



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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JUDICIARY COMMITTEE

MARCH 6, 2020

S.B. No. 317

AN ACT CONCERNING THE OPENING OR SETTING ASIDE OF A PATERNITY JUDGMENT

The Office of Chief Public Defender (OCPD) appreciates the opportunity to offer comments on ***Raised Senate Bill 317, An Act Concerning the Opening or Setting Aside of a Paternity Judgment.***

Public Defenders and Assigned Counsel under contract with OCPD represent indigent respondents in paternity actions who wish to exercise their statutory right to counsel and child support obligors at risk of incarceration in civil contempt proceedings in every judicial district across Connecticut. In contempt proceedings, we are appointed when a Family Support Magistrate (FSM) or judge finds that an indigent obligor facing a civil contempt charge is at risk of incarceration and wishes to exercise his or her right to court-appointed counsel.¹

There exists a statutory right to counsel in paternity actions given, in part, the important rights and obligations that follow from a paternity judgment, including, but not limited to, a duty to support the child and the risk of incarceration when such obligation is not or cannot be met. In addition to

¹ Public Defenders and Assigned Counsel represent such persons in Family Support Magistrate Court; Assigned Counsel also represent such persons on civil contempt charges in Family Court.

paternity judgments that enter as a result of a paternity petition filed in FSM court, a validly-executed acknowledgment of paternity can also serve as a legal finding of paternity.² Under existing law, there are understandably very limited circumstances and timeframes within which the court can consider opening and setting aside such judgments. More specifically, an acknowledgment of paternity may only be challenged after the 60-day rescission period if the challenger can prove fraud, duress or material mistake of fact. Although current law would permit the court to consider evidence that the challenger is not the father of the child, this bill as currently drafted would specifically *preclude* the court from ordering genetic testing to determine paternity unless the challenger has otherwise independently met the burden of proof of fraud, duress or mistake. Given the important interests at stake, and the reliability and accuracy of genetic testing, OCPD would suggest removing that language in the bill, which would continue to allow the court to order genetic testing earlier in this process. It's our understanding that the Department of Social Services is in agreement with this amendment.

In addition, the bill as currently drafted would specifically *preclude* the court from setting aside an acknowledgment of paternity *even if* the challenger has proven fraud, duress or material mistake of fact unless it *also* finds that this would be in the best interest of the child. OCPD supports adding specific statutory language that would require the court to *consider* the child's best interests, but the existing language in the bill is overly proscriptive and, in effect, makes this an independent and required ground to open the judgment despite having already found fraud, duress or mistake in the underlying judgment. In effect, this would require a court to deny a motion to set aside the judgment of paternity *even if* genetic testing confirms that the challenger is NOT the biological father, AND there is evidence of fraud, duress or mistake, based *solely* on the best interests of the child. While the list of "best interest" criteria is not mandated nor exhaustive, it specifically allows the court to consider the financial support the child could receive from both the acknowledged father and the biological father in determining best interests. While not the primary intent, this could require a person who has been found NOT to be the father of the child through genetic testing to remain the "father" for purposes of providing ongoing support to the child if that is found to be in the child's best interest. Moreover, if such person is later unable to provide such support, he could be subject to a contempt proceeding and incarcerated for his failure to pay, while the biological father would have no such obligation.

We appreciate the important interests at stake in these proceedings and efforts to clarify and standardize this process. To that end, we would be happy to work with DSS, the Judicial Department,

² See, CGS Sec. 46b-172.

and other stakeholders on any amendments that might be needed to balance these important interests consistent with the rights of all parties and the goals of procedural and substantive justice.

Thank you for considering our perspective on this important issue.