack of understanding their rights.

CONS:

- o Careful implementation and enforcement is necessary to ensure that fathers really are being informed of the rights in a manner which they understand them. This could require the Federal Government to be in the position of telling states what specific rights they must guarantee fathers and force the Department into trying to define due process and what guarantees due process in drafting the legislation and/or in implementing guidance to states?
- o Litigation may not decrease because a father could still challenge the acknowledgment on grounds that he was denied due process prior to signing the waiver.

RIGHTS OF MOTHERS IN UNIVERSAL PATERNITY ESTABLISHMENT

When establishing a universal paternity establishment system, it is just as important to protect the rights of the mother as those of the father. However, the current approach to establishing paternity does not necessarily protect mothers' rights. Nor does it ensure that mothers clearly understand the consequences of having paternity legally established. Instead, emphasis is placed on showing the mother why it is in her and the child's best interests to acknowledge paternity and on protecting the father's due process rights.

Current AFDC policy feeds into this emphasis on the positives and lack of attention to the negatives of paternity establishment. When a mother applies for AFDC, she is required by Federal law and regulations to cooperate in establishing paternity. There are a limited number of good cause exceptions, including the threat of physical or emotional harm to her or the child.

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In many states, these good cause exemptions may not be clearly described in a manner that the mother can understand them. If the mother refuses to cooperate, her case is reviewed for good cause and she is reminded of the penalty for noncooperation. If good cause is not found, the state agency may impose sanctions on the mother's AFDC benefits. While the state agency may not vigorously enforce the cooperation requirement or may use a broad definition of "good cause," emphasis still placed on convincing the mother to cooperate and not on ensuring she understand the results of legally establishing paternity.

- #40. The Federal Government could require states to have laws which specify that all paternity voluntary establishment programs must require mothers to sign a form stating that they clearly and knowingly understand their rights and the consequences of paternity establishment. This would be accomplished through Federal legislation.**

PROS:

- o This would ensure that all women clearly understand their rights in a paternity acknowledgement case and the consequences resulting from establishing paternity.

CONS:

- o If this step is taken without further action related to child custody issues (see discussion below), specifying the consequences of paternity establishment may decrease the number of paternities voluntarily established.

CHILD CUSTODY AND VISITATION ISSUES

A separate paper prepared by the Paternity Work Group is focusing on the issue of maternal noncooperation in paternity establishment. However, one barrier to participation by some mothers is the fear that when paternity is legally established, the father will be entitled to visitation and custody. In some cases, alleged fathers use the threat of a custody battle as a way of intimidating mothers.

DUE PROCESS ISSUES AND LEGAL RIGHTS

In many states, state law does not adequately protect an unwed mother's custody rights. According to the National Center on Women and Family Law, Inc., if a father petitions for custody, the mother is not entitled to a court-appointed attorney if she cannot afford one.

The National Center also reports that in virtually all states, the fact that the unwed mother has the child with her since birth does not create a presumption or other advantage in a custody dispute. Rather, in many states, when a father sues for change of custody, the court views the case as an initial custody decision. An initial custody decision requires the father to show "the best interests of the child" rather than showing "a change in circumstances" which is used in a change of custody case and the mother could lose custody. It should be noted that some states do presume that custody is with the natural mother unless otherwise declared.

Visitation rights another pose a problem for some mothers. This is particularly true in situations where the father has been or continues to be abusive to her and/or the children. The National Center on Women and Family Law notes that in many cases, it is virtually impossible for a mother to persuade a court to limit a father's visitation rights. The National Center suggests that in many cases, the mother has to wait until the father physically harms her or the child to end or restrict paternal visitation.

Current IV-D policy is to separate the IV-D agency from issues related to visitation and custody. At least two courts have dealt with visitation and custody in IV-D cases. In one case, a Michigan Court of Appeals ruled that a trial court in an URESA paternity action was not authorized to address or determine custody (*Lucas County (Ohio) Department of Human Services ex rel, Pollzie v. Wayne*). In another case, the California Court of Appeals ruled that a visitation agreement which was included in a stipulation drafted by the district attorney and entered into by both parents was not valid. The Court held that California law limited action by the district attorney to only paternity establishment and child support (*San Joaquin County (Calif.) v. Woods*).

In order to increase maternal cooperation in paternity establishment and to alleviate women's concerns regarding custody and visitation, some have argued for the adoption of the primary caretaker presumption as a remedy. The primary caretaker presumption is a presumption currently used by judges in some states when making custody determinations in divorce proceedings. Under this presumption, the court assigns custody to the natural or adoptive parent determined by the court to be the

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primary caretaker of the child during the marriage. Under this recommendation, the parent who has been the child's the primary caretaker prior to the establishment of paternity would receive a custody order when paternity is legally established.

Currently, in many states, judges use the notion of a primary caretaker when making custody determinations in divorce proceedings. However, West Virginia is the only state which calls for a firm primary caretaker presumption. The West Virginia State Supreme Court has ruled as recently as 1990 that the state's law presumes that it is in the best interests of children of tender years (loosely defined as children under age of 14 but may vary according to a child's maturity level) to be awarded custody to the primary caretaker. The state court has defined the primary caretaker as the "natural or adoptive parent who, until the initiation of the divorce proceedings, has been primarily responsible for the caring and nurturing of the child." The court has also identified a series of duties to define caretaking, including a set of basic functions such as meal preparation, medical care, grooming, discipline, and education.

While West Virginia is the only state to require that the primary caretaker presumption be the sole presuming factor in custody decisions, a number of other states are using the notion of a primary caretaker as one of several factors. Courts in at least 16 state have shown some favor to the parent who has been deemed the primary caretaker before the divorce, while at least seven state courts have ruled that primary caretaking is a significant factor in assessing the child's best interests. At the same time, while courts in five states have noted the importance of primary caretaking, they have rejected it as the sole presumptive determinant in custody.

- #41. The Federal Government could require states to have laws in effect which require that the parent who has been the child's primary caretaker prior to the determination of paternity shall receive a custody order when a paternity acknowledgement is made. This would be accomplished through Federal legislation.**

PROS:

- o This would relieve custodial parents' fears of losing custody. Adoption of this presumption would provide custody of the child to the primary caregiver who would, most likely, be the custodial parent.**

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- o Removes the arbitrariness of court custody decisions and relieves fears of custodial parents who live in states where there is no primary caretaker presumption.
- o Removing the threat of a custody battle may increase the number of paternities established. This is true in situations where the custodial parent is either the mother or the father because the presumption is gender neutral. Where the mother is the custodial parent, the presumption provides her with some assurance that she, as the custodial parent who has been most responsible for the child's care, will retain custody despite potential pressure from the noncustodial father, who in many cases is more financially secure and can afford to threaten the mother with litigation. Where the father is the custodial parent, he may be more willing to establish paternity because, as the custodial parent, he is likely to be determined the primary caretaker and retain custody.
- o Other side benefits may accrue as well, such as:
 - Awarding custody to the primary caretaker provides stability children child because they would stay with the parent who has been responsible for their care;
 - Awarding custody to the parent who has been primarily responsible for raising the child rewards the parent who has provided the nurture and care of the child in the past rather than the parent who has been absent.

CONS:

- o Adoption of this presumption may not clarify the matter of custody if the term "primary caretaker" is vaguely defined. Defining the term is difficult and then, once a standard definition is made, determining which parent has been the primary caretaker may be even more difficult.

States which use the primary caretaker notion as one of many factors in determining custody in divorce proceedings have identified a series specific parental responsibilities or actions to define primary caretaker. However, in Minnesota, where the state supreme court attempted to use the primary caretaker preference as the only presumption, custody litigation increased after adoption of the standard as the primary presumption. This was because

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parents were suing each other over which parent should be determined the primary caretaker. (In 1989 and 1990, the Minnesota state legislature passed legislation requiring the state court to use the primary caretaker preference as one of many factors in determining child custody.)

It is worth noting that this may not be a major issue in adopting the presumption for unwed parents (as opposed to divorcing parents) because in most situations, the child will be a new born or young baby who has probably lived with only one parent and that one parent has been the primary caretaker.

- o Adoption of presumption removes discretion from courts to determine custody based on the specific facts of individual cases. As a result, the best interests of the child may not be met. For example, in a paternity case, it is highly possible that the noncustodial parent may be prevented having visiting the child or having physical custody of the child by the custodial parent. Therefore, because he/she was not able to have custody of the child, they automatically would lose custody.
- o Using the primary caretaker presumption assumes that either the mother or the father is the primary caretaker and does not deal with those situations in which the primary caretaker is a relative, such as a grandmother or aunt.
- o In reality, use of this presumption will result in mothers receiving custody of the children in a majority of the cases and many would argue that it tips the scale too far in favor of the mother. This may be especially true in situations where the father has been prevented from seeing his child.

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A P P E N D I X

Summary of the Administration's Proposed Legislation on Paternity Establishment

I. STARTING POINT

A legislative proposal regarding paternity establishment is moving forward on a separate track as part of the Administration's deficit reduction strategy.

Summary of the Legislation

The proposed legislation would establish a new paternity performance standard. The new standard would require that a State's paternity establishment percentage be based on the most recent data available which are found by the Secretary to be reliable, and must (1) be 75 percent, or (2) have increased by 3 percentage points over the previous fiscal year for a State with a percentage between 50 and 75 percent, or by 6 percentage points over the previous fiscal year for a State with a percentage below 50 percent. The 75 percent standard has been used in federal audits for some time in assessing substantial compliance with the child support enforcement requirements.

In addition, the legislation would require that, as a IV-D State plan requirement, States adopt procedures to improve the effectiveness of paternity establishment, including procedures:

- for a simple civil process for voluntarily acknowledging paternity under which the rights and responsibilities of acknowledging paternity are explained and due process safeguards are afforded and which must include (A) a hospital-based program for the voluntary acknowledgment of paternity during the period immediately preceding or following the birth of a child, and (B) the inclusion of signature lines on applications for official birth certificates which, once signed by the father and the mother, constitute a voluntary acknowledgment of paternity;
- under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgments are admissible as evidence of paternity;
- under which the voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without first requiring any further proceedings to establish paternity;
- which provide that any objection to genetic testing results must be made in writing within a specified number of days prior to any hearing at which such results may be introduced in evidence, and if no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy;
- which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability of the alleged father being the father of the child;

- under which State tribunals must enter default orders in paternity cases upon a showing of service of process and whatever additional showing may be required by State law;
- for expedited processes for paternity establishment in contested IV-D cases;
- that require that a State give full faith and credit to determinations of paternity made by other States; and
- under which, in the administration of any law involving the issuance, reissuance, or amendment of a birth certificate, the State must require each parent to furnish his social security number (SSN) to assist in identifying the parents of the child. The SSN could not appear on the birth certificate, and the use of the SSN is restricted to child support purposes.

These amendments would be effective (1) on October 1, 1993, or (2) if later, upon enactment by the State legislature of all laws required by such amendments, but in no event later than the first calendar quarter beginning after the close of the first regular session of the State legislature after enactment of this bill.

Where Do We Go From Here?

There are several issues which remain for consideration as part of the welfare reform process. The legislation provides a starting point for even more extensive reforms. For instance:

- Many of the provisions of the proposed legislation apply to non-IV-D cases. Further reforms can be made to create a universal system.
- The proposal mandates expedited process for IV-D cases. Further reforms could require administrative processes and extend use of such processes to non-IV-D cases.
- The proposed legislation provides a technical fix that corrects problems with the existing standard. However, the standard could be changed to include non-IV-D cases, and State performance under the standard could be tied to incentives.

**APPENDIX: OVERVIEW OF PATERNITY PROPOSALS IN
INTERSTATE COMMISSION REPORT AND ADMINISTRATION'S LEGISLATION**

Proposal	Interstate Commission Recommendation	Administration's Legislative Proposal
Time limit for objections to genetic test results; otherwise results admissible without foundation	X	X
Presumption of paternity based on genetic test results	X	X
Use of default orders	X	X
Expedited processes for paternity establishment		X
Immunity from prosecution in connection with an acknowledgment of paternity; decriminalization of nonmarital parentage	X	
Civil proceeding; preponderance of the evidence	X	
Putative father given standing to bring action	X	
Joinder of child not necessary; privity law governs res judicata effect	X	
Use of temporary support orders	X	
Admissibility of taped admissions and birth- related bills	X	
Party with paternity previously determined cannot plead non-paternity in support action	X	
Revised paternity performance standard		X
Simple civil process for voluntarily acknowledging paternity	X	X
Hospital-based acknowledgment programs	X	X
Voluntary acknowledgment creates presumption of paternity and is admissible as evidence		X
Acknowledgment basis for seeking support		X
Hearing to ratify acknowledgment unnecessary	X	
Paternity determinations made by another State entitled to full faith and credit		X
Paternity outreach programs with 90% FFP	X	

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MEASUREING PATERNITY ESTABLISHMENT PERFORMANCE

EXECUTIVE SUMMARY

What would a measurement system for universal paternity establishment look like and what would have to be taken into consideration in order to implement such a system? This paper centers around a number of questions and considers options for each question:

1. How can it be determined who is in need of paternity?
2. How can all of the paternities established in a state be accurately captured?
3. How can old paternity cases on the rolls still awaiting establishment be tracked and accounted for in a universal system?
4. How can an accurate pool of eligibles for paternity be set up and maintained?
5. How can women who refuse to cooperate with paternity establishment be treated in the measure?

These questions are explored in terms of options, pros, and cons, and from them a measurement system based on in-hospital paternity establishments opportunities approached through the birth registration system is developed as an option.

After the birth registration option is described, the paper looks at three alternative theoretical systems for measuring a state's progress in a system of universal paternity. These alternative options are:

1. Using a national survey to measure state paternity performance. This system would greatly augment the Survey of Income and Program Participation (SIPP) so that it would be capable of yielding state specific data on out-of-wedlock birth and paternity establishment.
2. A national system based on social security numbers. This system builds on the requirement already in place for assignment of social security numbers to all children. The Social Security Administration would act as a clearing house, and essentially the system operates very much like the one built on the vital statistics model.
3. Using on the OCSE audit process to measure paternity performance. This system is built on the same model as the one presently in force - i.e., unmarried mothers are asked if they want help to establish paternity, and if they say yes, the are made "paternity only" IV-D cases that are treated for paternity as any other case, closed when paternity is established, and turn

up in samples when a state OCSE audit is done. The state is held to the audit standards for paternity as it is now except that there are a number of cases turning up in the sample that are women who responded affirmatively when asked if they wanted paternity established for them.

All of these systems will depend upon the setting of some standards that are deemed appropriate for the measurement system being used. All such standards will be arbitrary in that there is no scientific way to determine standards. There are serious problems and drawbacks for every method of measurement and these are described in the "cons" associated with each.

The paper ends with a discussion of the problems associated with measurement systems of state performance in general terms.

MEASURING PATERNITY ESTABLISHMENT PERFORMANCE

I. BACKGROUND AND PROBLEM STATEMENT

In 1970, 10.7 percent of the 3,731,000 U.S. births were out-of-wedlock. By 1990, 28 percent of the 4,179,000 births were out-of-wedlock. The absolute numbers are also revealing: in 1970 there were 398,700 out-of-wedlock births, by 1990 there were 1,168,384 such births. Clearly, there has been a huge increase in out-of-wedlock births in the last twenty years. Out-of-wedlock birth is now a major reason for welfare reciprocity. Children from such unions are least likely to receive child support and when they do the amounts are smaller than for children from former marital unions. In 1990, of the 4.2 million women living with children with fathers not present in the home and who have not been awarded child support 2.2 million (53 percent) were never married to the father. Out-of-wedlock birth is a major cause of child poverty.

Paternities are established in a number of different ways, but the principal institution responsible for this activity at the state level is the Child Support Enforcement (IV-D) Agency. IV-D sponsored establishment activity has increased greatly in a short period of time: from 1987 to 1991, the number of paternities established rose from 269,161 to 479,088 for an increase of 78 percent. Dramatic as this establishment effort has been, clearly it does not come close to solving the problem of establishing paternity, which is the gateway to support order establishment and collection of child support, and which in turn can alleviate child poverty.

Congress (in the Family Support Act of 1988) sought to hold states more accountable for establishing paternities. Thus, a performance measurement system was mandated for paternity cases within the IV-D system to check the progress and performance of states in paternity establishment. The implementation of that measurement system was problematic and new legislation has been proposed that essentially removes the competitive quality of the 1988 system and pits a state's performance in one year against its own performance during the previous year, as reported by its own data subject to audit. The new system works by measuring improvement from year to year, rather than by comparing a state to that of the average of all states or to the best states, as the old system did.

II. UNIVERSAL PATERNITY ESTABLISHMENT

This paper lays out a system for measuring state performance in a context of universal paternity establishment. What is meant by "universal" paternity establishment as a working ideal? As used here the concept signifies that unmarried parents will be given every possible opportunity to establish paternity for their newborn children. Medical and genetic and inheritance reasons will be stressed as well as the right of every child to have its

parentage fully established. Paternity establishment could still remain the gateway into certain income and in-kind transfer programs such as AFDC and Food Stamps, and into Child Support Insurance, should that program be implemented. The same good cause and sanctioning system can be kept in place or even strengthened for recipient applicants, but the major focus would likely be on opportunists.

The term has the greatest implications for parents outside the welfare or child support systems. A serious attempt at education, persuasion, and the provision of opportunity to establish paternity shortly after birth, preferably in the hospital, would be implemented, the "working ideal" of which program would be the establishment of paternity for virtually every child born out of wedlock. Any new system has to take into account that a number of mothers will choose not to establish paternity regardless of how persuasive the reasons are for doing so, and that furthermore these women will not make demands on any public system for welfare or aid in obtaining child support. It is not known how many such women there are in a typical year. Nevertheless, the challenge will be to convince these women that it is desirable to get paternity established.

It is also important to note that of all out of wedlock births a certain number of these babies are adopted, their parents marry after the birth is registered, the mother marries another man who acts as father to the child and may even subsequently adopt it, and a few die. It cannot be a goal to establish paternity for every out-of-wedlock birth in a given birth cohort. There is a need to determine a workable percentage establishment goal short of 100 percent for each birth cohort. A measure of the paternity system's success will be how many new births short of the "exempted" categories named above can be established.

III. THE GOAL OF A NEW MEASUREMENT SYSTEM

One possibility is to construct a system of near universal paternity establishment with an attendant measurement of results and a sanctioning/incentive system that holds the states accountable for results. The measure should identify and count a pool of eligibles for whom paternity needs to be established and a count of those for whom paternity has been established within some window of time after birth. The fraction of those who have been established from among those who need establishment is the basis of the standard for the states. What the standard should be is beyond the scope of this paper, which covers mainly measurement issues.

The system also assumes that the paternity establishment performance is being measured state by state in order to hold the states accountable for the successful operation of the paternity function. There will exist some standard that the states will

have to reach in order to satisfy the requirement to establish paternities, and depending on the option, states could be rewarded or penalized on the basis of the results of the measure of their performance. The percentage, the time frame within which establishment will occur after birth, and the nature of any rewards or penalties attendant upon the measure can be determined independently from determination of the measurement's form, the subject of this paper. The operating agency is assumed to be the state child support enforcement systems whose responsibility it will be gather data on paternity establishments and report them.

Some systems of paternity establishment measurement under universal paternity conditions will require that the measurement start with new cases only, since there is no way to capture appropriate data on older cases. Other suggested systems (e.g., the survey method and the audit method) would not particularly require starting the measurement of paternities from scratch at the beginning of a particular year.

IV. A SIMPLE PATERNITY ESTABLISHMENT MEASUREMENT SYSTEM

Option 1: Measuring paternity using the birth registration system

It is assumed that an in-hospital system will approach unmarried mothers, as determined by the questions asked by birth registrars about the mother's marital status and that those women saying they have an interest in paternity services will become IV-D cases, if only for paternity establishment. In order to generate from this method a performance measure, a number of steps requiring decisions are necessary.

The first question is how to determine who is in need of paternity. When the IV-D population comes in for voluntary or mandatory services, it quickly becomes obvious whether a child is in need of paternity establishment. In an expanded system, where paternity establishment is encouraged for every non-marital birth, IV-D will simply treat all cases for paternity establishment the same, except that they will have more tools to deal with them in an expedited manner, and there will be many more IV-D cases than there now are coming from the out-of-wedlock birth population as a whole.

Federal legislation may be needed to require all states to ascertain via the birth registration process all children who are born out of wedlock. Six states have laws on their books that prohibit the asking of the question about marital status of the mother as part of the vital statistics collection process, even though the form used by most states asks the marital status of the mother. For those states the marital status of the mother is now inferred by a process of name comparison. It is also possible to leave the system as it is and accept the estimates that the six states now make as accurate. Using the birth registration system as a basis for establishment measurement would be a possible first step in the process.

Pros:

- o Simple system basically already in place, and respected
- o Would make birth registration process uniform across states
- o Quality of data would be improved (no estimation)

Cons:

- o Birth registration is a state function with no federal financial participation
- o Might require federal expenditures to change
- o Would be opposed by National Center for Health Statistics on political grounds
- o Could be seen as anti-child protection of privacy in the states where marital status of mother is not recorded on birth registration information forms

The second question is how all of the paternities established in a state can be accurately captured. This is not problematic within the IV-D system. A universal system, however, will include non IV-D cases where paternity has been established in different ways in a particular state, and some of those ways may have nothing to do with IV-D. It is, however, fairly clear that virtually all events that legally normalize a child's birth status eventually end up being registered in the court.

Birth can be normalized through a court process that is either adversarial or voluntary, with or without the IV-D system; through adoption; or through voluntary acknowledgement of paternity after the birth of the child through the birth registration process. All three of these events involve either the courts or state vital statistics or both. These two relevant reporting agencies should be able to capture almost 100 percent of all paternity establishments that IV-D does not already know about.

The state will have to devise ways to capture paternity establishments done outside of the IV-D system from these sources. It would seem feasible for courts handling adoption cases and vital statistics offices to report all such "legitimizing" actions to the state IV-D agency on a simple form, completed and filled in as part of the process. There are similar arrangements in most states connected with the divorce process and this type of simple exchange of information between two state agencies should not pose a formidable problem.

The third question is how can the system keep track of old cases, i.e., cases already on the books or coming into the system, but born before the initiation of universal paternity, and new cases, i.e., those that become part of the pool of eligibles upon the initiation of universal paternity. There is no way to avoid separating old and new cases if there is to be a strict measurement of performance of paternity establishment at the state level under a system of universal paternity. There simply is no system in place or is there one that can be constructed to measure the proper numerator and denominator for a paternity establishment fraction for old cases.

Options:

1. The system would start with new cases, those born and established after the initiation of a system that can capture the data. Meanwhile, states would continue to be responsible for these old cases through the audit standards and requirements.

Pros:

- o This is a simple system that builds on that already in place and adds elements where necessary to accommodate universal paternity
- o No paternity cases are left outside of the system with disincentives to work them

Cons:

- o Cases, depending on when the child was born, are assigned to two different systems for state accounting
2. Mandate minimum standards only for new cases, but reward the states with cash incentives for establishing old cases.

Pros:

- o Gives states financial incentives to establish paternities for old cases that have been difficult to work
- o Rewards states for penetrating their caseload, while not allowing a backlog of new cases to become more difficult old cases

Cons:

- o There is no way to predict with accuracy that this arrangement would prevent the slighting of old cases

The fourth question is how to set up and maintain an accurate pool of eligibles. A state will be interested in setting up and maintaining an accurate pool of paternity eligibles. Thus, once the out-of-wedlock births are counted, this number must be "refined" so as to reflect only those cases for which the state has a true and realistic responsibility and expectation of paternity establishment.

The following are events that would normalize an out-of-wedlock birth and thereby remove it from the state's remaining pool of eligibles: death of the child or father, adoption, subsequent marriage of the mother either to the child's father or another man who becomes de facto father, or the movement out of the state of the child's birth all affect the true size of the pool of eligibles and the state may want to try to adjust for these factors in order to pursue a more realistic paternity establishment responsibility.

Pros:

- o Allowing states to remove these children from the pool of eligibles will be viewed as fair to the states
- o Allowing states to use their own estimation techniques to refine the measure should not cause concern

Cons:

- o Technique allowing states to estimate the impact of events affecting the size of the pool of paternity eligibles may be overly generous to states
- o There is room for possible abuse by overestimation of the impact of these denominator-reducing events which would artificially inflate the paternity establishment measure

NOTE: An alternative option could remove from the pool of eligibles the children of unmarried mothers who refuse to establish paternity or cooperate with it.

The fifth question is how to handle in the measure women who refuse to cooperate with the establishment of paternity. Are non-cooperators to be removed from the state's pool of eligibles? If mothers are not obligated to cooperate with paternity establishment and will not, should the state be held responsible for establishment of those cases? Again, the state can reasonably argue that if services have been offered and the mothers refused outright the state should not continue to be held responsible and such cases should be removed from the pool of eligibles.

Options:

1. Allow these cases to be removed from the pool of eligibles on the grounds that the state is unable to establish paternity for IV-D or non IV-D cases if the mother refuses to cooperate.

Pros:

- o it will be difficult to apply any system of sanctions and awards in those cases for which the state cannot be held accountable

Cons:

- o It would be easy to lump difficult cases under a category of "refuser" or "good cause" to make the paternity measurement look more favorable
2. Continue to hold states responsible for the establishment of paternity even if the mother refuses cooperation.

Pros:

- o The measure that results will be a more accurate picture of the state of paternity establishment in a state including difficult cases and cases that, while now refused for services, might later come into the system

Cons:

- o Will be perceived by states as a fairness issue - holding them responsible for cases they cannot expect to establish

V. ALTERNATIVE MEASURES

There are other possible options that would also be compatible with universal paternity establishment.

Option 2: USING A NATIONAL SURVEY TO MEASURE STATE PATERNITY PERFORMANCE

Questions could be added to some phase of the Current Population Survey, perhaps the wave in which state-specific unemployment statistics are collected. One question would ask respondents, male or female, whether they had ever had a child born out of wedlock, if so how old was the child, and if so, had paternity ever been established. The case would be thrown out of the count for all children born over eighteen years ago. These questions would set the denominator and the numerator of the paternity establishment fraction and standards could be set which would have to be met every year, on the basis of what the sample population told the enumerators.

Pros:

- o Relatively simple concept, depends on obtaining answers to some questions on a survey once a year, and using data to figure simple percentage
- o Measure that is compatible with a number of different sanctioning or reward scenarios
- o Scheme is entirely divorced from child support or welfare reciprocity, rather asks questions tied specifically to paternity in a totally neutral and anonymous context
- o Census has increasing knowledge about how to ask questions concerning marital status and paternity

Cons:

- o Subject matter very sensitive, Census has resisted asking these questions, on assumption that subject could refuse to cooperate further with the survey
- o Answers subject to lying
- o Some paternity issues are conceptually difficult for respondents to understand and answer even if willing to do so
- o Available indications are that such questions elicit a great deal of embarrassment and resistance
- o Could be viewed as overly intrusive government intervention in the private lives of people who are not asking for government services

Another sub-option is use of the Survey of Income and Program Participation (SIPP) which will be augmented in 1995 to 50,000 households every two years so that a state specific sample could be obtained for many states; provisions would have to be made for small states perhaps necessitating an augmentation far larger than is planned in order to cover all states. SIPP asks respondents to list all of the children in a household, one of whose parents is absent, and then it asks whether support payments were received for the youngest and oldest children in the household. One of the reasons for not receiving payments is "Paternity not established." If these questions were slightly reworded the paternity question could be asked of every child in the household.

Pros:

- o Most of the same advantages as for the Current Population Survey
- o The survey could produce a wealth of information about the population producing out-of-wedlock children and the children themselves, information could be very helpful in shaping policy decisions about paternity

Cons:

- o Survey would have to be substantially changed because it asks paternity only for oldest and youngest child
- o Census is resistant to asking sensitive questions about paternity
- o Validity of data would remain an issue for sanctioning decisions
- o Augmentation to cover representativeness of all states could be costly

In short, the survey route may be viable and as cost effective as any other form of measurement. Advice as to its legality as a sanctioning instrument, and estimates and feasibility for making one of the currently used surveys (the CPS child support and alimony supplement or the SIPP) a state specific instrument are needed. More negotiation and dialogue with Census is in order.

Option 3: A NATIONAL SYSTEM BASED ON SOCIAL SECURITY NUMBERS

At birth each child could be assigned a social security number; this is almost a necessity now, because of the requirements of the Federal income tax system. Along with the recording of the Social Security number the child's birth status and State of birth go into its file. Whenever paternity is established by whatever means, or whenever a child dies or is adopted the event must become a part of the child's social security file along with the name of the state in which the event occurred. Social Security should be able to refine state universes by removing deaths and adoptions and keeping track of paternity establishments by state.

Pros:

- o Relatively simple
- o Based on requirement already in force because of tax code

- o Should be fairly easy to arrive at a fairly accurate accounting of a State's caseload

Cons:

- o Would put huge additional burden on Social Security system
- o System would not be totally accurate in that it would not cover certain contingencies such as interstate movement of mother and child

Option 4: USING ONLY THE AUDIT PROCESS TO MEASURE PATERNITY PERFORMANCE

In a scenario where every unwed mother who wants paternity services will be offered them in the hospital and the IV-D agency will assume responsibility for the cases of these women to be treated like any other IV-D case, whether they are paternity only, or go on to need order establishment and enforcement functions, then the paternity establishment measurement process need not be a separate process from audit itself, which contains a standard for paternity establishment. Option 4 would simply build on the present system by adding in-hospital cases generated through the birth registration process and then measuring the extent to which these and all other paternity cases are worked through the audit. These cases are then subject to audit as are all cases, and states are held to the audit paternity standard. All other forms of measurement are dropped. Cases requiring only paternity would be dropped upon successful establishment. Mothers who refuse services can be counted for statistical purposes so that the state and federal governments can see what the extent of the paternity establishment problem is during any given year, but no action would be taken against a state involving the cases of mothers who refuse.

Pros:

- o System avoids enormous difficulties in setting up a separate paternity measurement system
- o Measurement system is based on a process that all of the states know and understand - the OCSE audit.

Cons:

- o Does not emphasize and underline the importance that Federal government wants to place on paternity, as a separate system does
- o Places burden on audit and would require additional resources

VI. PROBLEMS WITH MEASUREMENT SYSTEMS IN GENERAL

There are legal questions involved in all systems of State performance measurement when sanctions are involved. The current law requires ACF to sanction states if they do not meet a certain paternity standard that includes a national average or 50 percent of their cases in need of establishment or some incremental increase each year. This performance standard is currently measured by states in two ways: a census of all cases, a point-in-time sample of their caseload. OCSE auditors have concluded that the data produced by the States is flawed. Furthermore the Office of the General Counsel says that the national average required by law is legally problematic in that it depends on accurate data from each of 54 jurisdictions or it can be challenged in court. The conclusion is that states can only be judged against their own performance, not that of other states, and the new legislation amends the old requirement along those lines.

Auditors have a history of sanctioning states on the basis of samples that are drawn by them with the aid of the state, but in every case of sanctioning there is a lengthy process during which the state challenges the audit findings on methodological bases. Audit has usually won these disputes, even though data cannot be demonstrated to be perfect. Data have to be defensible, though. The new legislation currently in Congress takes these principles into consideration, and any system proposed for measurement must also do so.

The data do not exist to be able to calculate one global universal paternity measurement based on the percentage of all out-of-wedlock births for which paternity has been established. Such a performance measurement can only start at some point in the future. Old data cannot be captured in this manner. When the new data begin to come in, at the end of the new system's first year, we will be able to tell how many children, born during that year, have had paternity established, been adopted, and died, and then relate these figures back to the number of out-of-wedlock births collected by Vital Statistics, or other means, for that year. This will give a relatively accurate paternity establishment rate for one-year-olds. The problems come into the system when looking backward. Certainly during the second year of the new measurement system, not only can the system capture the new rate for one year olds, but also the same accurate rate for children who are two years old, and so on as the measure is used from every year hence. Thus, the method would allow us, starting in a particular year, say 1994, to establish accurate rates for all age cohorts born that year and in the future.

VII. DISCUSSION

The system described above assumes that paternity will remain a state function. It is based on relatively simple counts of paternities established and services offered to unwed mothers in hospitals and elsewhere. If a state establishes paternities within the IV-D system it will be favorably or unfavorably audited and sanctioned or not as required. If cases added under universal paternity do not become IV-D cases, then the new cases can be measured and perhaps an incentive payment given to states to work such cases. The magnitude and mix of sanctions and incentive payments would depend on the option chosen. There is also the possibility of paying incentives to mothers who give information leading to successful establishment. The whole issue of incentives in child support is being dealt with by other issue groups and is also a restructuring problem, and ultimately needs to be treated in the context of the whole child support program. The proposed measurement system should perhaps be demonstrated in several states before it is considered for general adoption.

JKManiha
6/30/93

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ADMINISTRATIVE DETERMINATION OF PARENTAGE

Executive Summary

This paper explores the possibilities for making the paternity establishment process an administrative one, rather than relying so heavily on the court system. Strategies which exist or could be developed to remove the disposition of a significant segment of paternity actions from the traditional court-based adjudicative approach are highlighted. A search to improve efficiency and cost effectiveness in operating a child support enforcement program has led a growing number of States to adopt administrative alternatives to enhance traditional judicial processes for the establishment of paternity. An administrative process offers a State child support agency an opportunity to streamline procedures, enhance quality control, consolidate and integrate management of the full-range of case-processing activities, and improve policy-making and decision-making in the agency. Moreover, a properly designed and operated administrative process can effectively ensure that constitutional due process guarantees are safeguarded.

Most administrative processes that encompass paternity establishment focus on purely uncontested cases in which the alleged father freely and voluntarily acknowledges parentage. As a result, the judicial system is freed to handle disputed actions. There is, however, an increasing recognition that use of highly probative genetic testing as a precursor to commencing formal adversarial proceedings can produce a significant number of acknowledgments among fathers unwilling to initially admit absent some independent objective "proof." At least three States--Ohio, Montana, and Iowa--have incorporated administrative mechanisms for directing the parties to submit to genetic testing. The features of these processes are described in this paper.

Use of expedited processes in handling paternity cases, now an option for States, would be required under the Administration's proposed legislation presently before Congress. Obviously, the Federal/State child support enforcement partnership faces a consequential juncture for revisiting the design of expedited processes. Undoubtedly, this will include serious consideration of administrative processes.

Redesigning a system steeped in judicial tradition can be a challenging, but not insurmountable, undertaking. Decisions will significantly impact--and will need to include involvement by-- all branches of State government, and the public. It will be important to clearly define the best way to structure and share responsibilities. The experiences of those States which have incorporated workable administrative processes into traditional court-based structures should be carefully considered. This paper includes descriptive illustrations of various administrative approaches being utilized among the States.

ADMINISTRATIVE DETERMINATION OF PARENTAGE: DISENGAGING THE TRAPS OF TRADITION

Introduction

This paper explores the possibilities for making the paternity establishment process an administrative one, rather than relying so heavily on the court system. It examines alternative approaches and methods for improving the resolution of paternity cases by reducing the need for judicial involvement.

Some of the processes currently available in various States that can serve as useful models for streamlined resolution of disputed paternity cases, including Ohio, Iowa, Montana, Maine, Colorado, and Oregon, are illustrated. Strategies which exist or could be developed to remove the disposition of a significant segment of paternity actions from the traditional court-based adjudicative approach are highlighted. Consideration is also given to how use of an administrative process and/or less adversarial strategies might strengthen and enhance present practices.

Background

Concerns have been voiced that court-based, judicially-dependent mechanisms which have been relied upon to ascertain a child's parentage may hinder prompt resolution. Furthermore, such protracted processes may not be the optimum way of delivering justice in the majority of cases. Certainly where there is no real dispute about the ultimate issue, either because there is a willingness to acknowledge parentage at the outset, or where the results of genetic testing allay uncertainty, there is little benefit to congesting an already inundated docket with cases for which there exists no controversy--and for which delay is a disservice. Is there a less-complicated alternative that produces a just result while still guaranteeing that due process is afforded the participants?

It is well-established that State legislatures have the authority to set up an executive agency or board to resolve problems or claims between private parties.¹ State child support practitioners are becoming increasingly cognizant that cases processed through the judicial system often take inordinate amounts of time because the existing judicial procedures are rather ill-suited to establishing and continuing to enforce ongoing obligations, many of which span decades. In a world of burgeoning demands for services, resources to meet the need--particularly time--are precious commodities.

An administrative process is one way to relieve the courts of the overwhelming caseload by delegating it to a specialized agency in the executive branch. The administrative process offers many advantages in establishing and enforcing child support obligations.² It permits child support obligations to be established more quickly due to fewer procedural roadblocks. By virtue of consolidation of functions (with the exception of appeals), an administrative process offers efficiency and eliminates splintering of responsibilities and competition for control among multiple entities.

An administrative process provides a State child support agency an opportunity to streamline procedures, enhance quality control, consolidate and integrate management of the full-range of case-processing activities, and improve policy-making and decision-making in the agency. Moreover, a properly designed and operated administrative process can effectively ensure that constitutional due process guarantees are safeguarded through proper notice, an opportunity for a fair and impartial hearing, and right to appeal the agency decision.

Legislative History of Expedited Processes

Congressional acknowledgment of the need for efficiency and effectiveness in establishing and enforcing child support obligations is evident in the enactment of the Child Support Enforcement Amendments of 1984.³ Among the comprehensive, sweeping mandates was the requirement that States have in effect and use expedited processes for obtaining and enforcing support orders, and at the option of the States, for establishing paternity.⁴

The legislative history suggests Congress' insistence that States make all reasonable efforts to expedite and otherwise improve the establishment of, compliance with, and enforcement of child support obligations. Citing problems resulting from the necessity of resolving disputes through courts, the House Ways and Means Committee observed that using the courts often exacerbates the adversarial nature of the proceeding with parents emerging as "victors" and "losers." The combination of long delays, poor case management and communication, and adversarial proceedings may create a climate which deters voluntary compliance with child support obligations. Administrative process is described as a statutory system granting authority to an executive agency to determine child support duties. . . wholly outside the court system. Procedures can be tailored to mesh with and complement existing legal and administrative arrangements within jurisdictions so inefficient systems can be bypassed or eliminated from the child support program.⁵

The Senate Finance Committee version specified that "States will be required to have in effect expedited processes within the State judicial system for establishing paternity and obtaining and enforcing child support orders." Expressly recognizing that a variety of procedures are used by different States, the Committee specified that the provision "does not mandate a particular procedure nor authorize the Federal agency to impose its views on the details of State court organization. What is required is that States adopt structures and procedures which will ensure that child support and paternity actions are processed in an expeditious manner."⁶

The Conference agreement on this provision "mandates that the States use expedited processes, but allows them to determine whether they are under the judicial system or administrative processes. States are permitted but not required to include paternity establishment in their expedited process. It is not intended that the Secretary be authorized to specify the particular administrative or judicial structures to be adopted by the States. Rather it is intended that the Secretary should measure a State's compliance with the provision primarily on the basis of the results it produces."⁷

In the preamble to final regulations issued to implement the Child Support Enforcement Amendments of 1984, OCSE responded to comments on the use of expedited processes for determining paternity and concerns expressed about the need for additional due process protections. It was recommended by a commenter that OCSE add additional requirements for determining paternity under an expedited process or limit paternity proceedings under expedited process to uncontested cases. OCSE explained that States that opt to include paternity establishment in their expedited process must provide whatever additional due process requirements are necessary for the protection of the parties involved in the proceedings. However, if a case involves non-support-related issues such as countersuits by the alleged father, the State may refer the case to its judicial system.⁸

According to official State IV-D plans submitted by the individual States, 20 States have indicated their election of the option to include paternity establishment in their expedited process (either quasi-judicial, administrative, or combination).⁹

Changes On the Horizon

As drafted, the Administration's proposed budget reconciliation bill would eliminate the "at State option" language with respect to paternity establishment.¹⁰ Thus, use of expedited processes in handling paternity cases would be required. Therefore, we can anticipate a fast-approaching critical juncture for revisiting the design of expedited processes and undoubtedly, consideration of administrative processes.

Creating an Administrative Process

State legislatures must enact statutes expressly authorizing an administrative process. State constitutions prohibit agencies from simply assuming legislative or judicial authority without specific statutory delegations. A chief concern articulated about placement of traditional judicial functions in an executive branch agency is whether administrative determinations of child support obligations are constitutional. Essentially, may the legislature delegate this traditionally judicial area to the executive branch? May child support obligations be established and enforced by an executive agency without violating a responsible parent's right to due process of law?

When challenged, such delegations generally have been upheld as not a breach of State constitutional restrictions, as long as the delegating statute contains some standards to limit agency discretion. It is clear that an administrative agency may make factual determinations and even "adjudicate" rights of the parties without running afoul of the constitutional separation of powers. It is when an agency purports to enter enforceable judgments that courts draw the line of permissibility, since entry of enforceable judgments is the essence of judicial power.¹¹

State Laws Allowing Administrative Determination of Paternity

Establishing paternity is historically a legal activity firmly rooted in the judicial arena, dating back to the Elizabethan poor laws.¹² Because of the criminal underpinnings in these 16th century principles--non-marital intercourse being considered a "sin and a crime"-- a judicial, punitive process was required to establish proof beyond a reasonable doubt. Although it has evolved through advancements in technology and has remarkably changed as a result of social attitudes, the paternity establishment process remains primarily entrenched within, and reliant upon, the court sector in the vast majority of States. Yet, States are focusing increasingly more attention on various aspects that can be accomplished independently of the court, even if the court ultimately must "establish" the paternity as required by State law.¹³

One such endeavor is the use of administrative processes in lieu of adjudicative ones. Normally a formal hearing is necessary when the alleged father contests the issue. The agency may be empowered to establish paternity without holding a hearing, provided that notice is given to all parties, in uncontested cases. These situations would include, for instance, where the father has acknowledged paternity in writing or where the parties have married, but a formal finding or declaration is necessary under State law to make it legally binding or official.

The implementation of an administrative process can significantly alter each step in case-processing procedures. Incorporating paternity determinations within the functions may demand extensive additions to the text of an administrative process statute. For instance, the hearing officer needs authority to order the parties to submit to genetic testing and a method to handle refusals to comply. Many other issues attendant to a civil paternity statute such as admissibility of evidence, presumptions, and necessary parties, also need to be addressed.¹⁴ Forms have to be designed to provide for formal acknowledgment of paternity, as well as other documents including notice, findings, and order.¹⁵

A search for greater efficiency and cost effectiveness in operating a child support enforcement program has led a growing number of States to adopt or explore administrative alternatives to traditional judicial processes. In addition to delegated authority to establish support obligations, an administrative agency may be granted the power to determine paternity. Oregon, Montana, Ohio, Colorado, Maine, and as a result of legislation enacted in May 1993, Iowa, are among the States in which such authority has, to varying degrees, been designated.¹⁶ A narrative description of the process used in each of these States follows. Legislation has been considered in several other States, including Massachusetts.¹⁷ Appendix A includes copies of the specific statutory language for Ohio, Oregon, Washington, Missouri, Iowa, Colorado, Maine, and Montana. Also incorporated is a diagram depicting the process set forth in the Ohio administrative paternity statute.

Montana's Process

Montana enacted its administrative paternity process legislation in 1989, premised on a concern that typical processing was "extremely difficult and time-consuming for the child support enforcement program."¹⁸ The major stumbling block imposed in contested cases by the judicial process was the requirement that absolute probable cause be established in the district court before a genetic testing order could be granted. With the extensive evidentiary requirements, the many delays available to an uncooperative alleged father, and the heavy backlogs in many Montana courts, most contested cases would wait more than a year for progress.

Under the 1989 revisions, codified at Montana Code Annotated §§40-5-231-40-5-237, personal jurisdiction is established in the Department of Revenue over any person who has had sexual intercourse in Montana that has resulted in the birth of a child who is the subject of a paternity proceeding. Personal jurisdiction may be acquired either by personal service or by service of notice by certified mail. If the child or either parent resides in Montana, any hearing may be held in the county where the child resides, either parent resides, or the department or any of its regional offices is located. The alleged father may be served an administrative notice of paternity determination based upon the sworn statement of the mother or evidence of a presumption under State law or any other reasonable cause to believe the alleged father is the child's natural father.

After service of the administrative notice, the alleged father has three alternatives: (1) respond and acknowledge paternity; (2) respond and deny paternity; or (3) ignore the service and make no response. If the alleged father fails to respond, such default is taken as an admission of paternity and an administrative order is rendered by the administrative hearing officer. The order takes effect within 10 days unless good cause for failure to appear is alleged. Upon timely request, and for good cause shown, a default judgment can be set aside. Default judgments are not taken in cases involving multiple alleged fathers, unless all other alleged fathers have been excluded by genetic blood testing.

Based on a written acknowledgment of paternity from an adult or minor alleged father, the administrative process enters an order establishing paternity. If the alleged father denies paternity in response to the notice, an administrative hearing is scheduled. During the hearing, which is usually conducted by telephone, the hearing officer determines if a reasonable probability exists that the alleged father had sexual intercourse with the mother during the probable period of conception or if any legal presumption of paternity exists under the circumstances of the particular case. If so, an administrative subpoena is issued ordering genetic testing. The Child Support Enforcement agency can apply to the district court, if necessary, to have its order enforced. If the alleged father fails to appear for the hearing or fails to appear for blood tests, the default is taken in the same fashion as if he had not made timely response to the initial service.

If the results of the genetic tests reflect a 95 percent or higher probability that the alleged father is the natural father of the child, a rebuttable presumption of paternity is created, and the hearing officer may enter an order establishing paternity. If the probability of paternity is less than 95 percent, but the alleged father is not excluded by the tests, the test results are weighed along with other evidence of paternity.

An administrative order of the department declaring the paternity of a child, docketed with the court, establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations. Upon request of the mother or father of the child, the department must file a copy of its order with the department of health and environmental sciences, which must prepare a substitute certificate of birth, if necessary, consistent with the administrative order.

Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon application of any affected party and upon a showing of any of the grounds and within the timeframes provided in Rule 60(b) of the Montana Rules of Civil Procedure. This rule specifies that the court may relieve a party or his legal representative from a final order, judgment, or proceeding based upon (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly-discovered evidence which by due diligence could not have been discovered in time to move for a new trial; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment have prospective application; or (6) any other reason justifying relief. The timeframe for the first three bases is 60 days from the entry of the judgment.

If an alleged father objects to the procedures for or the results of a paternity blood test, he must file a written objection with the court within 20 days after the service of the notice of the referral to the district court of the administrative determination. The court must order an additional blood test if a written objection is filed or at the request of the department. An additional test must be performed by the same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody. In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother with any person who has been excluded from consideration as a possible father of the child involved by the results of a paternity blood test is inadmissible in evidence. When a paternity blood test excludes an alleged father from possible paternity, the test must be conclusive evidence of nonpaternity of the alleged father for all purposes in district court.

Appeal of final administrative orders may be made on the father's initiative to the district court. However, if the results of genetic testing do not exclude the alleged father but he continues to deny paternity prior to the entry of an administrative order, he is served written notice and the case is referred by the child support agency to the district court.

The child support agency appears in the proceeding only with regard to the issue of paternity. No other issue--custody, visitation, or other--may be joined.

Since Montana's law creates a rebuttable presumption that it is in the child's best interest to legally establish paternity, the court may not normally appoint a guardian ad litem.

Furthermore, neither the mother nor the child are necessary parties to the action although they may testify as witnesses. Expert testimony on the genetic testing in the form of a certified report is admissible without further testimony, as is an affidavit documenting the chain of custody of the blood specimens. Genetic exclusion is considered conclusive evidence of non-paternity, and no evidence is admissible concerning sexual intercourse of the mother with any man already excluded by the genetic testing. The child support program is not liable for attorney fees, including those for indigent alleged fathers, or for the cost of a guardian ad litem unless frivolousness or bad faith is proven.

Ohio's Approach

As a result of legislation enacted effective July 15, 1992, Ohio has statutory authority governing the administrative determination of paternity.¹⁹ Particularly noteworthy is the fact that Ohio's child support enforcement program has historically been judicially-oriented, traditionally depending on the avenue of court proceedings to adjudicate actions. Administrative measures for accomplishing many functions were incorporated in Ohio's laws through passage of Senate Bill 10 in 1992.

With limited exceptions,²⁰ no person may bring court action to establish paternity before requesting an administrative determination of the existence or nonexistence of a parent and child relationship from the child support enforcement agency of the county in which the child or the guardian or legal custodian of the child resides. If more than one county agency receives a request, the agency receiving the request first must proceed with it. The request must contain all of the following information: the name, birthdate, and current address of the alleged father of the child; the name, social security number, and current address of the mother of the child; and the name and last known address of the alleged father of the child.

Upon receiving a request for a determination of the existence and nonexistence of a parent and child relationship, the agency schedules a hearing before an administrative officer to determine whether the natural mother and alleged natural father would voluntarily sign an acknowledgment of paternity or agree to be bound to the results of genetic testing. The hearing is to be held no later than sixty days after the date on which the request was received and no earlier than thirty days after the date the agency provides notice of the hearing to the mother and the alleged father.

Notice Requirements

After scheduling the hearing, the agency must give a notice, in accordance with rules of civil procedure, to the mother and alleged father stating all of the following:

- that the agency has been requested to determine the existence of a parent and child relationship between a child and the alleged named father;
- the name and birthdate of the child of which the man is alleged to be the natural father;
- the name of the mother and the alleged natural father;
- the rights and responsibilities of a parent;
- that the person served with notice must appear at the administrative hearing at the date, time, and location set forth in the notice, that all interested persons will have the opportunity to produce evidence proving or disproving the allegation, and that the child, the mother, and the alleged father may be required to submit to genetic testing at the time of the hearing;
- that any person served with notice has the right to bring legal counsel to the administrative hearing.

At the Hearing

If both the mother and the alleged father attend the scheduled hearing, the administrative officer explains the allegation, the administrative procedure for determining the existence of a parent and child relationship, and the rights and responsibilities of a parent to his child and explain that the mother and alleged father have a right not to dispute the allegation and sign an acknowledgment of paternity acknowledging that the child is the child of the alleged father and agree that the father will assume the parental duty of support.

If Both Acknowledge

If both the mother and the alleged father sign an acknowledgment of paternity, the administrative officer must issue an administrative order that the alleged father is the father of the child. The order must include a statement that the mother and father may object to the determination by bringing an action in court within thirty days of the date the administrative officer issued the determination.

If an administrative officer issues an administrative order determining the existence of a parent and child relationship or if an acknowledgment of paternity is filed and one of the parents named on the acknowledgment requests an administrative order for support, the administrative officer must schedule a hearing no later than sixty days after the issuance of the order and no earlier than thirty days after the date the agency gives the notice of the administrative hearing to the mother and father.

If Both Do Not Acknowledge

If both the mother and the alleged father attend the administrative hearing but do not sign an acknowledgment of paternity, the administrative officer explains to the mother and the father that they have the right to agree to be bound by the results of genetic testing. If they agree to be bound by the testing and the results show a ninety-five percent or greater probability of paternity, the administrative officer issues an administrative order that the alleged father is the father of the child. If the results of the genetic testing show a less than ninety five percent probability that the alleged father is the father of the child but do not exclude him, the administrative officer issues an administrative order stating that it is inconclusive whether the alleged father is the natural father of the child. If the results show that the alleged father is excluded as the natural father of the child, the administrative officer issues an administrative order that the alleged father is not the father of the child.

If both the mother and the alleged father sign a voluntary agreement to genetic testing stating that they agree to be bound by the results of genetic testing performed by an examiner authorized by the department of human services and that they waive any right to a jury trial, the administrative officer sets a date and time for the mother, the child, and the alleged father to submit to genetic testing.

When an administrative officer issues an administrative order determining the existence or nonexistence of a parent and child relationship, he must include in the administrative order a notice that both the mother and the alleged father may object to the determination by bringing, within thirty days after the date the administrative officer issued the order, an action in the juvenile court of the county in which the alleged father, the mother, the child, or the guardian or custodian of the child resides and that if neither brings an action within that thirty-day period, the administrative order is final.

Setting of Support Obligation

If the administrative officer issues an administrative order determining the existence of a parent and child relationship, the administrative officer schedules an administrative hearing to determine the amount of child support any parent is to pay and the method of payment. This hearing must be held no later than sixty days after the date of issuance of the order and no earlier than thirty days after the administrative officer gives the mother and the father notice of the administrative hearing.

The mother or the father may object to the administrative order by bringing an action in juvenile court no later than thirty days after the date of issuance of the administrative order requiring the payment of child support. If neither parent timely objects by making such court filing, the administrative order is final.

If the alleged natural father or the natural mother willfully fails to submit to genetic testing, the agency enters an administrative order stating that it is inconclusive as to whether the alleged father is the natural father of the child and must provide notice to the parties that an action may be brought through the court to establish the parent/child relationship.

If the mother and the alleged father both do not sign an acknowledgment of paternity or an agreement to be bound by the results of the genetic testing or if the mother or the natural father do not appear at the administrative hearing and do not show good cause why he or she did not appear at the administrative hearing, the agency must deny and dismiss the request for an administrative determination of the existence or nonexistence of the parent and child relationship. The mother and the alleged father are informed that they may bring an action in court.

Colorado's Process

Colorado's administrative paternity establishment statute, effective August 1, 1992, provides that the child support enforcement unit may issue an order establishing paternity of, and financial responsibility for, a child in the course of a support proceeding. This process is available when both parents sign sworn statements that the paternity of the child for whom support is sought has not been legally established, that the parents are the natural parents of the child, and if neither parent is contesting the issue of paternity.

Service of process to establish paternity and financial responsibility may be made by certified mail or by any of the other method of service. Prior to issuing an order, the child support enforcement unit must advise both parents in writing of their legal rights concerning the determination of paternity. The statute also allows issuance of an order of default establishing paternity and financial responsibility.

A copy of the order establishing paternity and financial responsibility and the sworn statements of the parents and, in the case of a default order establishing paternity and financial responsibility, the obligee's verified affidavit regarding paternity and the blood test results, if any, must be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued. The order establishing paternity and financial responsibility must have all the force, effect, and remedies of an order of the district court. The order of financial responsibility shall have all the force, effect, and remedies of an order of the court, including, but not limited to, wage assignment or contempt of court. Execution may be issued on the order in the same manner and with the same effect as if it were an order of the court. If the order establishing paternity is at variance with the child's birth certificate, the child support unit shall order that a new birth certificate be issued.

Expedited Administrative Process in Maine

In 1991, Maine enacted a statutory "Expedited Administrative Process for the Commencement of Paternity Actions." Under Maine's law, a person who engages in sexual intercourse with a resident of Maine in Maine submits to the jurisdiction of the department of human services for the purpose of commencing a paternity proceeding. To ensure maximum protection to citizens of Maine, the department shall assert jurisdiction over nonresident alleged fathers to the fullest extent permitted by the due process clause of the United States Constitution.

The department may commence a paternity proceeding by serving a notice on an alleged father. The department may not serve such a notice unless it has a sworn statement or affirmation under the penalty for unsworn falsification from the child's mother claiming that the alleged father engaged in sexual intercourse with her during a possible time of conception of the child or is a man who is presumed under State law to be the father. If the mother is a minor, the sworn statement or affirmation may be that of the guardian or next friend of the mother.

In addition, the notice must conform to the Maine Administrative Procedure Act and must include:

- a statement that service of the notice on the alleged father constitutes the commencement of a paternity proceeding for the determination of paternity and any related issues;
- a statement identifying any of the following as the reasons for filing the record of the proceeding in court:
 - the alleged father fails to deny paternity
 - the alleged father refuses to submit to blood or tissue typing tests
 - the alleged father fails to execute and deliver to the department an acknowledgment of paternity.
- a statement that, if the department files a record of the proceeding, the department may seek an order of support, reimbursement, and attorney fees and such other relief;
- the child's name and place and date of birth;
- the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

- the probable date on or period during which the child was conceived;
- an allegation that the alleged father engaged in sexual intercourse with the child's mother during a possible time of conception of the child or is a man who is presumed to be the child's father under State law, and that the alleged father is or may be the natural father of the child;
- if applicable, an allegation that the child may have been conceived as a result of sexual intercourse in the State and that the alleged father is subject to long-arm personal jurisdiction;
- a statement that the alleged father may deny the allegation of paternity by filing a written denial of paternity with the department within 20 days after service of the notice; that if the alleged father fails to file a written denial the proceeding will be filed in a court as a paternity proceeding; and that the question of paternity and any related issues may be resolved against him by the court;
- a statement that if the alleged father files a written denial of paternity; the department will provide an expert examiner of blood or tissue types to conduct blood or tissue typing tests on the mother, child, and alleged father and the tests will be conducted as follows:
 - the alleged father is required to submit to tests, which may include, but are not limited to, tests for red cell antigens, red cell isoenzymes, human leukocyte antigens and serum proteins;
 - the department will pay the initial cost of the tests;
 - an indigent alleged father is not liable for reimbursement of the cost of the tests;
 - if the alleged father refuses to submit to test, the proceeding will be filed in a court as a paternity proceeding;
 - if the alleged father is not excluded by the test results and he does not, within 15 days of the ordinary mailing to him of a report and copy of the blood typing results, execute and deliver to the department an acknowledgment of paternity of the child in accordance with the laws of the State in which the child was born, the proceeding will be filed in a court as a paternity proceeding; and
 - if the alleged father is excluded by the test results as the natural father of the child, the proceeding will be filed in a court as a paternity proceeding for disposition

- a statement that if, prior to the filing in a court, the alleged father executes and delivers to the department an acknowledgment of paternity, the proceeding must terminate and the department may proceed against him in court; and
- a statement that the alleged father may, within 25 days after notice has been mailed to him that the record has been filed in a court, assert any defense, in law or fact, if the record is filed because the alleged father:
 - refuses to submit to blood or tissue typing tests; or
 - fails to execute and deliver to the department an acknowledgment of paternity.

Service of a notice must be made by service in hand and may be made by an authorized representative of the commissioner or by a person authorized by the Maine Rules of Civil Procedure.

Components of the Court Order

The department may request that the court:

- establish the alleged father as the natural father of the child; ■
- order the alleged father to pay such sums per week in child support as required under the child support guidelines;
- order the alleged father to make support payments directly to the department whenever the mother is receiving aid to families with dependent children from the department for the child or is a support enforcement client of the department and at all other times directly to the mother;
- order the alleged father to pay all reasonable medical, dental, hospital and optical expenses for the child, to provide medical and health insurance coverage for the child and to provide evidence of that coverage to the department. An alleged father's liability for past expenses incurred is limited to the six years preceding service of the notice.
- order the alleged father to pay reasonable attorney's fees and costs for prosecution of the action, including, but not limited to, prejudgment interest;
- order income withholding as available under or required by law; and

- grant such other relief as the court determines just and proper.

When it appears to the department that there may be more than one alleged father, the department may maintain proceedings against each alleged father, simultaneously or successively. Failure to serve a notice on an alleged father does not bar the department from maintaining a proceeding against any other alleged father.

If the alleged father fails to file a written denial of paternity with the department within 20 days after service of notice upon him, the department's attorney may file the record of the proceeding in a court as a paternity proceeding. The department must schedule blood or tissue typing tests for the mother, the child and the alleged father. The tests must be performed by an expert examiner in a laboratory that is accredited for parentage testing by the American Association of Blood Banks.

The department must notify the alleged father in writing by ordinary mail of the date, time and place of his blood or tissue typing tests. The tests must be conducted no earlier than 15 days following the mailing of the department's notice, except with the consent of the alleged father. The test must be conducted in an office of the department, when practicable. The department must take into account the alleged father's place of residence or employment in selecting the location of the test.

If the alleged father does not submit to the tests, the department must notify him in writing by ordinary mail that if he does not, within 15 days, request the department to reschedule the tests, his failure to appear constitutes a refusal to submit to the tests. If the alleged father timely requests rescheduling, the department must reschedule the tests. The rescheduled tests must be conducted no earlier than 15 days following the mailing of the notice of rescheduling. The notice must also advise the alleged father that, if he fails to submit to the rescheduled tests, the failure constitutes a refusal to submit to the tests.

If the alleged father refuses to submit to blood or tissue typing tests, the department may file the record of the proceeding in a court as a paternity proceeding. Upon receipt of the results of the tests, the department must send copies of the result by ordinary mail to the alleged father and to the child's mother or to the mother's guardian or next friend if the mother is a minor. If the alleged father is excluded by the test results as the natural father of child, the department may file the record of the proceeding in a court as a paternity proceeding.

If the alleged father is not excluded by the test results and he does not, within 15 days of the mailing to him of a copy of the blood or tissue typing results and report, execute and deliver to the department by ordinary mail an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, the department may file the record of the proceeding, inclusive of the blood or tissue typing test results, in a court as a paternity proceeding. The alleged father's participation in the tests may not prejudice any

application by the alleged father for an order appointing an additional examiner of blood or tissue types.

If a record of the proceeding is filed in court, the alleged father is not required to file an additional denial of paternity. He may assert any defense, in law or fact. Any defense must be asserted within 25 days after the mailing by ordinary mail of a notice to the alleged father that the record has been filed in court. The alleged father must be given notice of these requirements.

If, prior to the filing in a court, the alleged father executes and delivers to the department an acknowledgment of paternity of the child in accordance with the laws of the State in which the child was born, the proceeding must be terminated and the department may proceed against the father for a support obligation.

The Oregon Approach

Oregon has been operating for several years under a law which provides for an administrative system for paternity establishment. When both parents are present and agree to paternity, the steps are simple. Both can sign a joint Declaration of Paternity. The document is then filed with the Department of Vital Statistics and a modest fee is paid (either by the parents or the IV-D agency). Vital Statistics prepares the birth certificate. For situations that are not as straightforward as this, Oregon has a very effective paternity establishment program which has been carefully refined over the last several years so that it now is operated mostly by regular staff rather than attorneys. It has been effectively reduced to an organized set of very simple procedures, clearly outlined in flow charts and utilizing standard forms. According to the staff, the system operates efficiently and still provides multiple opportunities for consent.

The welfare department handles in-take. The caseworker gives the mother an affidavit of paternity to complete. When it is signed and sworn to, it is sent to the IV-D office. The child support office then issues a Notice of Financial Responsibility which is personally served. If the alleged father wishes to acknowledge paternity, he can simply return an acknowledgment of paternity form to the IV-D office. If the Notice is served and ignored, paternity is established by default. If the alleged father responds and denies, genetic tests (including DNA) follow. A recent law allows the establishment of paternity when genetic test results show a cumulative paternity index of 99 or greater. When this standard is met and the mother makes a statement of paternity, an order is issued, unless a party objects within 30 days. If an objection is raised, the case goes to court. This process appears to avoid contested court actions. Oregon reports that they are establishing approximately 440 paternities per month, of which only one is court-ordered.²¹

Recent Iowa Enactment of Administrative Paternity Process

On May 4, 1993, Iowa's legislature enacted Senate Bill 350 adding new Section 252F to the Iowa Code to provide for administrative determination of paternity. The new law, effective July 1, 1993, governs cases in which paternity is at issue, meaning any of the following conditions: a child was not born or conceived within marriage; a child was born or conceived within marriage but a court has declared that the child is not the issue of the marriage; or paternity has been established by the filing of an affidavit of paternity and the father is contesting paternity within the statute of limitations period.

In any case in which the child support recovery (hereinafter referred to as CSRU) is at issue, proceedings may be initiated by the CSRU for the sole purpose of establishing paternity and any accrued or accruing child support or medical support obligations. Such proceedings are in addition to other means of establishing paternity or support. Issues in addition to establishment of paternity or support obligations shall not be addressed in such proceedings.

The CSRU may prepare a notice of alleged paternity and support debt to be served on the alleged father if the mother of the child provides a statement to the CSRU verifying that the alleged father is or may be the biological father of the child or children involved. The notice must be accompanied by a copy of the mother's statement and served on the alleged father. Service upon the mother shall not constitute valid service upon the alleged father.

The notice must include:

- The name of the recipient of services and the name and birth date of the child or children involved;
- A statement that the alleged father has been named as the biological father of the child or children named;
- A statement that the amount of the alleged father's monthly support obligation and the amount of the support debt accrued and accruing will be established in accordance with State guidelines;
- A statement that the alleged father has a duty to provide accrued and accruing medical support to the child or children;
- An explanation of the procedures for determining the child support obligation and a request for financial or income information as necessary for application of the child support guidelines;
- The right of the alleged father to request a conference with the

CSRU to discuss paternity establishment and the amount of support that the alleged father is required to pay, within ten days of the date of service or within ten days of the date of mailing of the paternity test results to the alleged father if the father denies paternity;

- A statement that if a conference is requested the alleged father shall have ten days from the date set for the conference or twenty days from the date of service of the original notice, or ten days from the date of the mailing of paternity test results to the alleged father if the alleged father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the CSRU;
- A statement that after the conference is held, the administrator may issue a new notice and finding of financial responsibility for child support or medical support, or both, to be sent to the alleged father by regular mail addressed to the alleged father's last known address;
- A statement that if the administration issues a new notice and finding of financial responsibility for child support or medical support, or both, the alleged father has ten days from the date of issuance of the new notice or twenty days from the date of service of the original notice, or ten days from the date of the mailing of paternity test results to the alleged father if the alleged father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the CSRU;
- A statement that if a conference is not requested, and the alleged father objects to the finding of financial responsibility or the amount of child support or medical support, or both, the alleged father must, within twenty days of the date of service or within ten days from the date of the mailing of paternity test results to the alleged father if the alleged father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the CSRU.
- A statement that if a timely written request for a hearing on the issue of support is received by the CSRU, the alleged father has the right to a hearing to be held in district court and that if no timely written request is received and paternity is not denied, the administrator may enter an order in accordance with the

notice and finding of financial responsibility for child support or medical support, or both.

- A statement of the rights and responsibilities associated with the establishment of paternity;
- A statement of the alleged father's right to deny paternity, the procedures for denying paternity, and the consequences of the denial.

The time limitations established for the notice provisions are binding unless otherwise specified or waived by the alleged father. If notice is served on the alleged father, the CSRU shall file a true copy of the notice and the original return of service with the clerk of the district court in the county in which the child or children reside, or, if the action is the result of a request from a foreign jurisdiction of another state to establish paternity of a alleged father located in Iowa, in the county in which the alleged father resides. All subsequent documents filed or court hearings held related to the action shall be in the district court in the county in which the notice was filed. The clerk shall file and docket the action.

If the alleged father requests a hearing on the issue of support, and if a timely written response setting forth objections and requesting a hearing is received by the CSRU, a hearing shall be held in district court on the issue of support. If a timely written response and request for hearing is not received by the CSRU and the alleged father does not deny paternity, the administrator may enter an order on the issue of support.

If the alleged father denies paternity, the alleged father must submit, within twenty days of service of the notice under subsection 1, a written denial of paternity to the CSRU. Upon receipt of a written denial of paternity, the administrator must enter an ex parte administrative order requiring the mother, child or children, and the alleged father to submit to paternity testing. The order must be filed with the clerk of the district court in the county where the notice was filed.

If the alleged father has signed an affidavit of paternity within the three-year period prior to the receipt of notice, and he contests paternity, he must pay all costs of the paternity testing. If a paternity test is required, the administrator must direct that inherited characteristics, including but not limited to blood types, be analyzed and interpreted, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the results and report the results to the administrator.

The alleged father shall be provided one opportunity to reschedule the paternity testing appointment if the testing is rescheduled prior to the date of the originally scheduled appointment. An original copy of the test results must be sent to the clerk of the district court in the county where the notice was filed, and a copy sent to the administrator and to the alleged father.

Verified documentation of the chain of custody of the blood specimens is competent evidence to establish the chain of custody. If the expert concludes that the test results show that the alleged father is not excluded and that the probability of the alleged father's paternity is ninety-five percent or higher, there shall be a rebuttable presumption that the alleged father is the biological father, and the evidence shall be sufficient as a basis for administrative establishment of paternity. A verified expert's report on test results which indicate a statistical probability of paternity is sufficient authenticity of the expert's conclusion.

If the paternity test results indicate a probability of paternity of ninety-five percent or greater and the alleged father wishes to challenge the presumption of paternity, the alleged father must file a written notice of the challenge with the district court and an application for a hearing by the district court within twenty days of the filing of the expert's report with the clerk of the district court or within ten days after the scheduled date of the conference, whichever occurs later.

The party challenging the presumption of paternity has the burden of proving that the alleged father is not the father of the child. The presumption of paternity may be rebutted only by clear and convincing evidence. If the expert concludes that the test results indicate that the alleged father is not excluded and that the probability of the alleged father's paternity is less than ninety-five percent, test results must be weighed along with other evidence of paternity. To challenge the test results, a party must file a written notice of the challenge with the clerk of the district court within twenty days of the filing of the expert's report and must send a copy of the written notice to any other party. The administrator may then order a second test or certify the case to the district court for resolution.

If the paternity test results exclude the alleged father as a potential biological father of the child, and additional tests are not requested by either party, the CSRU must withdraw its action against the alleged father and must file a notice of the withdrawal with the clerk of the district court.

If the results of the test or the expert's analysis are disputed, the administrator, upon the request of a party or upon the CSRU's own initiative, must order that an additional test be performed by the same laboratory or an independent laboratory, at the expense of the party requesting additional testing.

Entry of Default Orders

If the alleged father fails to respond to the initial notice within twenty days after the date of service of the notice, or fails to appear at the conference on the scheduled date of the conference, the administrator may enter an order against the alleged father, declaring the alleged father to be the biological father and assessing the support obligation and accrued and accruing child support pursuant to State guidelines and medical support against the father. If the alleged father fails to appear for a paternity test and fails to request a rescheduling or

fails to appear for both the initial and the rescheduled paternity tests, the administrator may enter an order against the alleged father declaring the alleged father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to the guidelines and medical support against the father.

Orders Upon Appearance at Conference

If the alleged father appears at a conference, the administrator may enter an order against the alleged father ten days after the second notice has been sent declaring the alleged father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to the guidelines and medical support against the father.

If paternity testing was performed and the alleged father was not excluded, and the alleged father fails to timely challenge paternity testing, the administrator may enter an order against the alleged father declaring the alleged father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to guidelines and medical support against the father.

The administrator must establish a support obligation based upon the best information available to the CSRU.

The order must contain all of the following provisions::

- A declaration of paternity;
- The amount of monthly support to be paid, with direction as to the manner of payment;
- The amount of accrued support;
- The name of the custodial parent or caretaker;
- The name and birth date of the child or children to whom the order applies;
- A statement that property of the alleged father is subject to income withholding, liens, garnishment, tax offset, and other collection actions.
- The medical support required.

If the alleged father does not deny paternity but does wish to challenge the issues of child or medical support, the administrator may enter an order establishing paternity and reserving the issues of child or medical support for determination by the district court.

Certification to District Court

Actions initiated under the administrative paternity process are not subject to contested case proceedings or further review. An action may be certified to the district court if a party challenges the administrator's finding of paternity, or the amount of support, or both. Review by the district court must be an original hearing before the court.

In any action under the administrative process, the action shall not be certified to the district court in a contested paternity action unless all of the following have occurred:

- Paternity testing has been completed;
- The results of the paternity test have been sent to the alleged father;
- A written objection to the entry of an order has been received from the alleged father;

A matter shall be certified to the district court in the county in which the notice was filed. The court shall set the matter for hearing and notify the parties of the time of and place for hearing.

If the court determines that the alleged father is the biological father, the court shall establish the amount of the monthly support payment and the accrued and accruing child support pursuant to the guidelines and shall establish medical support. If a party fails to appear at the hearing, upon a showing that proper notice has been provided to the party, the court may find the party in default and enter an appropriate order.

Filing with the District Court

Following issuance of an order by the administrator, the order must be presented to an appropriate district court judge for review and approval. Unless a defect appears on the face of the order, the district court shall approve the order. Upon approval by the district court judge, the order shall be filed in the district court in the county in which the notice was filed. Upon filing, the order has the same force and effect as a district court order.

Report to Vital Statistics

Upon the filing of an order with the district court, the clerk of the district court shall report the information from the order to the bureau of vital statistics. Upon receipt of a signed statement from the alleged father waiving the time limitations, the administrator may enter an order establishing paternity and support and the court may approve the order, notwithstanding the expiration of the period of the time limitations.

An alleged father may waive the time limitations. If he does so and an order establishing paternity and support is entered, the signed statement of the alleged father waiving the time limitations shall be filed with the order for support.

Balancing Need for Finality Against Accuracy in Determination

The objective of the paternity establishment process is not to obtain *any* father, but to find the biological father. This quest has to be balanced against presumptions that exist under the law--including the presumption of legitimacy and whether the best interests of a child are served by, or conversely, compromised by, rebuttal of that presumption. The wrong father may be more of a disservice to the child than no father at all. Should an acknowledged father be permitted to later challenge or renege on the admission and demand genetic testing? Within what timeframe and under what circumstances should reopening the paternity issue be allowed? Conditions and limitations for challenging a voluntary acknowledgment as well as notification to individuals who acknowledge regarding the consequences of their written admission would be a useful component of any paternity acknowledgment process. If an acknowledgment is allowed to be easily overturned, its value and efficacy is diminished. The need for finality and certainty is crucial in the lives of the parties, so to permit reopening except under a narrowly defined scope, could produce unnecessary tensions over the ultimate issue.

As suggested by David T. Ellwood and Paul K. Legler, there are two possible ways to treat voluntary acknowledgments which would balance these competing interests of finality and finding the right father.²² One sensible compromise is to allow challenges requesting a genetic test to be subject to a one or two-year statute of limitations after signing an acknowledgment (with the provision that a request does not stay payment and that no support is reimbursable if the father is then excluded). Another possibility is to allow challenges only upon a court showing that it is in the best interest of the child considering such things as the length and nature of the father/child relationship and impact on the child.

Iowa Code §600B.41(7) provides a useful example. It specifies that the establishment of paternity by court order, including a court order based on an administrative establishment of paternity, or by affidavit may be overcome if all of the following conditions are met:

- Prior blood or genetic tests have not been performed to establish paternity of the child.
- The court finds that it is in the best interest of the child to overcome the establishment of paternity. In determining the best interest of the child, the court shall consider the possibility of establishing actual paternity of the child.

- The court finds that the conclusion of the expert as disclosed by the evidence based upon the blood or genetic tests demonstrates that the established father is not the biological father of the child.
- The action to overcome paternity is filed no later than three years after establishment of paternity.
- Notice of the action to overcome paternity is served on any parent of the child not initiating the action and any assignee of the support judgment.
- A guardian ad litem is appointed for the child.

Anticipating Judicial Reaction

Redesigning a system so steeped in tradition can be a challenging, but not insurmountable, exercise. Legislative revision is certainly an intensive process and adapting to change is not instantaneous. However, engaging the players early--to explore and explain what is in it for them--is an essential element.*

One aspect that cannot be ignored is the sacrosanct separation of powers doctrine. The perception of intrusion on turf and trampling on discretion is a genuine, and highly sensitive, issue for the judiciary. Rather than allocating blame for "failure" of the traditional routes, deliberations should focus on determining ways to perform the required functions more efficiently. Prudent management suggests adopting a positive framework for mutual decision-making: emphasizing the need for harmonious linkages, the sharing of duties, a division of labor.

Even if a need to tread slowly emerges, development of a dual system that combines the best features of the "full administrative approach" and a "total judicial function" may be an improvement over the current system. For example, there is tremendous potential in the legislation currently before the Congress to improve paternity establishment to alleviate the burden created under existent procedures under which every single paternity case has to be filed and processed through the court, regardless of more practical alternatives (e.g., recognition of an acknowledgment; use of stipulations and consent decrees).

Obviously the fully contested cases, where a trial by jury is demanded, must be reserved for judicial resolution. While the right to trial by jury is available in many States, the frequency with which these are demanded is generally low, and the actual occurrence even lower. A primarily administrative system must avail the parties an open avenue for challenge in the courts.

A Reason to Reinvent the Paternity Establishment Environment

The proposition of going to court where a robed figure on an elevated bench with a gavel makes rulings about matters emanating from private, personal relationships can be intimidating. Even the most seasoned veteran of court proceedings can be overwhelmed by the prospect of a judge--and possibly a jury--deliberating the consequences of an intimate relationship. There is something inherently contradictory about having a "win/lose" environment for deciding an issue for which the intended outcome is extensive cooperation. Such adversarial processes may also generate resistance and create misunderstanding and confusion among the parties involved.

Why is an adversarial method used when a primary objective is encouraging a degree of "participative parenting," which, at a minimum, is an expectation of financial responsibility. There is an urgent need to formulate and test new approaches, to examine ways to remove the impediments that prevent or forestall achieving the ultimate result.

Is the current process so disconcerting that people avoid it? Alleged fathers dodging service of process or failing to appear for a blood draw as directed by the court are not uncommon problems with which child support practitioners contend. To what extent is nonparticipation driven by fear of the process itself?

It may be valuable to posit ways to engage the parties in case resolution without the necessity of a commencing a legal action. This, without question, creates an unproductive adversarial relationship. It positions the parties--many of whom may have had no previous contact with the judicial system--against each other on opposite sides of a contest.

Considerations in Taking Another Look

Efforts to make the opportunity to acknowledge paternity more readily available, as well as access to objective, persuasive genetic information demands a different perspective on how paternity is legally determined. It may call for a break from routine practices. Like enforcement cases, paternity cases vary in complexity across a continuum. Often, the posture of a case shifts from contested to uncontested based upon receipt of highly inclusionary results of genetic testing. Within the context of delivering services, it is important to evaluate alternative ways of responding to divergent case characteristics and to the fact that resolution of a "contested case" can occur at points other than a full-blown trial.

For instance, in a paternity intake interview or questionnaire, the foremost "next question" after asking a mother who is the father of her child is whether the man named will voluntarily admit parentage. If her response is affirmative, methods for obtaining the acknowledgment should be utilized rather than launching a lawsuit. Similarly, if an alleged father expresses uncertainty and desires genetic testing for purposes of an independent

validation of the mother's claim, it should not necessitate filing a court case to arrange the testing. Because in many respects an administrative approach is better equipped to handle these aspects does not denigrate the court's importance.

Permitting the judicial system to devote ever-limited resources to just complex paternity cases, such as those involving multiple possible fathers, inconclusive genetic results, and jury trial demands, is deserving of study.

The organizational approach taken in recognition of the wide-ranging possible reactions that alleged fathers may have to a claim of paternity is an important element. The Urban Institute used information from a national survey of county child support agencies conducted in 1990 to describe how paternity establishment is organized and expedited.²³ The summary of their research also explores whether particular organizational approaches and practices are associated with higher rates of paternity establishment. The Urban Institute analysis suggests that counties with a "transfer approach" (cases with cooperative fathers handled by the human services agency and contested cases referred to the legal agency) and which permit multiple opportunities for the father to consent had the highest rate of program performance. The Urban Institute research hypothesized that these higher rates may be due to the ability to tailor the system response to the father's level of cooperation to take full advantage of the fact that there is a spectrum of possible response to the allegation. The researchers also posit their suspicion that systems with a transfer option may be more efficient in screening cases to identify the probable response of the alleged father. They suggest the need for further research to understand why this approach appears particularly effective.

As States contemplate changes to keep pace with program demands and expectations, they will either need to redefine how cases are handled in a dual agency/court effort or establish alternative administrative approaches to paternity establishment. In so doing, consideration is worth giving to the need to incorporate the following suggested refinements, wherever appropriate:

- Less offensive captioning ("In the Matter of the Paternity of Baby Doe" is more palatable than "Jane Doe -vs- Joe Doak").
- Methods of notifying the alleged father--regular mail rather than use of law enforcement process server.²⁴
- Use of voluntary appearances in lieu of summons.
- Administrative subpoena power.
- Authority for administrative agency to compel genetic testing prior to filing any type of lawsuit or without need for a court to order such tests as a condition of their acceptability/admissibility

in later proceedings, formal or informal.²⁵

- More extensive routine use of stipulations and consent agreements--at any juncture in the process--which can be approved by the court, if necessary, without formal hearing.
- Use of voluntary waivers of rights after full disclosure of consequences.
- Use of summary judgments based on "no genuine issue of law and fact" when presumptive inclusionary results are achieved.
- Immediate establishment of temporary support orders following receipt of inclusionary testing results and prior to final determination.²⁶
- Use of retroactive support demands to counter dilatory tactics by alleged fathers/defense counsel which prolong resolution.²⁷

Conclusion

A movement toward more extensive use of administrative processes for paternity establishment would be a change for most States accustomed to litigating paternity cases in court. Fervent advocates of traditional mechanisms will have to be convinced that a different strategy is better. The challenge will be to take an objective look at whether, and how, the desired outcome--maximizing the number of children for whom paternity is established--can be reached easier and faster, without sacrificing accuracy and due process rights. Further inquiry into the experiences--and benefits derived--in those States which have adopted innovative approaches to streamlining the paternity establishment process, such as those illustrated in this paper, would be a worthwhile undertaking.

ENDNOTES

1. Cooper, D., Henry, M., and Schwartz, V., A Guide for Designing and Implementing an Administrative Process for Child Support Enforcement, (National Institute for Child Support Enforcement, July 22, 1985), p. 1.
2. Silvester, F. and Cooper, D., The Administrative Adjudication of Child Support Obligations, (National Institute for Child Support Enforcement, September 1991), p. 53.
3. P.L. 98-378
4. 42 U.S.C. §666(a)(2)
5. U.S. House of Representatives, Report 98-527 on H.R. 4325, Child Support Enforcement Amendments of 1983, 98th Cong. (November 10, 1983), pp. 35-36.
6. United States Senate, Report 98-387 (April 9, 1984), p. 29.
7. U.S. House of Representatives, Report 98-925, to accompany H.R. 4325, Child Support Enforcement Amendments of 1984 (August 1, 1984), p. 36.
8. 50 FR 19629 (May 9, 1985)
9. State IV-D Plan Preprint Page 2.12-2; States specifying optional inclusion of paternity establishment in expedited processes are Colorado, Delaware, District of Columbia, Guam, Massachusetts, Michigan, Mississippi, Montana, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Texas, Vermont, Virgin Islands, Virginia, West Virginia, and Wisconsin.
10. Draft Bill, Sec. 13261(b)(1)(A) [April 30, 1993]
11. State of Iowa ex rel. Keasling v. Keasling, 442 N.W.2d 118 (Iowa 1989)[statute authorizing child support agency to order wage attachment not invalid delegation of judicial function].
12. Melli, M., "A Brief History of the Legal Structure for Paternity Establishment in the United States" (paper presented at Paternity Establishment: A Public Policy Conference, Washington, D.C., February 1992).
13. "Paternity Establishment: State Innovations," METS Periodic Report No. 1, OCSE-IM-92-06 (November 1992); "Effective Paternity Establishment Practices: Technical Report," (Office of the Inspector General, January 1990); "Some Current Issues in Paternity Establishment" (OCSE Occasional Paper #1, B. Cleveland) (May 1992); "State Advancements in Paternity Establishment: Legislative, Gubernatorial, and Program Initiatives," OCSE-IM-92-

09 (December 1992).

14. Cooper, D., Henry, M., and Schwartz, V., A Guide for Designing and Implementing an Administrative Process for Child Support Enforcement, (National Institute for Child Support Enforcement, July 22, 1985), p. 49.

15. Cooper, D., Henry, M., and Schwartz, V., A Guide for Designing and Implementing an Administrative Process for Child Support Enforcement, (National Institute for Child Support Enforcement, July 22, 1985), p. 73. [Note: Chapter Four of this handbook includes an extensive discussion of the myriad of implementation considerations involved in adopting an administrative process].

16. Colo. R.S. §26-13.5-103; Maine 19 § 517; Missouri §454.485; Oregon §416.430; Washington §74.20A.056; Ohio §3111.22; Montana §40-5-231 et seq., Iowa § [Note: Oklahoma adopted an administrative paternity statute (10 Okla.Stat. §90.1-90.3) in 1987 which was repealed in 1991.]

17. "State Advancements in Paternity Establishment: Legislative, Gubernatorial, and Program Initiatives," OCSE-IM-92-09 (December 1992).

18. "Montana Passes Strong Paternity Legislation," Child Support Report, Vol. XI, No. 6, pg. 6 (Federal Office of Child Support Enforcement. June 1989).

19. Page's Ohio Revised Code Annotated §3111.22

20. Where the alleged father is deceased, where an action for divorce, dissolution of marriage, or legal separation is pending in a court of common pleas and a question of paternity arises, or where a juvenile court has entered a support order based upon an acknowledgment and a question regarding paternity arises [§3111.22(A)(2)]

21. "Paternity Establishment: State Innovations," METS Periodic Report No. 1, OCSE-IM-92-06 (November 1992), pp. 13-14.

22. Ellwood, David T. and Legler, Paul K., *Getting Serious About Paternity* (January 1993 Draft), p. 62.

23. Sonenstein, Freya L., Holcomb, Pamela A., and Seefeldt, Kristen S., *Promising Approaches to Improving Paternity Establishment Rates at the Local Level*, (Urban Institute, February 1993):

24. "State Advancements in Paternity Establishment: Legislative, Gubernatorial, and Program Initiatives," OCSE-IM-92-09 (December 1992), p. 73 (description of Missouri's use of special process servers).

25. Page's Ohio Revised Code Annotated §3111.22(C)(5) and (6);
Montana §40-5-233; Iowa Code §252F.3

26. Minn. Stat. Ann. §257.62(5)(a) (West Supp. 1992)

27. Kathy L.B. v. Patrick J.B., 371 S.E.2d 583 (W.Va. 1988)

OHIO

§ 3111.22 Request for administrative determination prior to paternity action; hearing; paternity and support orders; objections.

(A)(1) Except as otherwise provided in division (A)(2) of this section, no person may bring an action under sections 3111.01 to 3111.19 of the Revised Code before requesting an administrative determination of the existence or nonexistence of a parent and child relationship from the child support enforcement agency of the county in which the child or the guardian or legal custodian of the child resides.

(2) If the alleged father of a child is deceased and proceedings for the probate of the estate of the alleged father have been or can be commenced, the court with jurisdiction over the probate proceedings shall retain jurisdiction to determine the existence or nonexistence of a parent and child relationship between the alleged father and any child without an administrative determination being requested from a child support enforcement agency. If an action for divorce, dissolution of marriage, or legal separation, or an action under section 2151.231 [2151.23.1] of the Revised Code requesting an order requiring the payment of child support, has been filed in a court of common pleas and a question as to the existence or nonexistence of a parent and child relationship arises, the court in which the original action was filed shall retain jurisdiction to determine the existence or nonexistence of the parent and child relationship without an administrative determination being requested from a child support enforcement agency. If a juvenile court issues a support order under section 2151.231 [2151.23.1] of the Revised Code relying on an acknowledgment of paternity entered upon its journal by the probate court pursuant to section 2105.18 of the Revised Code, the juvenile court that issued the support order shall retain jurisdiction if a question as to the existence of a parent and child relationship arises.

(B) Except as provided in division (A)(2) of this section, before a person brings an action pursuant to sections 3111.01 to 3111.19 of the Revised Code to determine the existence or nonexistence of a parent and child relationship, he shall request the child support enforcement agency of the county in which the child or the guardian or legal custodian of the child resides to determine the existence or nonexistence of a parent and child relationship between the alleged father and the child. If more than one agency receives a request pursuant to this section, the agency that receives the request first shall pro-

ceed with the request. The request shall contain all of the following information:

- (1) The name, birthdate, and current address of the alleged father of the child;
- (2) The name, social security number, and current address of the mother of the child;
- (3) The name and last known address of the alleged father of the child.

(C)(1) Upon receiving a request for a determination of the existence or nonexistence of a parent and child relationship in accordance with division (B) of this section, the agency shall schedule a hearing before an administrative officer to determine whether the natural mother and the alleged natural father would voluntarily sign an acknowledgment of paternity or agree to be bound to the results of genetic testing. The hearing shall be held no later than sixty days after the date on which the request was received and no earlier than thirty days after the date the agency provides notice of the hearing to the mother and the alleged father.

After scheduling the hearing, the agency shall give notice in accordance with the Rules of Civil Procedure to the mother and the alleged father stating all of the following:

- (a) That the agency has been requested to determine the existence of a parent and child relationship between a child and the alleged named father;
- (b) The name and birthdate of the child of which the man is alleged to be the natural father;
- (c) The name of the mother and the alleged natural father;
- (d) The rights and responsibilities of a parent;
- (e) That the person served with notice must appear at the administrative hearing at the date, time, and location set forth in the notice, that all interested persons will have the opportunity to produce evidence proving or disproving the allegation, and that the child, the mother, and the alleged father may be required to submit to genetic testing at the time of the hearing;

(f) That any person served with notice has the right to bring legal counsel to the administrative hearing.

(2) If both the mother and the alleged father attend the hearing scheduled under division (C)(1) of this section, the administrative officer shall do both of the following:

- (a) Explain the allegation, the administrative procedure for determining the existence of a parent and child relationship, and the rights and responsibilities of a parent to his child;
- (b) Explain that the mother and the alleged father have the right to not dispute the allegation and sign an acknowledgment of paternity acknowledging that the child is the child of the alleged father and agree that the father will assume the parental duty of support.

(3) If both the mother and the alleged father sign an acknowledgment of paternity, the administra-

tive officer shall issue an administrative order that the alleged father is the father of the child who is the subject of the proceeding. The order shall include any information that the department requires pursuant to section 2301.35 of the Revised Code and shall include a statement that the mother and father may object to the determination by bringing an action under sections 3111.01 to 3111.19 of the Revised Code within thirty days after the date the administrative officer issued the administrative order determining the existence of a parent and child relationship between the alleged natural father and the child.

(4) If an administrative officer issues an administrative order determining the existence of a parent and child relationship pursuant to division (C)(3) of this section or if an acknowledgment of paternity is filed pursuant to section 2105.18 of the Revised Code and one of the parents named on the acknowledgment of paternity requests an administrative officer to issue an administrative order requiring the payment of child support, the administrative officer shall schedule an administrative hearing to determine, in accordance with sections 3111.21 to 3111.29 and 3113.215 [3113.21.5] of the Revised Code, the amount of child support any parent is required to pay and the method of payment of the child support. The hearing shall be held no later than sixty days after the date of the issuance of the order and no earlier than thirty days after the date the agency gives the mother and the father notice of the administrative hearing. When an administrative officer issues an administrative order for the payment of support, all of the following apply:

(a) An administrative order for the payment of support ordinarily shall be for periodic payments that may vary in amount. In the best interest of the child, the administrative officer may order a lump sum payment or the purchase of an annuity in lieu of periodic payments of support.

(b) The administrative order for the payment of support shall include a notice stating that the mother or the father may object to an administrative order by bringing an action for the payment of support under section 2151.231 [2151.23.1] of the Revised Code in the juvenile court of the county in which the child or the guardian or legal custodian of the child resides, that the action may be brought no later than thirty days after the date of the issuance of the administrative order requiring the payment of child support, and that, if neither the mother nor the father brings an action for the payment of support within that thirty-day period, the administrative order requiring the payment of support is final and may be modified only in accordance with sections 3113.21 to 3113.219 [3113.21.9] or section 3111.27 of the Revised Code.

(5)(a) If both the mother and the alleged father attend the administrative hearing scheduled under division (C)(1) of this section but do not sign an

acknowledgment of paternity, the administrative officer shall explain to the mother and the father that they have the right to agree to be bound by the results of genetic testing, that, if they agree to be bound by genetic testing and the results show a ninety-five per cent or greater probability that the alleged father is the natural father of the child, the administrative officer will issue an administrative order that the alleged father is the father of the child, that, if the results of the genetic testing show a less than ninety-five per cent probability that the alleged father is the natural father of the child but do not exclude the alleged father as the natural father of the child, the administrative officer will issue an administrative order stating that it is inconclusive whether the alleged father is the natural father of the child, and that if the results show that the alleged father is excluded as the natural father of the child, the administrative officer will issue an administrative order that the alleged father is not the father of the child.

(b) If both the mother and the alleged father sign a voluntary agreement to genetic testing stating that they agree to be bound by the results of genetic testing performed by an examiner authorized by the department of human services and that they waive any right to a jury trial, the administrative officer shall schedule a date and time for the mother, the child, and the alleged father to submit to genetic testing in accordance with the rules adopted by the department of human services pursuant to section 2301.35 of the Revised Code. If the natural mother and the alleged father both sign a voluntary agreement to genetic testing, all of the following apply:

(i) If the results of the genetic testing show a ninety-five per cent or greater probability that the alleged father is the natural father of the child, the administrative officer of the agency shall issue an administrative order that the alleged father is the father of the child who is the subject of the proceeding.

(ii) If the results of genetic testing show less than a ninety-five per cent probability that the alleged father is the natural father of the child but do not exclude the alleged father from being the natural father of the child, the administrative officer shall issue an administrative order stating that it is inconclusive whether the alleged father is the natural father of the child.

(iii) If the results of the genetic testing exclude the alleged father from being the natural father of the child, the administrative officer shall issue an administrative order that the alleged father is not the father of the child who is the subject of the proceeding.

(iv) When an administrative officer issues an administrative order determining the existence or non-existence of a parent and child relationship pursuant to this section, he shall include in the administrative order a notice that both the mother and the

alleged father may object to the determination by bringing, within thirty days after the date the administrative officer issued the order, an action under sections 3111.01 to 3111.19 of the Revised Code in the juvenile court in the county in which the alleged father, the mother, the child, or the guardian or custodian of the child resides and that if neither brings an action within that thirty-day period, the administrative order is final.

(c) If an administrative officer issues an administrative order determining the existence of a parent and child relationship between the alleged father and the child, the administrative officer shall schedule an administrative hearing to determine, in accordance with sections 3111.21 to 3111.29 and 3113.215 [3113.21.5] of the Revised Code, the amount of child support any parent is required to pay and the method of payment of child support. The hearing shall be held no later than sixty days after the date of the issuance of the order and no earlier than thirty days after the date the administrative officer gives the mother and the father notice of the administrative hearing.

(d) The mother or the father may object to the administrative order by bringing an action for the payment of support under section 2151.231 [2151.23.1] of the Revised Code in the juvenile court of the county in which the child or the guardian or legal custodian of the child resides. The action shall be brought no later than thirty days after the date of the issuance of the administrative order requiring the payment of child support. If neither the mother nor the father brings an action for the payment of support within that thirty-day period, the administrative order requiring the payment of support is final and may be modified only in accordance with sections 3113.21 to 3113.219 [3113.21.9] or section 3111.27 of the Revised Code.

(e) If the alleged natural father or the natural mother willfully fails to submit to genetic testing or if either parent or any other person who is the custodian of the child willfully fails to submit the child to genetic testing, the agency shall enter an administrative order stating that it is inconclusive as to whether the alleged natural father is the natural father of the child and shall provide notice to the parties that an action may be brought under sections 3111.01 to 3111.19 of the Revised Code to establish a parent and child relationship.

(6) If the mother and the alleged father both do not sign an acknowledgment of paternity or an agreement to be bound by the results of genetic testing or if either the mother or the natural father does not appear at the administrative hearing and does not show good cause why he or she did not appear at the administrative hearing, the agency shall deny and dismiss the request for an administrative determination of the existence or non-existence of a parent and child relationship and inform the mother and the alleged father that they may

bring an action under sections 3111.01 to 3111.19 of the Revised Code to determine the existence of a parent and child relationship.

(D)(1) The guardian or legal custodian of a child may object to an administrative officer's determination of the existence or nonexistence of a parent and child relationship by bringing an action under sections 3111.01 to 3111.19 of the Revised Code in the juvenile court of the county in which the child, the mother, or the alleged father resides or is found to determine the existence or nonexistence of a parent and child relationship. The action shall be brought no later than thirty days after the date of the issuance of the administrative order determining the existence or nonexistence of a parent and child relationship. If neither the mother nor the alleged father files an action under sections 3111.01 to 3111.19 of the Revised Code in the juvenile court within the thirty-day period, the administrative order determining a parent and child relationship is final.

(2) The mother or the father of a child may object to an administrative officer's administrative order for the payment of support by bringing an action for the payment of support under section 2151.231 [2151.23.1] of the Revised Code in the juvenile court of the county in which the child or the guardian or legal custodian of the child resides. The action shall be brought no later than thirty days after the date the administrative officer issued the administrative order requiring the payment of child support. If neither the mother nor the alleged father files an action for the payment of support in the juvenile court within the thirty-day period, the administrative order requiring the payment of support is final and may be modified only in accordance with sections 3113.21 to 3113.219 [3113.21.9] or section 3111.27 of the Revised Code.

HISTORY: 144 v S 10. Eff 7-15-92.

Not analogous to former RC § 3111.22 (RS § 5634; S & S 39; 70 v 114, § 19; GC § 8006-22; 124 v 178(201); Bureau of Code Revision, 10-1-53), repealed 130 v II 245, § 2, eff 6-29-82.

Cross-References to Related Sections

Administrative order for withholding child support from personal earnings, workers' compensation payments, public retirement system benefits or other sources of income of obligor; modification or termination, RC § 3111.23.

Definitions relating to child support, RC § 3111.20.

Presumptions as to natural father, RC § 3111.03.

Reports to director of human services of court-ordered support order or administrative support order, RC § 2301.35.1.

Separate order for health insurance coverage for children, RC § 3111.24.1.

Who may bring action to determine relationship of father and child, RC § 3111.04.

IOWA

DIVISION IV

ADMINISTRATIVE ESTABLISHMENT OF PATERNITY

Sec. 14. NEW SECTION. 252F.1 DEFINITIONS.

As used in this chapter unless the context otherwise requires:

1. "Administrator" means the administrator of the child support recovery unit of the department of human services or the administrator's designee.
2. "Mother" means a mother of the child for whom paternity is being established.
3. "Paternity is at issue" means any of the following conditions:
 - a. A child was not born or conceived within marriage.
 - b. A child was born or conceived within marriage but a court has declared that the child is not the issue of the marriage.
 - c. Paternity has been established by the filing of an affidavit of paternity and the father is contesting paternity within the statute of limitations period pursuant to section 600B.41, subsection 7.
4. "Paternity test" means and includes any form of blood, tissue, or genetic testing administered to determine the biological father of a child.
5. "Putative father" means a person alleged to be the biological father of a child.
6. "Unit" means the child support recovery unit created in section 252B.2.

Sec. 15. NEW SECTION. 252F.2 JURISDICTION.

In any case in which the unit is providing services pursuant to chapter 252B and paternity is at issue,

proceedings may be initiated by the unit pursuant to this chapter for the sole purpose of establishing paternity and any accrued or accruing child support or medical support obligations. Proceedings under this chapter are in addition to other means of establishing paternity or support. Issues in addition to establishment of paternity or support obligations shall not be addressed in proceedings initiated under this chapter.

An action to establish paternity and support under this chapter may be brought within the time limitations set forth in section 614.8.

Sec. 16. NEW SECTION. 252F.3 NOTICE OF ALLEGED PATERNITY AND SUPPORT DEBT -- CONFERENCE -- REQUEST FOR HEARING.

1. The unit may prepare a notice of alleged paternity and support debt to be served on the putative father if the mother of the child provides a statement to the unit verifying that the putative father is or may be the biological father of the child or children involved. The notice shall be accompanied by a copy of the statement and served on the putative father in accordance with rule of civil procedure 56.1. Service upon the mother shall not constitute valid service upon the putative father. The notice shall include all of the following:

- a. The name of the recipient of services under chapter 252B and the name and birth date of the child or children involved.
- b. A statement that the putative father has been named as the biological father of the child or children named.
- c. A statement that the amount of the putative father's monthly support obligation and the amount of the support debt accrued and accruing will be established in accordance with the guidelines established in section 598.21, subsection 4, and the criteria established pursuant to section 252B.7A.
- d. A statement that the putative father has a duty to provide accrued and accruing medical support to the child or children in accordance with chapter 252E.

e. An explanation of the procedures for determining the child support obligation and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21, subsection 4.

f. (1) The right of the putative father to request a conference with the unit to discuss paternity establishment and the amount of support that the putative father is required to pay, within ten days of the date of service or within ten days of the date of mailing of the paternity test results to the putative father if the father denies paternity.

(2) A statement that if a conference is requested, the putative father shall have ten days from the date set for the conference or twenty days from the date of service of the original notice, or ten days from the date of the mailing of paternity test results to the putative father if the putative father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the unit.

(3) A statement that after the holding of the conference, the administrator may issue a new notice and finding of financial responsibility for child support or medical support, or both, to be sent to the putative father by regular mail addressed to the putative father's last known address.

(4) A statement that if the administrator issues a new notice and finding of financial responsibility for child support or medical support, or both, the putative father shall have ten days from the date of issuance of the new notice or twenty days from the date of service of the original notice, or ten days from the date of the mailing of paternity test results to the putative father if the putative father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the unit.

g. A statement that if a conference is not requested, and the putative father objects to the finding of financial

responsibility or the amount of child support or medical support, or both, the putative father shall within twenty days of the date of service or within ten days from the date of the mailing of paternity test results to the putative father if the putative father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the unit.

h. A statement that if a timely written request for a hearing on the issue of support is received by the unit, the putative father shall have the right to a hearing to be held in district court and that if no timely written request is received and paternity is not denied, the administrator may enter an order in accordance with the notice and finding of financial responsibility for child support or medical support, or both.

1. A statement of the rights and responsibilities associated with the establishment of paternity.

j. A statement of the putative father's right to deny paternity, the procedures for denying paternity, and the consequences of the denial.

1A. The time limitations established for the notice provisions under subsection 1 are binding unless otherwise specified in this chapter or waived by the putative father pursuant to section 252F.8.

2. If notice is served on the putative father, the unit shall file a true copy of the notice and the original return of service with the clerk of the district court in the county in which the child or children reside, or, if the action is the result of a request from a foreign jurisdiction of another state to establish paternity of a putative father located in Iowa, in the county in which the putative father resides. All subsequent documents filed or court hearings held related to the action shall be in the district court in the county in which notice was filed pursuant to this subsection. The clerk shall file and docket the action.

3. If the putative father requests a hearing on the issue of support, and if a timely written response setting forth objections and requesting a hearing is received by the unit, a hearing shall be held in district court on the issue of support.

4. If a timely written response and request for hearing is not received by the unit and the putative father does not deny paternity, the administrator may enter an order in accordance with section 252F.4 on the issue of support.

5. a. If the putative father denies paternity, the putative father shall submit, within twenty days of service of the notice under subsection 1, a written denial of paternity to the unit. Upon receipt of a written denial of paternity, the administrator shall enter an ex parte administrative order requiring the mother, child or children, and the putative father to submit to paternity testing. The order shall be filed with the clerk of the district court in the county where the notice was filed.

b. If the putative father has signed an affidavit of paternity pursuant to section 252A.3A within the three-year period prior to the receipt of notice, and the putative father contests paternity, the putative father shall pay all costs of the paternity testing.

c. If a paternity test is required under this section, the administrator shall direct that inherited characteristics, including but not limited to blood types, be analyzed and interpreted, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the results and report the results to the administrator.

d. The putative father shall be provided one opportunity to reschedule the paternity testing appointment if the testing is rescheduled prior to the date of the originally scheduled appointment.

e. An original copy of the test results shall be sent to the clerk of the district court in the county where the notice

was filed, and a copy shall be sent to the administrator and to the putative father.

f. Verified documentation of the chain of custody of the blood specimens is competent evidence to establish the chain of custody.

g. If the expert concludes that the test results show that the putative father is not excluded and that the probability of the putative father's paternity is ninety-five percent or higher, there shall be a rebuttable presumption that the putative father is the biological father, and the evidence shall be sufficient as a basis for administrative establishment of paternity. A verified expert's report on test results which indicate a statistical probability of paternity is sufficient authenticity of the expert's conclusion.

h. If the paternity test results indicate a probability of paternity of ninety-five percent or greater and the putative father wishes to challenge the presumption of paternity, the putative father shall file a written notice of the challenge with the district court and an application for a hearing by the district court within twenty days of the filing of the expert's report with the clerk of the district court or within ten days after the scheduled date of the conference, whichever occurs later.

(1) The party challenging the presumption of paternity has the burden of proving that the putative father is not the father of the child.

(2) The presumption of paternity may be rebutted only by clear and convincing evidence.

i. If the expert concludes that the test results indicate that the putative father is not excluded and that the probability of the putative father's paternity is less than ninety-five percent, test results shall be weighed along with other evidence of paternity. To challenge the test results, a party shall file a written notice of the challenge with the

clerk of the district court within twenty days of the filing of the expert's report and shall send a copy of the written notice to any other party. The administrator may then order a second test or certify the case to the district court for resolution.

j. If the paternity test results exclude the putative father as a potential biological father of the child, and additional tests are not requested by either party, the unit shall withdraw its action against the putative father and shall file a notice of the withdrawal with the clerk of the district court.

k. If the results of the test or the expert's analysis are disputed, the administrator, upon the request of a party or upon the unit's own initiative, shall order that an additional test be performed by the same laboratory or an independent laboratory, at the expense of the party requesting additional testing.

Sec. 17. NEW SECTION. 252F.4 ENTRY OF ORDER.

1. If the putative father fails to respond to the initial notice within twenty days after the date of service of the notice or fails to appear at the conference pursuant to section 252F.3 on the scheduled date of the conference, the administrator may enter an order against the putative father, declaring the putative father to be the biological father and assessing the support obligation and accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

2. If the putative father fails to appear for a paternity test and fails to request a rescheduling pursuant to section 252F.3, or fails to appear for both the initial and the rescheduled paternity tests, the administrator may enter an order against the putative father declaring the putative father to be the biological father of the child and assessing the support obligation and accrued and accruing child support

pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

3. If the putative father appears at a conference, the administrator may enter an order against the putative father ten days after the second notice has been sent declaring the putative father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

3A. If paternity testing was performed and the putative father was not excluded, and the putative father fails to timely challenge paternity testing, the administrator may enter an order against the putative father declaring the putative father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

4. The administrator shall establish a support obligation under this section based upon the best information available to the unit and pursuant to section 252B.7A.

5. The order shall contain all of the following:

- a. A declaration of paternity.
- b. The amount of monthly support to be paid, with direction as to the manner of payment.
- c. The amount of accrued support.
- d. The name of the custodial parent or caretaker.
- e. The name and birth date of the child or children to whom the order applies.
- f. A statement that property of the putative father is subject to income withholding, liens, garnishment, tax offset, and other collection actions.

9. The medical support required pursuant to chapter 598 and chapter 252E.

6. If the putative father does not deny paternity but does wish to challenge the issues of child or medical support, the administrator may enter an order establishing paternity and reserving the issues of child or medical support for determination by the district court.

Sec. 18. NEW SECTION. 252F.5 CERTIFICATION TO DISTRICT COURT.

1. Actions initiated under this chapter are not subject to contested case proceedings or further review pursuant to chapter 17A.

2. An action under this chapter may be certified to the district court if a party challenges the administrator's finding of paternity, or the amount of support, or both. Review by the district court shall be an original hearing before the court.

3. In any action brought under this chapter, the action shall not be certified to the district court in a contested paternity action unless all of the following have occurred:

a. Paternity testing has been completed.

b. The results of the paternity test have been sent to the putative father.

c. A written objection to the entry of an order has been received from the putative father.

4. A matter shall be certified to the district court in the county in which the notice was filed pursuant to section 252F.3, subsection 2.

5. The court shall set the matter for hearing and notify the parties of the time of and place for hearing.

6. If the court determines that the putative father is the biological father, the court shall establish the amount of the monthly support payment and the accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and shall establish medical support pursuant to chapter 252E.

7. If a party fails to appear at the hearing, upon a showing that proper notice has been provided to the party, the court may find the party in default and enter an appropriate order.

Sec. 19. NEW SECTION. 252F.6 FILING WITH THE DISTRICT COURT.

Following issuance of an order by the administrator, the order shall be presented to an appropriate district court judge for review and approval. Unless a defect appears on the face of the order, the district court shall approve the order. Upon approval by the district court judge, the order shall be filed in the district court in the county in which the notice was filed pursuant to section 252F.3, subsection 2. Upon filing, the order has the same force and effect as a district court order.

Sec. 20. NEW SECTION. 252F.7 REPORT TO VITAL STATISTICS.

Upon the filing of an order with the district court pursuant to this chapter, the clerk of the district court shall report the information from the order to the bureau of vital statistics in the manner provided in section 600B.36.

Sec. 21. NEW SECTION. 252F.8 WAIVER OF TIME LIMITATIONS BY PUTATIVE FATHER.

1. A putative father may waive the time limitations established in this chapter.

2. Upon receipt of a signed statement from the putative father waiving the time limitations, the administrator may enter an order establishing paternity and support and the court may approve the order, notwithstanding the expiration of the period of the time limitations.

3. If a putative father waives the time limitations and an order establishing paternity and support is entered under this chapter, the signed statement of the putative father waiving the time limitations shall be filed with the order for support.

Sec. 22. Section 600B.41, subsection 7, paragraph a, unnumbered paragraph 1, Code 1993, is amended to read as follows:

Notwithstanding section 590.21, subsection 0, paragraph "k", the establishment of paternity by court order, including a court order based on an administrative establishment of paternity, or by affidavit may be overcome if all of the following conditions are met:

Sec. 23. Section 600B.41, subsection 7, paragraph a, subparagraph (4), Code 1993, is amended to read as follows:

(4) The action to overcome paternity is filed no later than three years after the entry-of-an-order establishment of paternity.

APPENDIX A

O R E G O N

416.430 Establishing paternity of child; certification of paternity issue to circuit court. (1) The administrator may establish paternity of a child in the course of a support proceeding under ORS 416.400 to 416.470 when both parents sign sworn statements that paternity has not been legally established and that the male parent is the father of the child. The administrator may enter an order which establishes paternity.

(2) If the parent fails to file a response denying paternity and requesting a hearing within the time period allowed in ORS 416.415 (2), then the administrator, without further notice to the parent, may enter an order, in accordance with ORS 416.415 (8), which declares and establishes the parent as the legal father of the child.

(3) Any order entered pursuant to subsection (1) or (2) of this section establishes legal paternity for all purposes. The Vital Statistics Unit of the Health Division of the Department of Human Resources shall prepare a new birth certificate in the new name, if any, of the child. The original birth certificate shall be sealed and filed and may be opened only upon order of a court of competent jurisdiction.

(4) If paternity is alleged under ORS 416.415 (3) and a written response denying paternity and requesting a hearing is received within the time period allowed in ORS 416.415 (2), or if the administrator determines that there is a valid issue with respect to paternity of the child, the administrator, subject to the provisions of subsections (5) and (6) of this section, shall certify the matter to the circuit court for a determination based upon the contents of the file and any evidence which may be produced at trial. The proceedings in court shall for all purposes be deemed suits in equity, but either party shall have the right to trial by jury on the issue of paternity. The provisions of ORS 109.145 to 109.230 apply to proceedings certified to court by the administrator pursuant to this section.

(5) An action to establish paternity initiated under ORS 416.400 to 416.470 shall not be certified to court for trial unless all of the following have occurred:

(a) Blood tests have been conducted;

(b) The results of the blood tests have been served upon the parties and notice has been given that an order establishing paternity will be entered unless a written objection is received within 30 days; and

(c) A written objection to the entry of an order has been timely received from a party.

(6) Notwithstanding the provisions of subsection (5) of this section, the matter shall be certified to court by the administrator:

(a) Within 30 days of receipt by the administrator of a timely written objection to the entry of an order by a party under paragraph (c) of subsection (5) of this section;

(b) At any time a party requests certification in writing provided, however, that 120 days have elapsed from receipt of a party's written denial of paternity; or

(c) Upon receipt of blood test results with a cumulative paternity index of less than 99.

(7) Notwithstanding ORS 109.258, if the blood tests conducted under ORS 109.250 to 109.262 result in a cumulative paternity index of 99 or greater, evidence of the tests, together with the testimony of the parent, shall be a sufficient basis upon which to establish paternity and the administrator may enter an order declaring the alleged father as the legal father of the child unless a party objects in writing to the entry of the order. The testimony of the parent may be presented by affidavit.

(8) Prior to certification to court, the administrator may attempt to resolve the issue of paternity by discovery conducted under the Oregon Rules of Civil Procedure. Unless otherwise specifically provided by statute, the proceedings shall be conducted under the Oregon Rules of Civil Procedure. [1979 c.431 §7; 1983 c.709 §44; 1985 c.671 §38; 1989 c.566 §6; 1991 c.484 §2]

74.20A.056. Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting

(1) If an alleged father has signed an affidavit acknowledging paternity which has been filed with the state office of vital statistics, the office of support enforcement may serve a notice and finding of parental responsibility on him. Service of the notice shall be in the same manner as a summons in a civil action or by certified mail, return receipt requested. The notice shall have attached to it a copy of the affidavit and shall state that:

(a) The alleged father may file an application for an adjudicative proceeding at which he will be required to appear and show cause why the amount stated in the finding of financial responsibility as to support is incorrect and should not be ordered;

(b) An alleged father may request that a blood test be administered to determine whether such test would exclude him from being a natural parent and, if not excluded, may subsequently request that the office of support enforcement initiate an action in superior court to determine the existence of the parent-child relationship; and

(c) If the alleged father does not request that a blood test be administered or file an application for an adjudicative proceeding, the amount of support stated in the notice and finding of parental responsibility shall become final, subject only to a subsequent determination under RCW 26.26.060 that the parent-child relationship does not exist.

(2) An alleged father who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt, the amount of the current and future support obligation, and the reimbursement of the costs of blood tests if advanced by the department.

(3) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department. If no application is filed within twenty days:

(a) The amounts in the notice shall become final and the debt created therein shall be subject to collection action; and

(b) Any amounts so collected shall neither be refunded nor returned if the parent is later found not to be the father.

(4) An alleged father who denies being a responsible parent may request that a blood test be administered at any time. The request for testing shall be in writing and served on the office of support enforcement personally or by registered or certified mail. If a request for testing is made, the department shall arrange for the test and, pursuant to rules adopted by the department, may advance the cost of such testing. The department shall mail a copy of the test results by certified mail, return receipt requested, to the alleged father's last known address.

(5) If the test excludes the alleged father from being a natural parent, the office of support enforcement shall file a copy of the results with the state office of vital statistics and shall dismiss any pending administrative collection proceedings based upon the affidavit in issue. The state office of vital statistics shall remove the alleged father's name from the birth certificate.

(6) The alleged father may, within twenty days after the date of receipt of the test results, request the office of support enforcement to initiate an action under RCW 26.26.060 to determine the existence of the parent-child relationship. If the office of support enforcement initiates a superior court action at the request of the alleged father and the decision of the court is that the alleged father is a natural parent, the alleged father shall be liable for court costs incurred.

(7) If the alleged father does not request the office of support enforcement to initiate a superior court action, or if the alleged father fails to appear and cooperate with blood testing, the notice of parental responsibility shall become final for all intents and purposes and shall not be overturned only by a subsequent superior court order entered under RCW 26.26.060.

COLORADO

ARTICLE 13.5

Administrative Procedure for Child Support Establishment and Enforcement

26-13.5-102.	Definitions.	26-13.5-106.	Default - issuance of order of default - filing of order with district court.
26-13.5-103.	Notice of financial responsibility issued - contents.	26-13.5-107.	Orders - duration - effect of court determinations.
26-13.5-104.	Service of notice of financial responsibility.	26-13.5-108.	Request for court hearing. (Repealed)
26-13.5-105.	Negotiation conference - issuance of order of financial responsibility - filing of order with district court.	26-13.5-110.	Paternity - establishment - filing of order with court.
		26-13.5-112.	Modification of an order.

26-13.5-102. Definitions. (4) "Costs of collection" means attorney fees, costs for administrative staff time, service of process fees, court costs, costs of blood tests, and costs for certified mail. Attorney fees and costs for administrative time shall only be collected in accordance with federal law and rules and regulations.

(5) "Court" or "judge" means any court or judge in this state having jurisdiction to determine the liability of persons for the support of another person. "Court" or "judge" includes a juvenile magistrate and a district court magistrate.

(7) "Delegate child support enforcement unit" means the unit of a county department of social services or its contractual agent which is responsible for carrying out the provisions of article 13 of this title.

(8.5) "District court" means any district court in this state and includes the juvenile court of the city and county of Denver and the juvenile division of the district court outside of the city and county of Denver.

(9) "Duty of support" means a duty of support imposed by law, by order, decree, or judgment of any court, or by administrative order, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise. "Duty of support" includes the duty

to pay a monthly support obligation, a child support debt, support of children in foster care, and any arrearages.

Source: (4) and (7) amended and (8.5) added, L. 90, p. 896, § 19, effective July 1; (5) amended, L. 91, p. 365, § 39, effective April 9; (9) amended, L. 91, p. 216, § 5, effective July 1.

26-13.5-103. Notice of financial responsibility issued - contents. (1) The delegate child support enforcement unit shall issue a notice of financial responsibility to an obligor who owes a child support debt or who is responsible for the support of a child on whose behalf the custodian of that child is receiving support enforcement services from the delegate child support enforcement unit pursuant to article 13 of this title. The notice shall advise the obligor:

(b) That the delegate child support enforcement unit shall issue an order of default setting forth the amount of the obligor's duty of support, if the obligor:

(I) Fails to appear for the negotiation conference as scheduled in the notice; and

(II) Fails to reschedule a negotiation conference prior to the date and time stated in the notice; and

(b.5) That, if the notice is issued for the purpose of establishing the paternity of and financial responsibility for a child, the delegate child support enforcement unit shall issue an order of default establishing paternity and setting forth the amount of the obligor's duty of support, if:

(I) The obligor fails to take a blood test or fails to appear for an appointment to take a blood test without good cause; or

(II) The results of the blood test indicate a ninety-seven percent or greater probability that the alleged father is the father of the child, and the obligor fails to appear for the negotiation conference as scheduled in the notice and fails to reschedule a negotiation conference prior to the date and time stated in the notice;

(c) (Deleted by amendment, L. 92, p. 213, § 17, effective August 1, 1992.)

(e) That, a judgment may be entered on the order of financial responsibility issued pursuant to this article, and that if a judgment is not entered on the order of financial responsibility and needs to be enforced, the judgment creditor shall file with the court a verified entry of judgment specifying the period of time that the judgment covers and the total amount of the judgment for that period and that, notwithstanding the provisions of this paragraph (e), no court order for judgment nor verified entry of judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or state department of revenue for purposes of intercepting a federal or state tax refund;

(m) If applicable, that foster care maintenance may be collected against the obligor;

Source: IP(1), IP(1)(b), (1)(b)(I), (1)(b)(II), and (1)(m) amended, L. 90, p. 896, § 20, effective July 1; (1)(c) amended, L. 91, p. 257, § 22, effective July 1; (1)(b.5) added and (1)(c) and (1)(e) amended, L. 92, pp. 184, 213, § 5, effective August 1.

Editor's note: Section 10 of chapter 38, Session Laws of Colorado 1992, provides that the act enacting subsection (1)(b.5) is effective August 1, 1992, and applies to orders entered on or after said date.

26-13.5-104. Service of notice of financial responsibility. (1) The delegate child support enforcement unit shall serve a notice of financial responsibility on the obligor not less than ten days prior to the date stated in the notice for the negotiation conference:

(a) In the manner prescribed for service of process in a civil action; or
(b) By an employee appointed by the delegate child support enforcement unit to serve such process; or

(c) By certified mail, return receipt requested, signed by the obligor only. The receipt shall be prima facie evidence of service.

(2) Service of process to establish paternity and financial responsibility may be made under this article by certified mail as specified in subsection (1) of this section or by any of the other methods of service specified in said subsection (1).

(3) If process has been served pursuant to this section, no additional service of process shall be necessary if the case is referred to court for further review.

Source: IP(1) amended, L. 90, p. 896, § 21, effective July 1; entire section amended, L. 92, p. 184, § 6, effective August 1.

Editor's note: Section 10 of chapter 38, Session Laws of Colorado 1992, provides that the act amending this section is effective August 1, 1992, and applies to orders entered on or after said date.

26-13.5-105. Negotiation conference - issuance of order of financial responsibility - filing of order with district court. (1) Every obligor who has been served with a notice of financial responsibility pursuant to section 26-13.5-104 shall appear at the time and location stated in the notice for a negotiation conference or shall reschedule a negotiation conference prior to the date and time stated in the notice. The negotiation conference shall be scheduled not more than thirty days after the date of the issuance of the notice of financial responsibility. A negotiation conference shall not be rescheduled more than once and shall not be rescheduled for a date more than ten days after the date and time stated in the notice without good cause as defined in rules and regulations promulgated pursuant to section 26-13.5-113. If a negotiation conference is continued, the obligor shall be notified of such continuance by first class mail. If a stipulation is agreed upon at the negotiation conference as to the obligor's duty of support, the delegate child support enforcement unit shall issue an administrative order of financial responsibility setting forth the following:

(a) The amount of the monthly support obligation and instructions on the manner in which it shall be paid;

(b) The amount of child support debt due and owing to the state department and instructions on the manner in which it shall be paid;

(c) The amount of arrearages due and owing and instructions on the manner in which it shall be paid;

(d) The name of the custodian of the child and the name, birth date, and social security number of the child for whom support is being sought;

(e) The information required by section 14-14-107 (1) (b), C.R.S.;

(f) Such other information set forth in rules and regulations promulgated pursuant to section 26-13.5-113.

(2) A copy of the administrative order of financial responsibility issued pursuant to subsection (1) of this section, along with proof of service, shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued or in the district court where an action relating to support is pending or an order exists but is silent on the issue of child support. The clerk shall stamp the date of receipt of the copy of the order and shall assign the order a case number. The order of financial responsibility shall have all the force, effect, and remedies of an order of the court, including, but not limited to, wage assignment or contempt of court. Execution may be issued on the order in the same manner and with the same effect as if it were an order of the court. In order to enforce a judgment based on an order issued pursuant to this article, the judgment creditor shall file with the court a verified entry of judgment specifying the period of time that the judgment covers and the total amount of the judgment for that period. Notwithstanding the provisions of this subsection (2), no court order for judgment nor verified entry of judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or state department of revenue for purposes of intercepting a federal or state tax refund.

(3) If no stipulation is agreed upon at the negotiation conference because the obligor contests the issue of paternity, the delegate child support enforcement unit shall file the notice of financial responsibility and proof of service with the clerk of the district court in the county in which the notice of financial responsibility was issued or in the district court where an action relating to child support is pending or an order exists but is silent on the issue of child support, and shall request the court to set a hearing for the matter. If no stipulation is agreed upon at the negotiation conference and paternity is not an issue, the delegate child support enforcement unit shall issue temporary orders establishing child support and shall file the notice of financial responsibility and proof of service with the clerk of the district court in the county in which the notice of financial responsibility was issued and shall request the court to set a hearing for the matter. Notwithstanding any rules of the Colorado rules of civil procedure, a complaint is not required in order to initiate a court action pursuant to this subsection (3). The court shall inform the delegate child support enforcement unit of the date and location of the hearing and the court or the delegate child support enforcement unit shall send a notice to the obligor informing the obligor of the date and location of the hearing. In order to meet federal requirements of expedited process for child support enforcement, the court shall hold a hearing and decide only the issue of child support within ninety days after receipt of notice, as defined in section 26-13.5-102 (13), or within one year after receipt of notice, as defined in section 26-13.5-102 (13), if the obligor is contesting the issue of paternity. If the obligor raises issues relating to custody or visitation and the court has jurisdiction to hear such matters, the court shall set

a separate hearing for those issues after entry of the order of support. In any action, including an action for paternity, no additional service beyond that originally required pursuant to section 26-13.5-104 shall be required if no stipulation is reached at the negotiation conference and the court is requested to set a hearing in the matter.

(4) The determination of the monthly support obligation shall be based on the child support guidelines set forth in section 14-10-115, C.R.S. The delegate child support enforcement unit may issue an administrative subpoena requesting income information, including but not limited to wage statements, pay stubs, and tax records. In the absence of reliable information, which may include such information as wage statements or other wage information obtained from the department of labor and employment, tax records, and verified statements made by the obligee, the delegate child support enforcement unit shall set the amount included in the order of financial responsibility pursuant to section 14-10-115, C.R.S., based on the current minimum wage for a forty-hour workweek.

Source: IP(1), (2), and (3) amended, L. 90, p. 897, § 22, effective July 1; entire section amended, L. 92, p. 213, § 18, effective August 1.

26-13.5-106. Default - issuance of order of default - filing of order with district court. (1) (a) If an obligor fails to appear for a negotiation conference as scheduled in the notice of financial responsibility, and fails to reschedule a negotiation conference prior to the date and time stated in the notice of financial responsibility, the delegate child support enforcement unit shall issue an order of default in accordance with the notice of financial responsibility. If an obligor fails to appear for a rescheduled negotiation conference, the delegate child support enforcement unit shall issue an order of default in accordance with the notice of financial responsibility.

(b) In an action to establish paternity and financial responsibility, if an obligor fails to take a blood test or fails to appear for an appointment to take a blood test without good cause or if the results of the blood test indicate a ninety-seven percent or greater probability that the alleged father is the father of the child, and the obligor fails to appear for the negotiation conference as scheduled in the notice of financial responsibility and fails to reschedule a negotiation conference prior to the date and time stated in the notice of financial responsibility, the delegate child support enforcement unit shall issue an order of default establishing paternity and financial responsibility in accordance with the notice of financial responsibility. The state board shall promulgate rules defining what constitutes good cause for failure to appear at a negotiation conference.

(c) Such order of default shall be approved by the court and shall include the following:

(I) The amount of the monthly support obligation and instructions on the manner in which it shall be paid;

(II) The amount of child support debt due and owing to the state department and instructions on the manner in which it shall be paid;

(III) The amount of arrearages due and owing and instructions on the manner in which it shall be paid;

(IV) The name of the custodian of the child and the age, birth date, and social security number of the child for whom support is being sought;

(V) The information required by section 14-14-107 (1) (b), C.R.S.;

(VI) In a default order establishing paternity, a statement that the obligor has been determined to be the natural parent of the child;

(VII) Such other information set forth in rules and regulations promulgated pursuant to section 26-13.5-113.

(2) A copy of any order of default issued pursuant to subsection (1) of this section, along with proof of service, and in the case of a default order establishing paternity and financial responsibility under paragraph (b) of subsection (1) of this section, the obligee's verified affidavit regarding paternity and the blood test results, if any, shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued or in the district court where an action relating to child support is pending or an order exists but is silent on the issue of child support. The clerk shall stamp the date of receipt of the copy of the order of default and shall assign the order a case number. The order of default shall have all the force, effect, and remedies of an order of the court, including, but not limited to, wage assignment or contempt of court. Execution may be issued on the order in the same manner and with the same effect as if it were an order of the court. In order to enforce a judgment based on an order issued pursuant to this article, the judgment creditor shall file with the court a verified entry of judgment specifying the period of time that the judgment covers and the total amount of the judgment for that period. Notwithstanding the provisions of this subsection (2), no court order for judgment nor verified entry of judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or state department of revenue for purposes of intercepting a federal or state tax refund.

Source: IP(1) and (2) amended, L. 90, p. 898, § 23, effective July 1; (1) and (2) amended, L. 92, p. 185, § 7, effective August 1; entire section amended, L. 92, p. 215, § 19, effective August 1.

Editor's note: This section is amended by chapters 38 and 40, Session Laws of Colorado 1992, and section 10 of chapter 38 provides that the act set out in that chapter amending subsections (1) and (2) is effective August 1, 1992, and applies to orders entered on or after said date.

26-13.5-107. Orders - duration - effect of court determinations. (1) A copy of any order of financial responsibility or of any order of default or of any temporary order of financial responsibility issued by the delegate child support enforcement unit shall be sent by such unit by first-class mail to the obligor or his attorney of record and to the custodian of the child.

(2) Any order of financial responsibility, any order of default, and any temporary order of financial responsibility shall continue notwithstanding the fact that the child is no longer receiving benefits for aid to families with dependent children, unless the child is emancipated or is otherwise no longer entitled to support. Any order of financial responsibility, any order of default, and any temporary order of financial responsibility shall continue until modified by administrative order or court order or by emancipation of the child.

In the event that the order of financial responsibility, order of default, or temporary order of financial responsibility is entered in a case at a time when there is a court action on the same case, the court may credit a portion of a monthly amount paid under the administrative process order towards future payments due in the court case only if the order in the court case is established at a lower amount than the administrative process order and only to the extent of the difference between the amount of the court order and the amount of the administrative process order.

Source: (1) and (2) amended, L. 92, p. 217, § 20, effective August 1.

26-13.5-108. Request for court hearing. (Repealed)

Repealed, effective August 1, 1992.

Source: (1) and (2) amended, L. 90, p. 898, § 24, effective July 1; (2) amended, L. 91, p. 258, § 23, effective July 1; entire section repealed, L. 92, p. 217, § 21, effective August 1.

26-13.5-110. Paternity - establishment - filing of order with court. (1) The delegate child support enforcement unit may issue an order establishing paternity of and financial responsibility for a child in the course of a support proceeding under this article when both parents sign sworn statements that the paternity of the child for whom support is sought has not been legally established and that the parents are the natural parents of the child and if neither parent is contesting the issue of paternity or may issue an order of default establishing paternity and financial responsibility in accordance with section 26-13.5-106. Prior to issuing an order under this section, the delegate child support enforcement unit shall advise both parents in writing as prescribed by rule and regulation promulgated pursuant to section 26-13.5-113 of their legal rights concerning the determination of paternity.

(2) A copy of the order establishing paternity and financial responsibility and the sworn statements of the parents and, in the case of a default order establishing paternity and financial responsibility, the obligee's verified affidavit regarding paternity and the blood test results, if any, shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued or as otherwise provided in accordance with the provisions of section 26-13.5-105 (2). The order establishing paternity and financial responsibility shall have all the force, effect, and remedies of an order of the district court, and the order may be executed upon and enforced in the same manner as set forth in section 26-13.5-105 (2).

(3) If the order establishing paternity is at variance with the child's birth certificate, the delegate child support enforcement unit shall order that a new birth certificate be issued under section 19-4-124, C.R.S.

(4) Service of process to establish paternity and financial responsibility may be made under this article by certified mail as specified in section 26-13.5-104 or by any of the other methods of service specified in said section.

Source: (2) amended, L. 90, p. 899, § 25, effective July 1; entire section amended, L. 92, p. 186, § 8, effective August 1.

Editor's note: Section 10 of chapter 38, Session Laws of Colorado 1992, provides that the act amending this section is effective August 1, 1992, and applies to orders entered on or after said date.

26-13.5-112. Modification of an order. (1) At any time after the entry of an order of financial responsibility or an order of default under this article, in order to add, alter, or delete any provisions to such an order, the delegate child support enforcement unit may issue a notice of financial responsibility to an obligor requesting the modification of an existing administrative order issued pursuant to this article. The delegate child support enforcement unit shall serve the obligor with a notice of financial responsibility by first class mail and shall proceed as set forth in this article. The obligor or the obligee may file a written request for modification of an administrative order issued under this article with the delegate child support enforcement unit by serving the delegate child support enforcement unit by certified mail. If such unit objects to the request for modification based upon the failure to demonstrate a showing of changed circumstances required pursuant to section 14-10-122, C.R.S., the delegate child support enforcement unit shall advise the requesting party of the party's right to request the court to set the matter for a court hearing. The court shall hold a hearing and decide only the issue of modification within ninety days of such request. If the delegate child support enforcement unit does not object to the obligor's or obligee's request for modification, the unit shall serve the obligor with a notice of financial responsibility by first class mail and shall proceed as set forth in this article. Within thirty days of receipt of the request for modification, the delegate child support enforcement unit shall either advise the requesting party of the party's right to request a court hearing or shall issue a notice of financial responsibility. If the child for whom the order applies is no longer in the custody of a person receiving public assistance or receiving support enforcement services from the delegate child support enforcement unit pursuant to article 13 of this title, the delegate child support enforcement unit shall certify the matter for hearing to the district court in which the order was filed.

Source: (1) amended, L. 90, p. 899, § 26, effective July 1; (1) amended, L. 91, p. 258, § 24, effective July 1.

MAINE

EXPEDITED PROCESS FOR THE COMMENCEMENT OF PATERNITY ACTIONS

Section	Section
517. Definitions.	524. Multiple alleged fathers.
518. Additional persons subject to jurisdiction.	525. Failure of alleged father to deny paternity.
519. Limitation on recovery from father.	526. Blood or tissue typing tests.
520. Service.	527. Refusal of alleged father to submit to blood or tissue tests.
521. Notice of proceeding to commence an action.	528. Procedures after blood tests.
522. Court orders; relief.	529. Applicability; Maine Rules of Civil Procedure, Rule 12(b).
523. Applicability; Maine Rules of Civil Procedure, Rule 5(b).	530. Acknowledgment of paternity.

Historical and Statutory Notes

Codification

Laws 1991, c. 256, enacted Subchapter VI, Expedited Process for the Commencement of Paternity Actions.

§ 517. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings.

1. **Alleged father.** "Alleged father" means:
 - A. A man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child; or
 - B. A man who is presumed to be a child's father under the Maine Rules of Evidence, Rule 302.
2. **Blood or tissue typing tests.** "Blood or tissue typing tests" means tests that demonstrate through examination of genetic markers the paternity of a child.
3. **Commissioner.** "Commissioner" means the Commissioner of Human Services.
4. **Department.** "Department" means the Department of Human Services.
5. **Paternity proceeding.** "Paternity proceeding" means the administrative proceeding provided in this subchapter for the commencement of an action to establish paternity under chapter 5, subchapter III.¹

1991, c. 256.

¹ Section 271 et seq. of this title.

Library References

Words and Phrases

Words and Phrases (Perm.Ed.)

§ 518. Additional persons subject to jurisdiction

1. **Application.** To ensure maximum protection to citizens of this State, the department shall apply this section to assert jurisdiction over nonresident alleged fathers to the fullest extent permitted by the due process clause of the United States Constitution, Amendment XIV.

2. **Cause of action.** A person who engages in sexual intercourse with a resident of this State in this State submits to the jurisdiction of the department for the purpose of commencing a paternity proceeding.

1991, c. 256.

§ 519. Limitation on recovery from father

An alleged father's liability for past expenses incurred is limited to the 6 years preceding service of the notice under section 521.

1991, c. 256.

§ 520. Service

Service of a notice under section 521 must be made by service in hand and may be made by an authorized representative of the commissioner or by a person authorized by the Maine Rules of Civil Procedure.

1991, c. 256.

§ 521. Notice of proceeding to commence an action

1. **Notice of proceeding.** The department may commence a paternity proceeding by serving a notice on an alleged father. The department may not serve such a notice unless it has a sworn statement or affirmation under the penalty for unsworn falsification from the child's mother claiming that the alleged father engaged in sexual intercourse with her during a possible time of conception of the child or is a man who is presumed under state law to be the child's father. If the mother is a minor, the sworn statement or affirmation may be that of the guardian or next friend of the mother.

2. **Contents of notice.** In addition to conforming with the requirements of the Maine Administrative Procedure Act, Title 5, section 9052, subsection 4, the notice must include:

- A. A statement that service of the notice on the alleged father constitutes the commencement of a paternity proceeding for the determination of paternity and any related issues under this subchapter;
- B. A statement identifying any of the following as the reason for filing the record of the proceeding in court.
 - (1) The alleged father fails to deny paternity.
 - (2) The alleged father refuses to submit to blood or tissue typing tests.
 - (3) The alleged father fails to execute and deliver to the department an acknowledgment of paternity;
- C. A statement that, if the department files a record of the proceeding, the department may seek relief under section 522;
- D. The child's name and place and date of birth;
- E. The name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;
- F. The probable date on or period during which the child was conceived;
- G. An allegation that the alleged father engaged in sexual intercourse with the child's mother during a possible time of conception of the child or is a man who is presumed to be the child's father under state law, and that the alleged father is or may be the natural father of the child;
- H. If applicable, an allegation that the child may have been conceived as a result of sexual intercourse in this State and that the alleged father is subject to personal jurisdiction under section 518;
- I. A statement that the alleged father may deny the allegation of paternity by filing a written denial of paternity with the department within 20 days after service of the notice; that if the alleged father fails to file a written denial the proceeding will be filed in a court as a paternity proceeding; and that the question of paternity and any related issues under this subchapter may be resolved against him by the court;
- J. A statement that if the alleged father files a written denial of paternity:
 - (1) The department will provide an expert examiner of blood or tissue types to conduct blood or tissue typing tests on the mother, child and alleged father and the tests will be conducted as follows:

(a) The alleged father is required to submit to tests, which may include, but are not limited to, tests of red cell antigens, red cell isoenzymes, human leukocyte antigens and serum proteins;

(b) The department will pay the initial cost of the tests; and

(c) An indigent alleged father is not liable for reimbursement of the cost of the tests;

(2) If the alleged father refuses to submit to tests under subparagraph (1), the proceeding will be filed in a court as a paternity proceeding;

(3) If the alleged father is not excluded by the test results and he does not, within 15 days of the ordinary mailing to him of a report and copy of the blood or tissue typing results, execute and deliver to the department an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, the proceeding will be filed in a court as a paternity proceeding; and

(4) If the alleged father is excluded by the test results as the natural father of the child, the proceeding will be filed in a court as a paternity proceeding for disposition under section 280, subsection 1, paragraph A;

K. A statement that if, prior to the filing in a court, the alleged father executes and delivers to the department an acknowledgment of paternity, the proceeding must terminate and the department may proceed against him under subchapter V;¹ and

L. A statement that the alleged father may, within 25 days after notice has been mailed to him that the record has been filed in a court, assert any defense, in law or fact, if the record is filed because the alleged father:

(1) Refuses to submit to blood or tissue typing tests; or

(2) Fails to execute and deliver to the department an acknowledgment of paternity.

1991, c. 256.

¹ Section 491 et seq. of this title.

§ 522. Court orders; relief

The department may request that the court:

1. **Establish as natural father.** Establish the alleged father as the natural father of the child;

2. **Weekly support.** Order the alleged father to pay such sums per week in child support as required under the child support guidelines;

3. **To whom payments made.** Order the alleged father to make support payments directly to the department whenever the mother is receiving aid to families with dependent children from the department for the child or is a support enforcement client of the department and at all other times directly to the mother;

4. **Reimbursement.** Order the alleged father to reimburse the mother or the department or other payor of public assistance, as applicable, for the past support, birth expenses and medical expenses incurred on behalf of the child to the time of trial and grant judgment to the mother or the department or other payor of public assistance, as applicable, in the amount of those expenses, with execution to issue immediately;

5. **Medical expenses.** Order the alleged father to pay all reasonable medical, dental, hospital and optical expenses for the child, to provide medical and health insurance coverage for the child and to provide evidence of that coverage to the department under section 776;

6. **Attorney's fees.** Order the alleged father to pay reasonable attorney's fees under section 271 and costs for prosecution of the action, including, but not limited to, prejudgment interest;

7. **Income withholding period.** Order income withholding as available under or required by and

8. **Other relief.** Grant such other relief as the court determines just and proper. 1991, c. 256.

§ 523. Applicability; Maine Rules of Civil Procedure, Rule 5(b)

The Maine Rules of Civil Procedure, Rule 5(b), applies to a proceeding under this subchapter.

1991, c. 256.

§ 524. Multiple alleged fathers

When it appears to the department that there may be more than one alleged father, the department may maintain proceedings against each alleged father, simultaneously or successively. Failure to serve a notice on an alleged father does not bar the department from maintaining a proceeding under this subchapter against any other alleged father.

1991, c. 256.

§ 525. Failure of alleged father to deny paternity

If the alleged father fails to file a written denial of paternity with the department within 20 days after service of notice upon him, the department's attorney may file the record of the proceeding in a court as a paternity proceeding. This filing constitutes a filing under the Maine Rules of Civil Procedure, Rule 3.

1991, c. 256.

§ 526. Blood or tissue typing tests

1. **Requirement of tests.** If the alleged father files a written denial of paternity with the department within 20 days after service of the notice upon him, the department shall schedule blood or tissue typing tests for the mother, the child and the alleged father, which may include, but not be limited to, tests of red cell antigens, red cell isoenzymes, human leukocyte antigens and serum proteins. The tests must be performed by an expert examiner in a laboratory that is accredited for parentage testing by the American Association of Blood Banks.

2. **Scheduling of tests.** The department shall notify the alleged father in writing by ordinary mail of the date, time and place of his blood or tissue typing tests. The tests must be conducted no earlier than 15 days following the mailing of the department's notice, except with the consent of the alleged father. The test must be conducted in an office of the department, when practicable. The department shall take into account the alleged father's place of residence or employment in selecting the location of the test.

3. **Rescheduling of tests.** If the alleged father does not submit to the tests, the department shall notify him in writing by ordinary mail that if he does not, within 15 days, request the department to reschedule the tests, his failure to appear constitutes a refusal to submit to the tests. If the alleged father timely requests rescheduling, the department shall reschedule the tests. The rescheduled tests must be conducted no earlier than 15 days following the mailing of the notice of rescheduling. The notice must also advise the alleged father that, if he fails to submit to the rescheduled tests, the failure constitutes a refusal to submit to the tests.

1991, c. 256.

§ 527. Refusal of alleged father to submit to blood or tissue tests

If an alleged father refuses to submit to blood or tissue typing tests, the department may file the record of the proceeding in a court as a paternity proceeding. The alleged father's refusal to submit to a test constitutes a refusal to submit under section 277.

1991, c. 256.

MONTANA

40-5-231. Establishment of paternity — jurisdiction and venue.

(1) For purposes of an administrative action brought under 40-5-231 through 40-5-237, personal jurisdiction is established in the department over any person who has had sexual intercourse in this state that has resulted in the

birth of a child who is the subject of such proceedings and over any person subject to the provisions of Rule 4B of the Montana Rules of Civil Procedure, including but not limited to the child, the child's parents, any person having custody of the child, and any alleged father.

(2) Personal jurisdiction over the persons described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a hearing under 40-5-231 through 40-5-237 may be held in the county where:

- (a) the child resides;
- (b) either parent resides; or
- (c) the department or any of its regional offices is located.

History: En. Sec. 2, Ch. 119, L. 1989.

40-5-232. Establishment of paternity — notice of paternity determination — contents. (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

(2) It is presumed to be in the best interest of a child to legally determine and establish his paternity. A presumption under this subsection may be rebutted by a preponderance of the evidence.

(3) In any proceeding under 40-5-231 through 40-5-237, if a man acknowledges his paternity of a child in writing and such acknowledgment is filed with the department, the department may enter an order establishing legal paternity. An acknowledgment is binding on a parent who executes it, whether or not he is a minor.

(4) The department shall commence proceedings to establish paternity by serving on an alleged father a notice of paternity determination. The department may not serve such notice unless it has:

- (a) a sworn statement from the child's mother claiming that the alleged father is the child's natural father;
- (b) evidence of the existence of a presumption of paternity under 40-6-105; or
- (c) any other reasonable cause to believe that the alleged father is the child's natural father.

(5) Service on the alleged father of the notice of paternity determination shall be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against him without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) he is subject to compulsory blood testing;

(ii) a blood test may result in a presumption of paternity; and

(iii) he may request a trial in district court to determine paternity before the final administrative decision is made.

(6) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of paternity determination.

(7) When there is more than one alleged father of a child, the department may serve a notice of paternity determination on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child.

History: En. Sec. 3, Ch. 119, L. 1989.

§ 528. Procedures after blood tests

1. **Transmittal of test results.** Upon receipt of the results of the tests, the department shall send copies of the results by ordinary mail to the alleged father and to the child's mother or to the mother's guardian or next friend if the mother is a minor.

2. **Exclusion of alleged father.** If the alleged father is excluded by the test results as the natural father of the child, the department may file the record of the proceeding in a court as a paternity proceeding for disposition under section 280, subsection 1, paragraph A.

3. **Nonexclusion of alleged father.** If the alleged father is not excluded by the test results and he does not, within 15 days of the mailing to him of a copy of the blood or tissue typing results and report, execute and deliver to the department by ordinary mail an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, the department may file the record of the proceeding, inclusive of the blood or tissue typing test results, in a court as a paternity proceeding. Section 280 applies to the action even though the tests were performed and the results prepared as part of an administrative proceeding. The alleged father's participation in the tests may not prejudice any application by the alleged father under section 278 for an order appointing an additional examiner of blood or tissue types.

1991, c. 256.

§ 529. Applicability; Maine Rules of Civil Procedure, Rule 12(b)

If a record of the proceeding is filed under section 527 or section 528, subsection 3, the alleged father is not required to file an additional denial of paternity. He may assert any defense, in law or fact. Any defense must be asserted within 25 days after the mailing by ordinary mail of a notice to the alleged father that the record has been filed in court. The notice must contain the substance of this section.

1991, c. 256.

§ 530. Acknowledgment of paternity

If, prior to the filing in a court, the alleged father executes and delivers to the department an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, the proceeding must be terminated and the department may proceed against the father under subchapter V¹ with respect to any remedy provided under that subchapter.

1991, c. 256; R.R.1991, c. 2, § 52.

¹Section 491 et seq. of this title.

Historical and Statutory Notes

Codification

Revisor's Report 1991, c. 2, § 52, corrected
punctuation and reference to subchapter V.

APPENDIX A

MISSOURI

454.485. Paternity order, establishing—entered when—docketing of order, result—copies to be sent to bureau of vital records of department of health—defense of nonpaternity—decision, how rendered

1. The director may enter an order establishing paternity of a child in the course of a support proceeding under sections 454.460 to 454.510 when both parents sign sworn statements that the paternity of the dependent child for whom support is sought has not been legally established and that the male parent is the father of the child.

2. The docketing, pursuant to section 454.490, of an order establishing paternity under this section shall establish legal paternity for all purposes. The division shall provide an additional copy of each administrative order to be docketed and the circuit clerk shall, upon docketing, forward such copy to the bureau of vital records of the department of health. The bureau of vital records shall enter the name of the father on the birth records pursuant to sections 193.085 and 193.215, RSMo, and shall record the social security account numbers of both parents, pursuant to section 193.075, RSMo.

3. In no event shall a hearing official conducting a hearing under sections 454.460 to 454.510 be authorized to enter a finding of nonpaternity in the case of a man presumed to be the natural father of any child of legitimate birth under Missouri law, or of the father of any child born out of wedlock who has acknowledged paternity in writing under oath or has acknowledged that he is responsible for the support, maintenance, and education of such child, unless such presumption has been overruled, or such acknowledgment has been ruled void, by a court of competent jurisdiction.

(Amended by L. 1986, H.B. No. 1479, § 1; L.1990, S.B. No. 834, § A.)

Historical and Statutory Notes

1986 Amendment. In subsec. 2, substituted "Missouri department of health shall enter the name of the father on the birth records pursuant to sections 193.085 and 193.215, RSMo Supp. 1984" for "division of health of the state department of social services shall prepare a new birth certificate in the new name, if any, of the child, and shall list the male parent as the child's father on such certificate" in the second sentence; and in subsec. 3, substituted "enter a

finding" for "render a decision as to the validity of the defense".

1990 Legislation

The 1990 amendment, in subsec. 2, inserted the second sentence, concerning the furnishing, docketing and forwarding of an additional copy of each administrative order, and at the end of the third sentence provided for a recording of the social security account numbers of both parents pursuant to § 193.075.

40-5-233. Establishment of paternity — administrative hearing — subpoena — compulsory blood testing. (1) When the department receives a timely written denial of paternity, it may order the alleged father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods. If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged father had sexual intercourse with the child's mother during the probable time of the child's conception or if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of sexual intercourse during the possible time of conception may be established by affidavit of the child's mother.

(2) If the department does not receive a timely written denial of paternity or if an alleged father fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may enter an order declaring the alleged father the legal father of the child. The order will take effect within 10 days after entry of the default unless the alleged father before the 10th day presents good cause for failure to make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The department may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of paternity blood testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

(3) If the rights of others and the interests of justice so require, the department may apply to any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court shall enter an order compelling the alleged father to submit to a paternity blood test. As provided in subsection (1), reasonable cause may be established by affidavit of the child's mother.

History: En. Sec. 4, Ch. 119, L. 1989.

40-5-234. Paternity blood tests — use of expert's affidavit — effect of test results. (1) The department shall appoint an expert who is qualified in examining genetic markers to conduct any paternity blood test required by 40-5-233. If the issue of paternity is referred to the district court under 40-5-236, the expert's completed and certified report of the results and conclusions of a paternity blood test is admissible as evidence without additional testimony by the expert if the laboratory in which the expert performed the test is accredited for parentage testing by the American association of blood banks. Accreditation may be established by verified statement or reference to published sources.

(2) An affidavit documenting the chain of custody of any blood specimen is admissible to establish such chain of custody.

(3) If the scientific evidence resulting from a blood test:

(a) conclusively shows that the alleged father could not have been the natural father, the question of paternity shall be resolved accordingly. A finding under this subsection is sufficient to overcome a presumption created by 40-6-105.

(b) shows a 95% or higher statistical probability of paternity, the alleged father is presumed to be the natural father of the child. This presumption may be rebutted in an appropriate action in district court by a preponderance of the evidence.

(c) does not exclude the alleged father and shows less than a 95% statistical probability of paternity, the test results may be weighed in conjunction with other evidence to establish paternity.

History: En. Sec. 5, Ch. 119, L. 1989.

40-5-235. Effect of order establishing paternity — birth records — relief from order. (1) An administrative order of the department declaring the paternity of a child, docketed as provided in 40-5-227, establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations.

(2) Upon the request of the mother or father of the child, the department shall file a copy of its order with the department of health and environmental sciences, which shall prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the time frames provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of Title 2, chapter 4, part 7.

History: En. Sec. 6, Ch. 119, L. 1989.

40-5-236. Referral of paternity issue to district court — record — parties — exclusion of other matters — fees. (1) If the scientific evidence resulting from a blood test does not exclude the alleged father and he continues to deny paternity, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court shall be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of paternity determination and the return of service thereof;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father as provided in 40-5-231(2) that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that such an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110.

History: En. Sec. 7, Ch. 119, L. 1989.

40-5-237. District court paternity proceedings — objection to tests — additional tests. (1) If an alleged father objects to the procedures for or the results of a paternity blood test, he shall file a written objection with the court within 20 days after service of the notice required by 40-5-236(3). The court shall order an additional paternity blood test if a written objection is filed or at the request of the department. An additional test must be performed by the same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody.

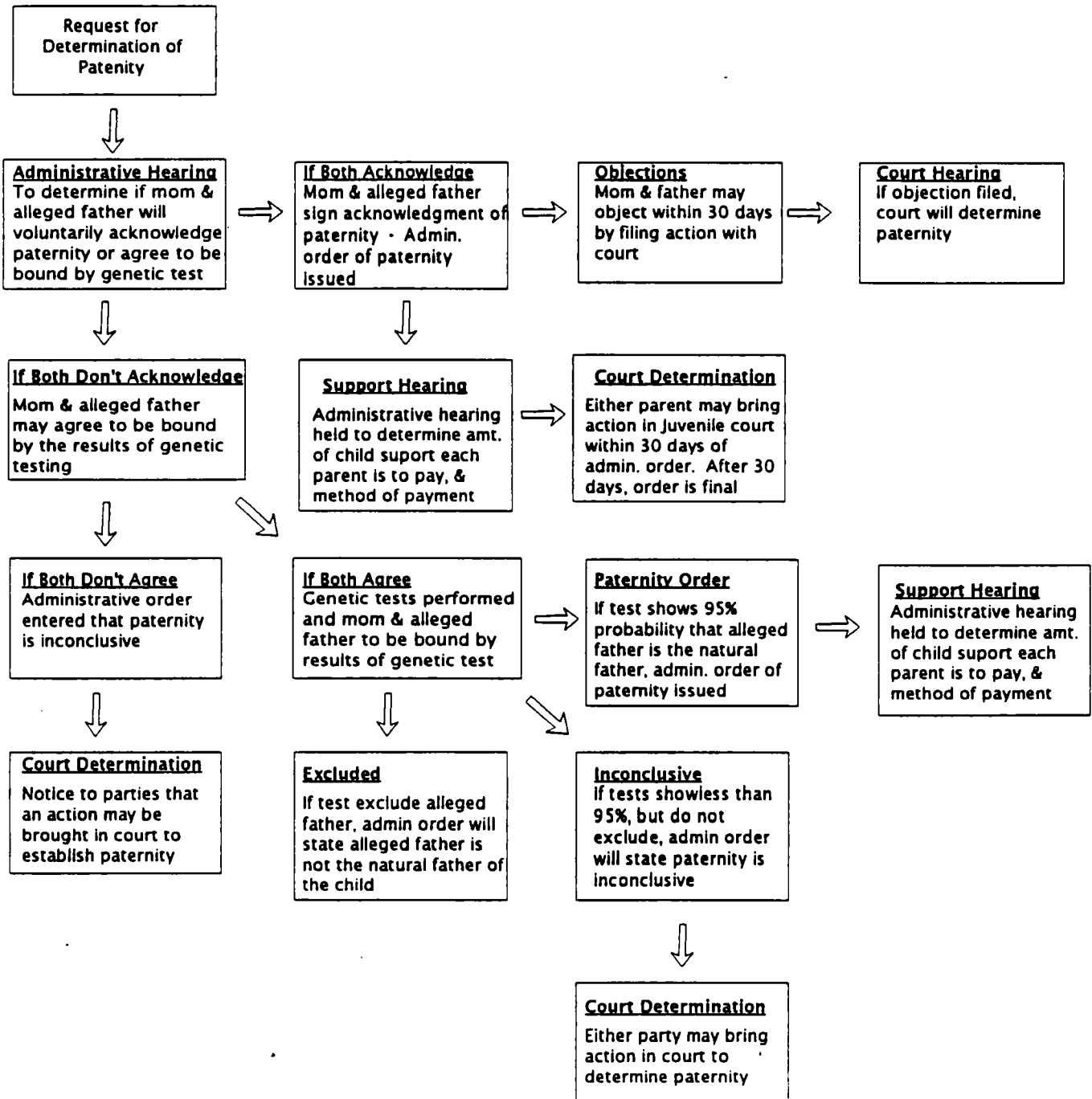
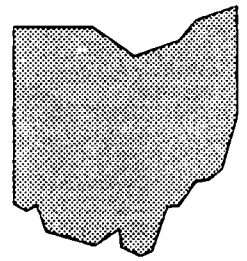
(2) In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother with any person who has been excluded from consideration as a possible father of the child involved by the results of a paternity blood test is inadmissible in evidence.

(3) When a paternity blood test excludes an alleged father from possible paternity, the test shall be conclusive evidence of nonpaternity of the alleged father for all purposes in the district court.

History: En. Sec. 8, Ch. 119, L. 1989.

Administrative Paternity Establishment

Under Ohio Statute, Effective July 15, 1992



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IMPROVING PATERNITY ESTABLISHMENT IN CONTESTED CASES WITHIN THE JUDICIAL SYSTEM

EXECUTIVE SUMMARY

Recent efforts to reform paternity establishment procedures have focused on obtaining voluntary acknowledgments. However, in some cases, the man will not voluntarily acknowledge paternity. Since genetic tests are now routinely used in contested cases and the results they provide are almost conclusive, there is usually sufficient evidence to establish paternity if the man is actually the father, even if he is unwilling to voluntarily acknowledge. However, the process for establishing paternity in contested cases is often protracted, particularly in localities which use the courts. This paper examines ways to improve contested paternity establishment in a judicial system.

Expedited Process

Many States that use courts for establishing paternity have already implemented practices to expedite the process, including the use of hearing officers, efficient case scheduling, and pretrial conferences. Legislation proposed by the Administration will, if enacted, require expedited paternity establishment processes for contested IV-D cases, thereby providing an impetus for the widespread adoption of efficient court management practices.

Additional Reforms to Expedite Contested Cases

Civil Proceeding. The vast majority of States have civil procedures for paternity establishment. However, some States still have quasi-criminal rules and procedures. Federal legislation could require States to develop completely civil procedures, using a "preponderance of the evidence" standard, for contested cases. Civil procedures would likely expedite the process and create less conflict.

Service of Process. The inability to serve process is a major reason for failed paternity establishment. To address this problem, at least one jurisdiction has hired its own sheriffs that work exclusively on paternity and child support matters. Some States authorize first-class or certified mail service, limiting the need for personal process servers.

Temporary Support Orders and Retroactive Child Support. If the alleged father is obligated to pay support under a temporary order or if he knows that he may be ordered to pay retroactive child support, he will not have an incentive to prolong the paternity process by raising objections or other hurdles.

Other Contested Case Reforms

Other reforms, in addition to those which expedite the process, may improve the adjudication of contested cases.

Admissibility of Taped Admissions. Federal legislation could require States to provide that written, videotaped, or audiotaped evidence of the defendant admitting paternity be admissible as evidence.

Preventing Fathers from Relitigating Paternity Determinations. A Federal statute requiring States to provide that a father whose paternity has been previously established may not plead non-paternity as a defense to a support action will prevent paternity determinations from being needlessly reopened.

Nonjoinder of Child. A Federal statute providing that States may bring a paternity action without joinder of the child as a party to the action may ensure that the child can relitigate paternity if a case was incorrectly dismissed due to a technicality.

Standing to Bring a Paternity Action. For reasons of equity, the Federal government may want to require States to allow a father, who wants contact and a relationship with his child, to initiate paternity establishment proceedings.

Interstate Paternity Establishment

Contested cases can be particularly difficult to work when the parties live in different States. Increased use of long-arm jurisdiction, improving interstate locate methods, service of process reform, and liberalizing rules of evidence would improve processing in such cases.

INTRODUCTION

Recent efforts to reform paternity establishment procedures have focused on obtaining voluntary acknowledgments. However, in some cases, the man may be unwilling to voluntarily acknowledge paternity. He may not believe or may be unsure that he is the father. The parents may not get along with each other. The father may not want to pay child support or have a relationship with his child. In such contested cases, paternity must be established by means other than a voluntary acknowledgment.

In recent years, scientific advancements in genetic testing have revolutionized the paternity determination process in contested cases. Genetic tests can usually either exclude a man from consideration or establish the probability that he is the father at 99 percent or higher, leaving little doubt as to whether an alleged father is actually the genetic father. Since genetic tests are now routinely used in contested cases and the results they provide are almost conclusive, there is usually sufficient evidence to establish paternity if the man is actually the father, even if he is unwilling to voluntarily acknowledge.

However, even with genetic testing, the process for establishing paternity in contested cases can still be protracted, particularly in localities which use the courts. One study of three localities found that paternity establishment, on average in both contested and uncontested cases, took 5 to 10 months after a case was opened, depending on the locality.¹ In certain localities, some contested cases have lasted 2 to 4 years. The longer it takes to establish paternity, the longer the children will have to wait for support.

Paternity establishment within the court system is often problematic, particularly in contested cases, for several reasons. First, fathers are able to use dilatory tactics, such as requesting continuances or jury trials (jury trials may lead to docket delays of over a year), in order to delay the proceedings. Second, some court procedures are burdensome and create delays. For example, some courts require the testimony of every person in the chain-of-custody of a blood sample before genetic test results can be admitted as evidence. There are often delays

between each step in the process as pleadings are filed, motions are made, and depositions are taken. Third, some courts may give low priority to paternity cases. Furthermore, some courts, particularly in urban areas with large caseloads, are overburdened and may simply lack the staff and capacity to handle so many cases. This leads to scheduling and long waits to get on the court's docket. If the paternity caseload were to increase further as a result of a universal paternity establishment initiative, some courts may be even further overwhelmed.

This last problem, an overburdened court system, may largely be a result of the other problems--dilatory tactics, cumbersome procedures, and a lack of effort. The courts may be able to handle the caseload if they developed efficient procedures and focused on paternity establishment. Furthermore, although judicial processing of paternity cases is problematic in some jurisdictions, there is little information available regarding how widespread these problems are. Some courts, such as the paternity court in Prince George's County, Maryland, have focused on paternity cases and adopted procedures that enable the judicial system to efficiently handle a large volume of cases.

This paper will examine reforms that can be implemented within a judicial system.² (Administrative process and genetic testing reforms are examined in separate papers and are not dealt with here). The paper will look at ways to expedite contested cases, other contested case reforms, and options for improving interstate contested cases. There are three reasons for examining ways to expedite a judicial process. First, the courts handle paternity establishment cases in most States. Second, unless administrative process is federally-mandated, some jurisdictions, with strong court systems, are likely to continue to process most paternity cases judicially. Finally, even if administrative processes for paternity establishment are mandated or widely adopted, some complex contested cases may still need to be adjudicated in the courts. Most States that currently use an administrative process for establishing paternity still use courts as a last resort in some cases.

EXPEDITED PROCESS

Many States that use judicial systems for establishing paternity have already implemented reforms designed to expedite the process. For example, some jurisdictions use:

Court Hearing Officers. Some courts, including courts in parts of Delaware and Pennsylvania, allow court officials, other than judges, to make decisions in paternity cases. These officials, often called hearing officers or masters, may be able to order genetic tests or ratify voluntary acknowledgments. This expedites the process by allowing officials other than judges to make decisions and take action.

Efficient Case Scheduling. Courts expedite the process through innovative scheduling practices. Some courts schedule days for dealing solely with paternity, allowing the cases to be processed more quickly. Prince George's County, Maryland, for example, convenes paternity court once every other week, and processes at least 150 cases each day it is in session. Some courts also schedule a trial date at the time of the blood draw, allowing just enough time to get the test results prior to the trial.

Pretrial Conferences. Courts in Philadelphia, Pennsylvania schedule pretrial conferences between court personnel and the parties in contested cases. The conferences occur both prior to genetic testing and after receiving genetic test results and are designed to encourage voluntary acknowledgments so that the case will not have to go to trial.

Coordination between Courts and IV-D. Many courts have found that close coordination with the IV-D agency, on issues such as scheduling court hearings and trials, is essential to expediting the process. A number of States, including Colorado and Kansas, have established a child support judicial coordinator to serve as a liaison to foster open lines of communication and improved working relationships between the child support agency and the judiciary.

Such court management practices have been successful in expediting paternity establishment in many courts, but there are still many jurisdictions where the process remains lengthy. While the Federal government may want to encourage efficient court management practices, it would be difficult to federally-mandate each specific one. Practices that work in one court may not work in another due to local circumstances and procedures.

Instead of attempting to federally-mandate specific court management practices, the Administration has adopted an alternative approach that gives States more flexibility. A legislative proposal in the President's FY1994 budget, will, if enacted, require expedited paternity establishment processes for contested IV-D cases. Under the Administration's proposal, States would likely have flexibility to design their own expedited processes, but would have to meet case processing timeframes established in regulation. In order to meet these timeframes, States and courts would have to implement efficient court management practices (including, as discussed above, court hearing officers, efficient case scheduling, and pretrial conferences).³

ADDITIONAL REFORMS TO EXPEDITE CONTESTED CASES

In addition to the expedited process requirement in the proposed legislation, there are other reforms which would speed up the process. These reforms are more universally applicable than the specific court management practices discussed above and therefore could be federally-mandated by legislation.

Civil Proceeding. Historically, in most States, the paternity establishment process was initiated as a criminal proceeding. Criminal proceedings may have inhibited the paternity establishment process in several ways:

- The father may have been less willing to voluntarily acknowledge paternity if he was admitting to a criminal offense.
- The mother may have been reluctant to subject the father to a criminal conviction.
- Criminal proceedings required a higher standard of proof than civil proceedings.

The Family Support Act of 1988 encouraged States to adopt civil, rather than criminal, procedures for establishing paternity in contested cases.⁴ The vast majority, if not all, States now have civil procedures for paternity establishment. However, some States still have quasi-criminal rules and procedures regarding paternity establishment (e.g., criminal warrants for abandonment, arrest). Federal legislation could require States to develop completely civil procedures for contested cases. Civil procedures would likely expedite the process and create less conflict.

A related issue is the evidence standard used in a civil process. Some States use a "clear and convincing evidence" standard⁵, which is a harder standard to meet than a "preponderance of the evidence".⁶ The harder standard makes it more difficult to prove paternity. To address this problem, the Interstate Commission⁷ recommended a Federal statute requiring States to use a "preponderance of the evidence" standard as part of a civil process for determining paternity.

The Interstate Commission also recommended a Federal statute preventing States from having laws making it a crime to father a child out-of-wedlock.⁸ Several States currently have such criminal laws, which may hamper civil procedures for establishing paternity. Alleged fathers are more likely to cooperate in contested cases, and perhaps even voluntarily acknowledge, if State laws do not make their paternity a crime.

Service of Process. Service of process, under which notice is delivered to the obligor, is a necessary part of obtaining jurisdiction over an obligor in a paternity proceeding. However, the inability to serve process, e.g., because the obligor is purposely evasive or is frequently not home, is a major reason for failed paternity establishment. Many States require hand-delivered personal service, by a sheriff or private process server for example, for the initial contact in a proceeding. (Subsequent notification, after the initial contact, is less difficult since first class mail can be used in most States). Some process servers, such as sheriffs, may give priority to serving notice in criminal matters or other civil cases, rather than paternity cases.

To address these problems, the IV-D agency in Prince George's County, Maryland has hired its own sheriffs that work exclusively on paternity and child support matters. In addition, some States authorize first-class or certified mail service even for the initial service of process, limiting the need for personal process servers. However, there are drawbacks for using mail or similar techniques for initial service. These methods provide little or no proof that the obligor actually received service. Such proof is important in order to protect the rights of the obligor. In addition, lack of proof may impede progress in a case. For example, the judge may be reluctant or unable to enter a default order if there is not sufficient proof of initial service. In addition, if the obligor is not served, he may challenge and overturn the order. Therefore, techniques such as first-class mail may be more appropriate for subsequent service rather than initial service.⁹

Temporary Support Orders. The Interstate Commission recommended a Federal statute requiring States to have laws providing for the use of temporary support orders. Temporary orders require the man to pay child support prior to the final adjudication of paternity if genetic test results reach a certain threshold. Minnesota law allows the establishment of a temporary support order if genetic test results indicate a probability of paternity of 92 percent or greater. Once the alleged father is obligated to pay support under the temporary order, he no longer has an incentive to delay the paternity process by raising objections or other legal hurdles; therefore, resolution of the paternity issue should be expedited. In addition, the child will start receiving support payments sooner. However, temporary support orders may be unnecessary if a rebuttable presumption has been created by genetic test results, since paternity resolution should already be expedited. They may also create confusion and additional paperwork if the support amount is changed when the final support order is established, or if paternity is never established.

Retroactive Child Support. Another reform designed to expedite the process would be to require States have laws for awarding retroactive child support. In some States, courts have the authority to order retroactive support. In Minnesota, for example, courts can award retroactive child support for the two-year-period prior to the initiation of the paternity action.

In other States, retroactive child support can be awarded from the time of birth or the time of filing for paternity or support. If the man knows he may be ordered to pay retroactive child support, he will have less of an incentive to prolong paternity and support order establishment through dilatory tactics.

Jury Trials. Some courts still use jury trials to establish paternity in some cases. Limiting the use of jury trials would expedite the process. This issue is discussed in another paper.

OTHER CONTESTED CASE REFORMS

In addition to reforms designed to expedite the process, other reforms for contested cases within the judicial system are needed. These reforms, discussed below, would increase the availability of evidence, prevent the father from relitigating cases where paternity has been established, allow children the opportunity to relitigate cases where paternity was not established, and allow men claiming to be fathers to initiate paternity actions. While these reforms can be implemented within a judicial system, they could also be used within administrative processes.

Admissibility of Taped Admissions. The Interstate Commission recommended a Federal statute requiring States to provide that written, videotaped, or audiotaped evidence of the defendant admitting paternity be admissible as evidence in a contested case. A witness would have to testify, in person or by affidavit, that the person admitting paternity was the defendant. This provision would allow additional evidence that could help prove paternity.

Res Judicata Effect of Paternity Determination. The principle of res judicata, which is designed to bring an end to litigation in a case, prevents relitigation of a claim or issue after a final determination by a court. Generally, divorce decrees that recognize paternity or other final paternity determinations are governed by res judicata; therefore, the obligor cannot raise non-paternity as a defense in a subsequent child support establishment or enforcement proceeding. However, some courts have allowed paternity cases to be reopened after a final

determination. To address this issue, the Interstate Commission recommended enactment of a Federal statute requiring States to have and use laws providing that a father whose paternity has been previously established, perhaps during a divorce proceeding, may not plead non-paternity as a defense to a support action.¹⁰

Nonjoinder of Child. While it is generally desirable to prevent fathers from relitigating paternity determinations once paternity has been established, it may be appropriate to allow children to relitigate in cases where paternity should have been established but was not. In some States, a parentage action cannot be brought without joinder of the child as a party.¹¹ Joinder is a legal principle that allows, or sometimes requires, persons involved in a lawsuit to be joined as plaintiffs to litigate the matter together. The problem with this practice is that if the child is joined as a party to the action, res judicata may prevent the matter from being relitigated, even if a technicality or error prevented paternity from being established. On the other hand, if the child is not joined as a party, the child may have standing to relitigate paternity at a later point.

Therefore, the Interstate Commission recommended enactment of a Federal statute providing that States may bring a paternity action without joinder of the named child. However, the Commission also recommended that State law would govern the res judicata effect of nonjoinder. Therefore, under the Interstate Commission's recommendation, State law could still prohibit relitigation, even if the child was not joined as a party in the original action. Alternatively, a Federal statute could require that if a child is not named as a party in the original action, the child has the right to relitigate paternity at a later point.

Standing to Bring a Paternity Action. In a few States, a person claiming to be the father of the child does not have standing to initiate a paternity action. The Interstate Commission encouraged States to give such standing to a person claiming to be the father. For reasons of equity, it is important to allow a father, who wants contact and a relationship with his child, to initiate paternity establishment proceedings. However, if the child's mother is married or involved with another man who acts as a father to the child, allowing the man claiming to be

the biological father to initiate paternity proceedings could disrupt the family and potentially harm the child in some cases.

INTERSTATE PATERNITY ESTABLISHMENT

Contested cases can be particularly difficult to work when the parties live in different States. If the alleged father lives out-of-State, a court must either obtain long-arm jurisdiction over the man¹² or refer the case to another State for paternity establishment. If an interstate referral is made, the responding State's motivation for working another State's case may be low. IV-D agencies and parents complain that interstate paternity actions take too long, involve burdensome paperwork requirements, and are characterized by a lack of communication and cooperation between States. Below is a brief overview of some reforms which might improve the interstate establishment of paternity. (See the issue paper on interstate enforcement for a more detailed discussion of the interstate issue).

Use of Long-Arm. Use of long-arm would avoid interstate action by allowing one State to maintain control and work a case. Most States have long-arm authority in paternity cases; however a few do not. A Federal mandate requiring States to adopt the Uniform Interstate Family Support Act (UIFSA), a recently-drafted model State statute governing interstate processing, would ensure that every State had long-arm authority. UIFSA includes a broad long-arm provision that can be used to establish paternity.

Federal regulations require States to use their long-arm statutes, if they have a statute, where appropriate to establish paternity. However, since the State determines which cases are appropriate, long-arm jurisdiction is not widely used by most States. In order to increase the use of long-arm, the Federal government might: (1) establish financial incentives, or (2) require States to attempt long-arm jurisdiction before referring a case to another State, with only limited and specified exceptions.

Improving Interstate Locate. One of the primary barriers to working an interstate paternity case is locating the alleged father in another State. A national interstate network, the Child Support Enforcement System (CSENet) is currently being implemented. This network will allow locate inquiries and other information to be transmitted electronically between States, thereby expediting access to locate data. Complete implementation, and possible future expansion of CSENet's functions should help improve interstate locate.

Improving Service of Process. As discussed earlier in this paper, service of process can be an impediment to successful paternity adjudication. The problem is particularly difficult in interstate cases where it is necessary to serve an out-of-State individual. Innovative service-of-process techniques, such as certified mail, can help a court to serve process directly on a non-resident, without relying on an out-of-state process server. In addition, if each State recognized and accepted other States' proof and methods of service, States would be able to more easily use other States' service in long-arm cases.

Liberalizing rules of evidence. Evidence is essential to proving paternity in contested cases. However, obtaining, transmitting, and admitting evidence in interstate paternity cases can be difficult. To address this problem, UIFSA authorizes use of innovative techniques for transmission of evidence between States (e.g., via telephone), communication between States to obtain information, and assistance with discovery requests of another State. However, UIFSA only authorizes some of these actions and does not require them. To go a step further, Federal legislation could require States to: act on discovery orders issued by other States; use procedures that allow out-of-State witnesses to testify by telephone; and relax conditions for admitting out-of-State documents.

**APPENDIX: OVERVIEW OF PATERNITY PROPOSALS IN
INTERSTATE COMMISSION REPORT AND ADMINISTRATION'S LEGISLATION**

Proposal	Interstate Commission Recommendation	Administration's Legislative Proposal
Time limit for objections to genetic test results; otherwise results admissible without foundation	X	X
Presumption of paternity based on genetic test results	X	X
Use of default orders	X	X
Expedited processes for paternity establishment		X
Immunity from prosecution in connection with an acknowledgment of paternity; decriminalization of nonmarital parentage	X	
Civil proceeding; preponderance of the evidence	X	
Putative father given standing to bring action	X	
Joinder of child not necessary; privity law governs res judicata effect	X	
Use of temporary support orders	X	
Admissibility of taped admissions and birth- related bills	X	
Party with paternity previously determined cannot plead non-paternity in support action	X	
Revised paternity performance standard		X
Simple civil process for voluntarily acknowledging paternity	X	X
Hospital-based acknowledgment programs	X	X
Voluntary acknowledgment creates presumption of paternity and is admissible as evidence		X
Acknowledgment basis for seeking support		X
Hearing to ratify acknowledgment unnecessary	X	
Paternity determinations made by another State entitled to full faith and credit		X
Paternity outreach programs with 90% FFP	X	

APPENDIX: VOLUNTARY ACKNOWLEDGMENTS

The best way to expedite contested cases is to avoid them. Even if formal proceedings against an alleged father have already begun in a contested case, the matter may still be resolved by a voluntary acknowledgment. Although an alleged father may be initially unwilling to acknowledge paternity, perhaps because he is uncertain whether he is actually the biological father, he may be willing to voluntarily acknowledge after seeing genetic test results which show a high probability of paternity.

The Administration's proposed paternity legislation would require States to enact simple procedures for the voluntary acknowledgment of paternity. By requiring voluntary acknowledgment procedures as part of hospital-based and birth registration programs, the proposal particularly emphasizes early paternity establishment.

However, the Administration could take additional steps, most of which would require new Federal statutes, to increase the number of paternities established by voluntary acknowledgment and to expedite the process:

Require States to develop procedures for giving alleged fathers multiple opportunities to voluntarily acknowledge. State's voluntary acknowledgment procedures should be widely available (i.e., not simply limited to hospitals). Furthermore, once formal adjudication begins in a contested case, the alleged father should be given an opportunity to voluntarily acknowledge at every stage in the process.

Require States to develop outreach programs. Both the Interstate Commission and the Bradley/Roukema bill would require States to develop outreach programs for encouraging voluntary acknowledgments. The programs would include the distribution of written materials at schools, hospitals, and other agencies, and would receive 90 percent Federal Financial Participation (FFP).

Require staff training programs. A report by the Department of Health and Human Services Office of Inspector General found that interview training for caseworkers was effective in increasing the number of voluntary acknowledgments. (Department of Health and Human Services Office of Inspector General, "Effective Paternity Establishment Practices: Technical Report", January 1990, p. 15). Similarly, training of hospital and vital records staff is essential to the success of hospital-based voluntary acknowledgment programs.

If, under State procedures, a voluntary acknowledgment must be ratified by a tribunal, require that ratification be expedited. Many States require that a voluntary acknowledgment be entered or ratified by a tribunal. In order to ensure that this process does not delay a finding of paternity, agencies that obtain voluntary acknowledgments could be required to forward them to the appropriate tribunal within a specified timeperiod after receiving the acknowledgment. The Bradley/Roukema bill would establish a 10 day timeframe. Also, the tribunal could be required to ratify the acknowledgment without the necessity of a hearing.

Require collection of information necessary for support determination be done concurrently with the paternity acknowledgment process. This will not increase the number of voluntary acknowledgments, but will ensure, in cases where an acknowledgment is obtained, that support order establishment can be done concurrently or as soon as possible after paternity establishment.

Establish conditions and limits for challenging a voluntary acknowledgment. This will ensure that a voluntary acknowledgment cannot easily be overturned. One possibility would be to specify time limits within which challenges must occur, such as 1 or 2 years after the acknowledgment. Another option would be to only allow challenges upon a showing that it is in the best interest of the child. (David T. Ellwood and Paul K. Legler, "Getting Serious about Paternity", January 1993, DRAFT). The Bradley/Roukema bill contains a provision that would require States to adopt procedures "under which an individual who voluntarily acknowledges paternity may request genetic tests within 1 year of such acknowledgment". However, the bill does not specify whether the test results could be used to reverse the voluntary acknowledgment.

Many of these reforms are discussed in greater detail in the paper on universal paternity establishment.

ENDNOTES

1. "Costs and Benefits of Paternity Establishment" was an OCSE-funded study conducted by the Center for Health and Social Services Research and Maximus, Inc. and published in 1985. Data was collected in 1979 through 1981, so the results are somewhat dated. The study examined paternity establishment in Eugene, Oregon; Dane County, Wisconsin; and Essex County, New Jersey. These localities were chosen for their above average performance and are not necessarily representative of localities nationwide. The localities all established paternity using judicial or quasijudicial procedures. The figures regarding average time necessary to establish paternity include both uncontested and contested cases; therefore, the time for contested cases was probably considerably longer. In addition to the relatively lengthy time required for paternity establishment, there were a large number of cases where paternity was not established.
2. While all of the options discussed in this paper can be implemented within a judicial system for establishing paternity, many can also be implemented within an administrative system.
3. Expedited processes for support order establishment and enforcement were mandated by Federal legislation in 1984. The experience of implementing these requirements indicates that expedited timeframes are an effective means of encouraging State innovation that effectively speeds up the process.
4. The Administration's proposed paternity legislation would require States to adopt civil procedures for the voluntary acknowledgment of paternity, but would not require civil procedures for contested cases.
5. States which use a "clear and convincing evidence" standard generally only use it in certain circumstances, such as posthumous proceedings.
6. In 1987, the U.S. Supreme Court, in Rivera v. Minnich, held that it is constitutional to determine paternity using a "preponderance of the evidence" standard.
7. Congress, as part of the Family Support Act of 1988, created the U.S. Commission on Interstate Child Support, charging it to submit a report containing recommendations for improving the interstate establishment and enforcement of support awards. In 1992, the Commission issued its comprehensive final report which contained numerous recommendations.
8. The Interstate Commission's recommendation did not apply to statutory rape laws.
9. If an obligor has already received initial service, he is aware of the proceedings, and he may inform the tribunal of

address changes if he moves so that the tribunal will be able to deliver subsequent service.

10. The Uniform Interstate Family Support Act (UIFSA), a recently-drafted model State statute governing interstate processing, would implement this recommendation in interstate cases. Section 315 of UIFSA states, "A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonpaternity as a defense to a proceeding under this Act". See the issue paper on interstate enforcement for a more detailed discussion of UIFSA.

11. For example, California (if the child is 12 years or older), Colorado, North Dakota, New Mexico, Ohio (unless good cause is shown for not doing so), Washington, and Wyoming require the child to be made a party to a paternity action.

12. In order for a State to use long-arm in a case, the alleged father must have had "contact" with the State, as specified by State law. For example, many States' laws allow the use of long-arm in a paternity case if the non-resident obligor engaged in sexual intercourse, which may have resulted in the child's conception, in the State.

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