

1 SENATE BILL NO. 36

2 INTRODUCED BY BISHOP

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 ESTABLISHMENT OF PATERNITY OF A CHILD; AND AMENDING SECTIONS 40-5-232, 40-5-233,
7 40-5-234, 40-5-236, 40-5-237, 40-6-102, 40-6-105, 40-6-115, 40-6-117, 40-6-118, AND 50-15-210,
8 MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 40-5-232, MCA, is amended to read:

13 **"40-5-232. Establishment of paternity -- presumption -- notice of paternity determination --**
14 **contents.** (1) When the paternity of a child has not been legally established under the provisions of Title
15 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions
16 of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through
17 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2,
18 chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

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

21 (3) In any proceeding under 40-5-231 through 40-5-237, if a ~~man~~ person acknowledges paternity
22 of a child in writing and the acknowledgment is filed with the department, the department may enter an
23 order establishing legal paternity. As a part of a voluntary acknowledgment, the department shall provide
24 information to the parents regarding the rights and responsibilities of acknowledging paternity. An
25 acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

26 (4) Full faith and credit must be given to a determination of paternity made by any other state,
27 whether presumed by law, established through voluntary acknowledgment, or established by administrative
28 or judicial processes.

29 (5) When two or more conflicting presumptions arise, a presumption based on a paternity blood
30 test is sufficient to overcome other presumptions. If there are conflicting presumptions not based on

1 paternity blood testing, the presumption that is factually founded on the weightier considerations of policy
2 and logic controls.

3 ~~(4)~~(6) The department shall commence proceedings to establish paternity by serving on an alleged
4 father a notice of paternity determination. The department may not serve the notice unless it has:

5 (a) a sworn statement from the child's mother claiming that the alleged father is the child's natural
6 father;

7 (b) evidence of the existence of a presumption of paternity under 40-6-105; or

8 (c) any other reasonable cause to believe that the alleged father is the child's natural father.

9 ~~(5)~~(7) Service on the alleged father of the notice of paternity determination must be made as
10 provided in 40-5-231(2). The notice must include:

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

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

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

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

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

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

19 (i) the alleged father is subject to compulsory paternity blood testing;

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

21 (iii) upon receipt of the paternity blood test results, if the alleged father continues to deny paternity,
22 the alleged father may request the department to refer the matter to district court for a determination of
23 paternity.

24 ~~(6)~~(8) The alleged father may file a written denial of paternity with the department within 20 days
25 after service of the notice of paternity determination.

26 ~~(7)~~(9) When there is more than one alleged father of a child, the department may serve a notice
27 of paternity determination on each alleged father in the same consolidated proceeding or in separate
28 proceedings. Failure to serve notice on an alleged father does not prevent the department from serving
29 notice on any other alleged father of the same child."
30

1 **Section 2.** Section 40-5-233, MCA, is amended to read:

2 **"40-5-233. Establishment of paternity -- administrative hearing -- subpoena -- compulsory blood**
3 **testing.** (1) When the department receives a timely written denial of paternity, it may order the alleged
4 father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods.
5 If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged
6 father had sexual intercourse with the child's mother during the probable time of the child's conception or
7 if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue
8 a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of
9 sexual intercourse during the possible time of conception may be established by affidavit of the child's
10 mother.

11 (2) When there is reasonable cause to suggest that a blood test sample of a person submitting to
12 a blood test was not the sample of the alleged father, mother, or child, an additional hearing may be held.
13 The scope of the hearing is limited to questions involving the blood drawing or the chain of custody at the
14 blood drawing site. The hearing officer may order retesting of any party.

15 ~~(2)~~(3) If the department does not receive a timely written denial of paternity or if an alleged father
16 fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may enter an
17 order declaring the alleged father the legal father of the child. The order will take effect within 10 days
18 after entry of the default unless the alleged father before the 10th day presents good cause for failure to
19 make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The
20 department may not enter an order under this section if there is more than one alleged father unless the
21 default applies to only one of them and all others have been excluded by the results of paternity blood
22 testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

23 ~~(3)~~(4) If the rights of others and the interests of justice so require, the department may apply to
24 any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to
25 paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds
26 reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court
27 shall enter an order compelling the alleged father to submit to a paternity blood test. As provided in
28 subsection (1), reasonable cause may be established by affidavit of the child's mother."

29

30 **Section 3.** Section 40-5-234, MCA, is amended to read:

1 **"40-5-234. Paternity blood tests -- use of expert's affidavit -- effect of test results -- records --**

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

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

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

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

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

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

19 (4) The department may enter an order of nonpaternity based on a blood test exclusion and may
20 order the department of health and environmental sciences to prepare an amended or substitute birth
21 certificate.

22 (5) The department may enter in the support order registry established in 40-5-271 a written
23 finding of any paternity presumption created by paternity blood test results.

24 (6) A presumption of paternity established under this section is a sufficient basis for establishing
25 a support order."

26

27 **Section 4.** Section 40-5-236, MCA, is amended to read:

28 **"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other**
29 **matters -- fees.** (1) If the scientific evidence resulting from a paternity blood test does not exclude the
30 alleged father and ~~he~~ the alleged father continues to deny paternity, the alleged father shall file a written

1 objection with the department within 20 days after service of the paternity blood test results. If the alleged
 2 father fails to make a timely objection, the alleged father is barred from later contesting a presumption of
 3 paternity created by the paternity blood test results. Upon receipt of the written objection, the department
 4 shall refer the matter to the district court for a determination based on the contents of the administrative
 5 hearing record and any further evidence that may be produced at trial. Except as otherwise provided in
 6 40-5-231 through 40-5-237, proceedings in the district court ~~shall~~ must be conducted pursuant to Title 40,
 7 chapter 6, part 1.

8 (2) The administrative record must include:

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

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

11 (c) the transcript of the administrative hearing;

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

13 (e) any other relevant information.

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

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

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

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

27

28 **Section 5.** Section 40-5-237, MCA, is amended to read:

29 **"40-5-237. District court paternity proceedings -- objection to tests -- additional tests -- expert's**
 30 **report -- admissibility of evidence.** (1) If in a matter referred to the district court, if an alleged father

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

7 (2) The paternity blood test expert's completed and certified report of the results and conclusions
 8 of a paternity blood test is admissible as evidence without additional foundation testimony or other proof
 9 of authenticity and accuracy if the laboratory in which the expert performed the test is accredited for
 10 parentage testing by the American association of blood banks. Accreditation may be established by verified
 11 statement or reference to published sources. This subsection does not limit the right of a party to contest
 12 the identity of persons submitting to testing.

13 ~~(2)(3)~~ In any hearing before the court or at trial, testimony relating to sexual intercourse of the
 14 mother with any person who has been excluded from consideration as a possible father of the child
 15 involved by the results of a paternity blood test is inadmissible in evidence.

16 ~~(3)(4)~~ When a paternity blood test excludes an alleged father from possible paternity, the test ~~shall~~
 17 ~~be~~ is conclusive evidence of nonpaternity of the alleged father for all purposes in the district court."
 18

19 **Section 6.** Section 40-6-102, MCA, is amended to read:

20 **"40-6-102. ~~Parent and child relationship defined~~ Definitions.** As used in this part, the following
 21 definitions apply:

22 (1) "Blood test" means a test that demonstrates through examination of genetic markers either that
 23 an alleged father is not the natural father of a child or that there is a probability that an alleged father is the
 24 natural father of a child. A blood test may include but is not limited to the human leukocyte antigen test
 25 and DNA probe technology.

26 (2) ~~parent~~ "Parent and child relationship" means the legal relationship existing between a child
 27 and ~~his~~ the child's natural or adoptive parents incident to which the law confers or imposes rights,
 28 privileges, duties, and obligations. It includes the mother and child relationship and the father and child
 29 relationship.

30 (3) "Support judgment" or "support order" means an order, whether temporary or final, that

1 provides for the periodic payment of an amount of money expressed in dollars for the support of a child,
 2 including medical and health needs, child care, education, recreation, clothing, transportation, and other
 3 related expenses and costs specific to the needs of the child."

4

5 **Section 7.** Section 40-6-105, MCA, is amended to read:

6 **"40-6-105. Presumption of paternity.** (1) A ~~man~~ person is presumed to be the natural father of
 7 a child if any of the following occur:

8 (a) ~~he~~ the person and the child's natural mother are or have been married to each other and the
 9 child is born during the marriage or within 300 days after the marriage is terminated by death, annulment,
 10 declaration of invalidity, or divorce or after a decree of separation is entered by a court;

11 (b) before the child's birth, ~~he~~ the person and the child's natural mother have attempted to marry
 12 each other by a marriage solemnized in apparent compliance with law, although the attempted marriage
 13 is or could be declared invalid, and:

14 (i) if the attempted marriage could be declared invalid only by a court, the child is born during the
 15 attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity,
 16 or divorce; or

17 (ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after
 18 the termination of cohabitation;

19 (c) after the child's birth, ~~he~~ the person and the child's natural mother have married or attempted
 20 to marry each other by a marriage solemnized in apparent compliance with law, although the attempted
 21 marriage is or could be declared invalid, and:

22 (i) ~~he~~ the person has acknowledged ~~his~~ paternity of the child in writing in accordance with
 23 subsection (1)(e) and the acknowledgment is filed with the department of health and environmental
 24 sciences or with the district court for the county where ~~he~~ the person resides or for any county where the
 25 child support enforcement division of the department of social and rehabilitation services maintains a
 26 regional office; or

27 (ii) with ~~his~~ the person's consent, ~~he~~ the person is named as the child's father on the child's birth
 28 certificate; or

29 (iii) ~~he~~ the person is obligated to support the child under a written voluntary promise or by court
 30 order;

1 (d) while the child is under the age of majority, ~~he~~ the person receives the child into ~~his~~ the
 2 person's home and openly holds out represents the child to be as his the person's natural child; or

3 (e) ~~he~~ the person acknowledges ~~his~~ paternity of the child in a writing paternity acknowledgment
 4 form that is provided by the department of social and rehabilitation services and filed with the department
 5 of health and environmental sciences or with the district court of the county where ~~he~~ the person resides,
 6 ~~which court or department shall promptly inform the mother of the filing of the acknowledgment, and she~~
 7 ~~does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing~~
 8 ~~filed with the department of health and environmental sciences or with the district court of the county~~
 9 ~~where the acknowledgment was filed~~ or for any county where the child support enforcement division of
 10 the department of social and rehabilitation services maintains a regional office. The department of health
 11 and environmental sciences or the district court shall accept and file the completed form. As a part of a
 12 voluntary acknowledgment process, the department of social and rehabilitation services shall provide
 13 information to the parents regarding the rights and responsibilities of acknowledging paternity. If another
 14 ~~man~~ person is presumed under this section to be the child's father, acknowledgment may be effected only
 15 with the written consent of the presumed father or after the presumption has been rebutted.

16 (f) the scientific evidence resulting from a blood test, whether ordered by a court or administrative
 17 agency of competent jurisdiction or agreed to by the parties, shows a 95% or higher statistical probability
 18 of paternity.

19 (2) An acknowledgment is binding on a parent who executes it, whether or not the parent is a
 20 minor.

21 ~~(2)(3)~~ (3) A presumption under this section may be rebutted in an appropriate action by a
 22 preponderance of the evidence. When two or more conflicting presumptions arise, a presumption based
 23 upon a blood test is sufficient to overcome other presumptions. If there are conflicting presumptions not
 24 based on blood testing, the presumption that is factually founded on the weightier considerations of policy
 25 and logic controls.

26 (4) A presumption of paternity established under this section is a sufficient basis for establishing
 27 a support order."

28
 29 **Section 8.** Section 40-6-115, MCA, is amended to read:

30 **"40-6-115. Civil action.** (1) An action under this part is a civil action governed by the rules of civil

1 procedure. The mother of the child and the alleged father are competent to testify and may be compelled
2 to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

3 (2) Testimony relating to sexual access to the mother by an unidentified ~~man~~ person at any time
4 or by an identified ~~man~~ person at a time other than the probable time of conception of the child is
5 inadmissible in evidence, unless offered by the mother.

6 (3) In an action against an alleged father, evidence offered by ~~him~~ the alleged father with respect
7 to a ~~man~~ person who is not subject to the jurisdiction of the court concerning ~~his~~ sexual intercourse with
8 the mother at or about the probable time of conception of the child is admissible in evidence only if the
9 alleged father has undergone and made available to the court blood tests, the results of which do not
10 exclude the possibility of ~~his~~ the alleged father's paternity of the child. A ~~man~~ person who is identified and
11 is subject to the jurisdiction of the court ~~shall~~ must be made a defendant in the action.

12 (4) If a blood test has been initially ordered under this part and a party objects to the blood test
13 results, the objection must be filed within 20 days after service of the blood test results. If an objection
14 is filed, the court shall order an additional blood test. If no objection is made, the test results are admissible
15 as evidence of paternity without the need for foundation testimony or other proof of authenticity or
16 accuracy. This subsection does not limit the right of a party to contest the identity of persons submitting
17 to testing.

18 (5) If the alleged father fails to answer or to appear at a scheduled hearing or for a scheduled blood
19 test, the district court shall enter an order declaring the alleged father the legal father of the child. The
20 district court may not enter an order under this section if there is more than one alleged father unless the
21 default applies to only one of them and all others have been excluded by the results of blood testing."

22
23 **Section 9.** Section 40-6-117, MCA, is amended to read:

24 **"40-6-117. Enforcement of judgment or order.** (1) If existence of the father and child relationship
25 is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under
26 prior law, the court may order support payments to be made to the mother, the clerk of the court, or a
27 person, corporation, or agency designated to administer them for the benefit of the child under the
28 supervision of the court.

29 (2) Full faith and credit must be given to a determination of paternity made by any other state,
30 whether presumed by law, established through voluntary acknowledgment, or established by administrative

1 or judicial processes.

2 ~~(2)(3)~~ Willful failure to obey the judgment or order of the court is a civil contempt of the court. All
3 remedies for the enforcement of judgments apply.

4 ~~(3)(4)~~ (a) A district court judgment, decree, or order that establishes or modifies a child support
5 obligation must include a provision requiring the child support to be paid to:

6 (i) the legal custodian of the minor child;

7 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child
8 or collecting child support on behalf of the minor child under a legal assignment of rights; or

9 (B) the court for the benefit of the minor child;

10 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal
11 custodian; or

12 (iv) any assignee or other person, organization, or agency authorized to receive or collect child
13 support.

14 (b) A judgment, decree, or order that omits the provision required by subsection ~~(3)(a)~~ (4)(a) is
15 subject to the requirements of subsection ~~(3)(a)~~ (4)(a) without need for an amendment to the judgment,
16 decree, or order or for any further action by the court."

17

18 **Section 10.** Section 40-6-118, MCA, is amended to read:

19 **"40-6-118. Modification of judgment or order.** The court has continuing jurisdiction to modify or
20 revoke a judgment or order:

21 (1) for future education and support; and

22 (2) with respect to matters listed in 40-6-116(3), 40-6-116(4), and 40-6-117~~(2)(3)~~, except that
23 a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under
24 40-6-116(4) may specify that the judgment or order may not be modified or revoked."

25

26 **Section 11.** Section 50-15-210, MCA, is amended to read:

27 **"50-15-210. Paternity acknowledgment.** (1) Upon the birth of a child to a ~~woman~~ mother
28 unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in
29 which the birth occurs or the midwife who attends the birth shall:

30 (a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment

1 of parentage pursuant to 40-6-105;

2 (b) provide written information, furnished by the department of social and rehabilitation services,
3 describing the rights and responsibilities of parentage, the benefits of having a child's paternity established,
4 and the child's right to receive support; and

5 (c) forward a copy of an acknowledgment signed by the mother and the father to the department.

6 (2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of
7 obtaining an acknowledgment. The department of social and rehabilitation services shall establish ~~by rule~~
8 the amount of reasonable costs, not to exceed the amount for which federal financial participation is
9 available, and the procedures for claiming reimbursement.

10 (3) Hospitals, institutions, and midwives shall use forms prescribed by the department for the
11 acknowledgment of paternity."

12 -END-

APPROVED BY COMMITTEE
ON JUDICIARY

1 SENATE BILL NO. 36

2 INTRODUCED BY BISHOP

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 ESTABLISHMENT OF PATERNITY OF A CHILD; ~~AND~~ AMENDING SECTIONS 40-5-232, 40-5-233,
7 40-5-234, 40-5-236, 40-5-237, 40-6-102, 40-6-105, 40-6-115, 40-6-117, 40-6-118, AND 50-15-210,
8 MCA; AND PROVIDING AN EFFECTIVE DATE."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions
16 of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through
17 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2,
18 chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

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

21 (3) In any proceeding under 40-5-231 through 40-5-237, if a ~~man~~ person acknowledges paternity
22 of a child in writing and the acknowledgment is filed with the department, the department may enter an
23 order establishing legal paternity. As a part of a voluntary acknowledgment, the department shall provide
24 information to the parents regarding the rights and responsibilities of acknowledging paternity. An
25 acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

26 (4) Full faith and credit must be given to a determination of paternity made by any other state,
27 whether presumed by law, established through voluntary acknowledgment, or established by administrative
28 or judicial processes.

29 (5) ~~When two or more conflicting presumptions arise, a presumption based on a paternity blood~~
30 ~~test is sufficient to overcome other presumptions. If there are conflicting presumptions not based on~~

1 ~~paternity blood testing, the presumption that is factually founded on the weightier considerations of policy~~
 2 ~~and logic controls.~~

3 ~~(4)(6)(5)~~ The department shall commence proceedings to establish paternity by serving on an
 4 alleged father a notice of paternity determination. The department may not serve the notice unless it has:

5 (a) a sworn statement from the child's mother claiming that the alleged father is the child's natural
 6 father;

7 (b) evidence of the existence of a presumption of paternity under 40-6-105; or

8 (c) any other reasonable cause to believe that the alleged father is the child's natural father.

9 ~~(5)(7)(6)~~ Service on the alleged father of the notice of paternity determination must be made as
 10 provided in 40-5-231(2). The notice must include:

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

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

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

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

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

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

19 (i) the alleged father is subject to compulsory paternity blood testing;

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

21 (iii) upon receipt of the paternity blood test results, if the alleged father continues to deny paternity,
 22 the alleged father may request the department to refer the matter to district court for a determination of
 23 paternity.

24 ~~(6)(8)(7)~~ The alleged father may file a written denial of paternity with the department within 20
 25 days after service of the notice of paternity determination.

26 ~~(7)(9)(8)~~ When there is more than one alleged father of a child, the department may serve a notice
 27 of paternity determination on each alleged father in the same consolidated proceeding or in separate
 28 proceedings. Failure to serve notice on an alleged father does not prevent the department from serving
 29 notice on any other alleged father of the same child."
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3 **testing.** (1) When the department receives a timely written denial of paternity, it may order the alleged
4 father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods.
5 If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged
6 father had sexual intercourse with the child's mother during the probable time of the child's conception or
7 if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue
8 a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of
9 sexual intercourse during the possible time of conception may be established by affidavit of the child's
10 mother.

11 (2) When there is reasonable cause to suggest that a blood test sample of a person submitting to
12 a blood test was not the sample of the alleged father, mother, or child, an additional hearing may be held.
13 The scope of the hearing is limited to questions involving the blood drawing or the chain of custody at the
14 blood drawing site. The hearing officer may order retesting of any party.

15 ~~(2)~~(3) If the department does not receive a timely written denial of paternity or if an alleged father
16 fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may enter an
17 order declaring the alleged father the legal father of the child. The order will take effect within 10 days
18 after entry of the default unless the alleged father before the 10th day presents good cause for failure to
19 make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The
20 department may not enter an order under this section if there is more than one alleged father unless the
21 default applies to only one of them and all others have been excluded by the results of paternity blood
22 testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

23 ~~(3)~~(4) If the rights of others and the interests of justice so require, the department may apply to
24 any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to
25 paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds
26 reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court
27 shall enter an order compelling the alleged father to submit to a paternity blood test. As provided in
28 subsection (1), reasonable cause may be established by affidavit of the child's mother."
29

30 **Section 3.** Section 40-5-234, MCA, is amended to read:

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

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

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

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

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

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

19 (4) The department may enter an order of nonpaternity based on a blood test exclusion and may
 20 order the department of health and environmental sciences to prepare an amended or substitute birth
 21 certificate.

22 (5) The department may enter in the support order registry established in 40-5-271 a written
 23 finding of any paternity presumption created by paternity blood test results.

24 (6) A presumption of paternity established under this section is a sufficient basis for establishing
 25 a support order."

26

27 **Section 4.** Section 40-5-236, MCA, is amended to read:

28 **"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other**
 29 **matters -- fees.** (1) If the scientific evidence resulting from a paternity blood test does not exclude the
 30 alleged father and ~~he~~ the alleged father continues to deny paternity, the alleged father shall file a written

1 objection with the department within 20 days after service of the paternity blood test results. If the alleged
 2 father fails to make a timely objection, the alleged father is barred from later contesting a presumption of
 3 paternity created by the paternity blood test results. Upon receipt of the written objection, the department
 4 shall refer the matter to the district court for a determination based on the contents of the administrative
 5 hearing record and any further evidence that may be produced at trial. Except as otherwise provided in
 6 40-5-231 through 40-5-237, proceedings in the district court ~~shall~~ must be conducted pursuant to Title 40,
 7 chapter 6, part 1.

8 (2) The administrative record must include:

- 9 (a) a copy of the notice of paternity determination and the return of service ~~thereof~~ of the notice;
- 10 (b) the alleged father's written denial of paternity, if any;
- 11 (c) the transcript of the administrative hearing;
- 12 (d) the paternity blood test results and any report of an expert based on the results; and
- 13 (e) any other relevant information.

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

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

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

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

27

28 **Section 5.** Section 40-5-237, MCA, is amended to read:

29 **"40-5-237. District court paternity proceedings -- objection to tests -- additional tests -- expert's**
 30 **report -- admissibility of evidence.** (1) ¶ In a matter referred to the district court, if an alleged father

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

7 (2) The paternity blood test expert's completed and certified report of the results and conclusions
 8 of a paternity blood test is admissible as evidence without additional foundation testimony or other proof
 9 of authenticity and accuracy if the laboratory in which the expert performed the test is accredited for
 10 parentage testing by the American association of blood banks. Accreditation may be established by verified
 11 statement or reference to published sources. This subsection does not limit the right of a party to contest
 12 the identity of persons submitting to testing.

13 ~~(2)(3)~~ In any hearing before the court or at trial, testimony relating to sexual intercourse of the
 14 mother with any person who has been excluded from consideration as a possible father of the child
 15 involved by the results of a paternity blood test is inadmissible in evidence.

16 ~~(3)(4)~~ When a paternity blood test excludes an alleged father from possible paternity, the test ~~shall~~
 17 ~~be~~ is conclusive evidence of nonpaternity of the alleged father for all purposes in the district court."
 18

19 **Section 6.** Section 40-6-102, MCA, is amended to read:

20 **"40-6-102. ~~Parent and child relationship defined~~ Definitions.** As used in this part, the following
 21 definitions apply:

22 (1) "Blood test" means a test that demonstrates through examination of genetic markers either that
 23 an alleged father is not the natural father of a child or that there is a probability that an alleged father is the
 24 natural father of a child. A blood test may include but is not limited to the human leukocyte antigen test
 25 and DNA probe technology.

26 (2) ~~parent~~ "Parent and child relationship" means the legal relationship existing between a child
 27 and his ~~the child's~~ natural or adoptive parents incident to which the law confers or imposes rights,
 28 privileges, duties, and obligations. It includes the mother and child relationship and the father and child
 29 relationship.

30 (3) "Support judgment" or "support order" means an order, whether temporary or final, that

1 provides for the periodic payment of an amount of money expressed in dollars for the support of a child,
 2 including medical and health needs, child care, education, recreation, clothing, transportation, and other
 3 related expenses and costs specific to the needs of the child."

4
 5 **Section 7.** Section 40-6-105, MCA, is amended to read:

6 **"40-6-105. Presumption of paternity.** (1) A ~~man~~ person is presumed to be the natural father of
 7 a child if any of the following occur:

8 (a) ~~he~~ the person and the child's natural mother are or have been married to each other and the
 9 child is born during the marriage or within 300 days after the marriage is terminated by death, annulment,
 10 declaration of invalidity, or divorce or after a decree of separation is entered by a court;

11 (b) before the child's birth, ~~he~~ the person and the child's natural mother have attempted to marry
 12 each other by a marriage solemnized in apparent compliance with law, although the attempted marriage
 13 is or could be declared invalid, and:

14 (i) if the attempted marriage could be declared invalid only by a court, the child is born during the
 15 attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity,
 16 or divorce; or

17 (ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after
 18 the termination of cohabitation;

19 (c) after the child's birth, ~~he~~ the person and the child's natural mother have married or attempted
 20 to marry each other by a marriage solemnized in apparent compliance with law, although the attempted
 21 marriage is or could be declared invalid, and:

22 (i) ~~he the person has acknowledged~~ THE CHILD'S MOTHER AND THE CHILD'S ALLEGED FATHER
 23 HAVE ACKNOWLEDGED THE ALLEGED FATHER'S ~~his~~ paternity of the child in writing in accordance with
 24 subsection (1)(e) and the acknowledgment is filed with the department of health and environmental
 25 sciences or with the district court for the county where ~~he~~ the person resides or for any county where the
 26 child support enforcement division of the department of social and rehabilitation services maintains a
 27 regional office; ~~or~~

28 (ii) with ~~his~~ the person's consent, ~~he~~ the person is named as the child's father on the child's birth
 29 certificate; or

30 (iii) ~~he~~ the person is obligated to support the child under a written voluntary promise or by court

1 order;

2 (d) while the child is under the age of majority, ~~he~~ the person receives the child into ~~his~~ the
3 person's home and openly ~~holds out~~ represents the child to be as his the person's natural child; or

4 (e) ~~he~~ the person ~~acknowledges~~ THE CHILD'S MOTHER AND THE CHILD'S ALLEGED FATHER
5 ACKNOWLEDGE THE ALLEGED FATHER'S ~~his~~ paternity of the child in a ~~writing~~ paternity acknowledgment
6 form that is provided by the department of social and rehabilitation services and filed with the department
7 of health and environmental sciences or with the district court of the county where ~~he~~ the person resides,
8 ~~which court or department shall promptly inform the mother of the filing of the acknowledgment, and she~~
9 ~~does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing~~
10 ~~filed with the department of health and environmental sciences or with the district court of the county~~
11 ~~where the acknowledgment was filed or for any county where the child support enforcement division of~~
12 ~~the department of social and rehabilitation services maintains a regional office. The department of health~~
13 ~~and environmental sciences or the district court shall accept and file the completed form. As a part of a~~
14 ~~voluntary acknowledgment process, the department of social and rehabilitation services shall provide~~
15 ~~information to the parents regarding the rights and responsibilities of acknowledging paternity. If another~~
16 ~~man~~ person is presumed under this section to be the child's father, acknowledgment may be effected only
17 with the written consent of the presumed father or after the presumption has been rebutted.

18 (f) the scientific evidence resulting from a blood test, whether ordered by a court or administrative
19 agency of competent jurisdiction or agreed to by the parties, shows a 95% or higher statistical probability
20 of paternity.

21 (2) An acknowledgment is binding on a parent who executes it, whether or not the parent is a
22 minor.

23 ~~(2)(3)~~ (3) A presumption under this section may be rebutted in an appropriate action by a
24 preponderance of the evidence. ~~When two or more conflicting presumptions arise, a presumption based~~
25 ~~upon a blood test is sufficient to overcome other presumptions. If there are conflicting presumptions not~~
26 ~~based on blood testing, the presumption that is factually founded on the weightier considerations of policy~~
27 ~~and logic controls.~~

28 (4) A presumption of paternity established under this section is a sufficient basis for establishing
29 a support order."

30

1 **Section 8.** Section 40-6-115, MCA, is amended to read:

2 **"40-6-115. Civil action.** (1) An action under this part is a civil action governed by the rules of civil
3 procedure. The mother of the child and the alleged father are competent to testify and may be compelled
4 to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

5 (2) Testimony relating to sexual access to the mother by an unidentified ~~man~~ person at any time
6 or by an identified ~~man~~ person at a time other than the probable time of conception of the child is
7 inadmissible in evidence, unless offered by the mother.

8 (3) In an action against an alleged father, evidence offered by ~~him~~ the alleged father with respect
9 to a ~~man~~ person who is not subject to the jurisdiction of the court concerning ~~his~~ sexual intercourse with
10 the mother at or about the probable time of conception of the child is admissible in evidence only if the
11 alleged father has undergone and made available to the court blood tests, the results of which do not
12 exclude the possibility of ~~his~~ the alleged father's paternity of the child. A ~~man~~ person who is identified and
13 is subject to the jurisdiction of the court ~~shall~~ must be made a defendant in the action.

14 (4) If a blood test has been initially ordered under this part and a party objects to the blood test
15 results, the objection must be filed within 20 days after service of the blood test results. If an objection
16 is filed, the court shall order an additional blood test. If no objection is made, the test results are admissible
17 as evidence of paternity without the need for foundation testimony or other proof of authenticity or
18 accuracy. This subsection does not limit the right of a party to contest the identity of persons submitting
19 to testing.

20 (5) If the alleged father fails to answer or to appear at a scheduled hearing or for a scheduled blood
21 test, the district court shall enter an order declaring the alleged father the legal father of the child. The
22 district court may not enter an order under this section if there is more than one alleged father unless the
23 default applies to only one of them and all others have been excluded by the results of blood testing."

24
25 **Section 9.** Section 40-6-117, MCA, is amended to read:

26 **"40-6-117. Enforcement of judgment or order.** (1) If existence of the father and child relationship
27 is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under
28 prior law, the court may order support payments to be made to the mother, the clerk of the court, or a
29 person, corporation, or agency designated to administer them for the benefit of the child under the
30 supervision of the court.

1 (2) Full faith and credit must be given to a determination of paternity made by any other state,
 2 whether presumed by law, established through voluntary acknowledgment, or established by administrative
 3 or judicial processes.

4 ~~(2)(3)~~ Willful failure to obey the judgment or order of the court is a civil contempt of the court. All
 5 remedies for the enforcement of judgments apply.

6 ~~(3)(4)~~ (a) A district court judgment, decree, or order that establishes or modifies a child support
 7 obligation must include a provision requiring the child support to be paid to:

8 (i) the legal custodian of the minor child;

9 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child
 10 or collecting child support on behalf of the minor child under a legal assignment of rights; or

11 (B) the court for the benefit of the minor child;

12 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal
 13 custodian; or

14 (iv) any assignee or other person, organization, or agency authorized to receive or collect child
 15 support.

16 (b) A judgment, decree, or order that omits the provision required by subsection ~~(3)(a)~~ (4)(a) is
 17 subject to the requirements of subsection ~~(3)(a)~~ (4)(a) without need for an amendment to the judgment,
 18 decree, or order or for any further action by the court."
 19

20 **Section 10.** Section 40-6-118, MCA, is amended to read:

21 **"40-6-118. Modification of judgment or order.** The court has continuing jurisdiction to modify or
 22 revoke a judgment or order:

23 (1) for future education and support; and

24 (2) with respect to matters listed in 40-6-116(3), 40-6-116(4), and 40-6-117~~(2)(3)~~, except that
 25 a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under
 26 40-6-116(4) may specify that the judgment or order may not be modified or revoked."
 27

28 **Section 11.** Section 50-15-210, MCA, is amended to read:

29 **"50-15-210. Paternity acknowledgment.** (1) Upon the birth of a child to a ~~woman~~ mother
 30 unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in

1 which the birth occurs or the midwife who attends the birth shall:

2 (a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment
3 of ~~parentage~~ PATERNITY pursuant to 40-6-105;

4 (b) provide written information, furnished by the department of social and rehabilitation services,
5 describing the rights and responsibilities of ~~parentage~~ PATERNITY, the benefits of having a child's paternity
6 established, and the child's right to receive support; and

7 (c) forward a copy of an acknowledgment signed by the mother and the father to the department.

8 (2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of
9 obtaining an acknowledgment. The department of social and rehabilitation services shall establish ~~by rule~~
10 the amount of reasonable costs, not to exceed the amount for which federal financial participation is
11 available, and the procedures for claiming reimbursement.

12 (3) Hospitals, institutions, and midwives shall use forms prescribed by the department for the
13 acknowledgment of paternity."

14

15 NEW SECTION. SECTION 12. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 1995.

16

-END-

1 SENATE BILL NO. 36

2 INTRODUCED BY BISHOP

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 ESTABLISHMENT OF PATERNITY OF A CHILD; ~~AND~~ AMENDING SECTIONS 40-5-232, 40-5-233,
7 40-5-234, 40-5-236, 40-5-237, 40-6-102, 40-6-105, 40-6-115, 40-6-117, 40-6-118, AND 50-15-210,
8 MCA; AND PROVIDING AN EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 40-5-232, MCA, is amended to read:

13 **"40-5-232. Establishment of paternity -- ~~presumption~~ -- notice of paternity determination --**
14 **contents.** (1) When the paternity of a child has not been legally established under the provisions of Title
15 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions
16 of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through
17 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2,
18 chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

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

21 (3) In any proceeding under 40-5-231 through 40-5-237, if a ~~man~~ person acknowledges paternity
22 of a child in writing and the acknowledgment is filed with the department, the department may enter an
23 order establishing legal paternity. As a part of a voluntary acknowledgment, the department shall provide
24 information to the parents regarding the rights and responsibilities of acknowledging paternity. An
25 acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

26 (4) Full faith and credit must be given to a determination of paternity made by any other state,
27 whether presumed by law, established through voluntary acknowledgment, or established by administrative
28 or judicial processes.

29 ~~(5) When two or more conflicting presumptions arise, a presumption based on a paternity blood~~
30 ~~test is sufficient to overcome other presumptions. If there are conflicting presumptions not based on~~

1 ~~paternity blood testing, the presumption that is factually founded on the weightier considerations of policy~~
 2 ~~and logic controls.~~

3 ~~(4)(6)(5)~~ The department shall commence proceedings to establish paternity by serving on an
 4 alleged father a notice of paternity determination. The department may not serve the notice unless it has:

5 (a) a sworn statement from the child's mother claiming that the alleged father is the child's natural
 6 father;

7 (b) evidence of the existence of a presumption of paternity under 40-6-105; or

8 (c) any other reasonable cause to believe that the alleged father is the child's natural father.

9 ~~(5)(7)(6)~~ Service on the alleged father of the notice of paternity determination must be made as
 10 provided in 40-5-231(2). The notice must include:

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

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

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

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

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

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

19 (i) the alleged father is subject to compulsory paternity blood testing;

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

21 (iii) upon receipt of the paternity blood test results, if the alleged father continues to deny paternity,
 22 the alleged father may request the department to refer the matter to district court for a determination of
 23 paternity.

24 ~~(6)(8)(7)~~ The alleged father may file a written denial of paternity with the department within 20
 25 days after service of the notice of paternity determination.

26 ~~(7)(9)(8)~~ When there is more than one alleged father of a child, the department may serve a notice
 27 of paternity determination on each alleged father in the same consolidated proceeding or in separate
 28 proceedings. Failure to serve notice on an alleged father does not prevent the department from serving
 29 notice on any other alleged father of the same child."
 30

1 **Section 2.** Section 40-5-233, MCA, is amended to read:

2 "**40-5-233. Establishment of paternity -- administrative hearing -- subpoena -- compulsory blood**
3 **testing.** (1) When the department receives a timely written denial of paternity, it may order the alleged
4 father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods.
5 If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged
6 father had sexual intercourse with the child's mother during the probable time of the child's conception or
7 if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue
8 a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of
9 sexual intercourse during the possible time of conception may be established by affidavit of the child's
10 mother.

11 (2) When there is reasonable cause to suggest that a blood test sample of a person submitting to
12 a blood test was not the sample of the alleged father, mother, or child, an additional hearing may be held.
13 The scope of the hearing is limited to questions involving the blood drawing or the chain of custody at the
14 blood drawing site. The hearing officer may order retesting of any party.

15 ~~(2)~~(3) If the department does not receive a timely written denial of paternity or if an alleged father
16 fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may enter an
17 order declaring the alleged father the legal father of the child. The order will take effect within 10 days
18 after entry of the default unless the alleged father before the 10th day presents good cause for failure to
19 make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The
20 department may not enter an order under this section if there is more than one alleged father unless the
21 default applies to only one of them and all others have been excluded by the results of paternity blood
22 testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

23 ~~(3)~~(4) If the rights of others and the interests of justice so require, the department may apply to
24 any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to
25 paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds
26 reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court
27 shall enter an order compelling the alleged father to submit to a paternity blood test. As provided in
28 subsection (1), reasonable cause may be established by affidavit of the child's mother."

29
30 **Section 3.** Section 40-5-234, MCA, is amended to read:

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

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

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

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

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

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

19 (4) The department may enter an order of nonpaternity based on a blood test exclusion and may
 20 order the department of health and environmental sciences to prepare an amended or substitute birth
 21 certificate.

22 (5) The department may enter in the support order registry established in 40-5-271 a written
 23 finding of any paternity presumption created by paternity blood test results.

24 (6) A presumption of paternity established under this section is a sufficient basis for establishing
 25 a support order."

26
 27 **Section 4.** Section 40-5-236, MCA, is amended to read:

28 **"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other**
 29 **matters -- fees.** (1) If the scientific evidence resulting from a paternity blood test does not exclude the
 30 alleged father and ~~he~~ the alleged father continues to deny paternity, the alleged father shall file a written

1 ~~objection with the department within 20 days after service of the paternity blood test results. If the alleged~~
 2 ~~father fails to make a timely objection, the alleged father is barred from later contesting a presumption of~~
 3 ~~paternity created by the paternity blood test results.~~ Upon receipt of the written objection, the department
 4 shall refer the matter to the district court for a determination based on the contents of the administrative
 5 hearing record and any further evidence that may be produced at trial. Except as otherwise provided in
 6 40-5-231 through 40-5-237, proceedings in the district court ~~shall~~ must be conducted pursuant to Title 40,
 7 chapter 6, part 1.

8 (2) The administrative record must include:

- 9 (a) a copy of the notice of paternity determination and the return of service ~~thereof~~ of the notice;
- 10 (b) the alleged father's written denial of paternity, if any;
- 11 (c) the transcript of the administrative hearing;
- 12 (d) the paternity blood test results and any report of an expert based on the results; and
- 13 (e) any other relevant information.

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

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

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

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

27
 28 **Section 5.** Section 40-5-237, MCA, is amended to read:

29 "**40-5-237. District court paternity proceedings -- objection to tests -- additional tests -- expert's**
 30 **report -- admissibility of evidence.** (1) ~~¶~~ In a matter referred to the district court, if an alleged father

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

7 (2) ~~The~~ IF AN OBJECTION TO THE PATERNITY BLOOD TEST IS NOT TIMELY FILED, THE paternity
 8 blood test expert's completed and certified report of the results and conclusions of a paternity blood test
 9 is admissible as evidence without additional foundation testimony or other proof of authenticity and
 10 accuracy if the laboratory in which the expert performed the test is accredited for parentage testing by the
 11 American association of blood banks. Accreditation may be established by verified statement or reference
 12 to published sources. This subsection does not limit the right of a party to contest the identity of persons
 13 submitting to testing.

14 ~~(2)(3)~~ In any hearing before the court or at trial, testimony relating to sexual intercourse of the
 15 mother with any person who has been excluded from consideration as a possible father of the child
 16 involved by the results of a paternity blood test is inadmissible in evidence.

17 ~~(3)(4)~~ When a paternity blood test excludes an alleged father from possible paternity, the test ~~shall~~
 18 be is conclusive evidence of nonpaternity of the alleged father for all purposes in the district court."
 19

20 **Section 6.** Section 40-6-102, MCA, is amended to read:

21 **"40-6-102. ~~Parent and child relationship defined~~ Definitions.** As used in this part, the following
 22 definitions apply:

23 (1) "Blood test" means a test that demonstrates through examination of genetic markers either that
 24 an alleged father is not the natural father of a child or that there is a probability that an alleged father is the
 25 natural father of a child. A blood test may include but is not limited to the human leukocyte antigen test
 26 and DNA probe technology.

27 (2) ~~parent~~ "Parent and child relationship" means the legal relationship existing between a child
 28 and his ~~the~~ child's natural or adoptive parents incident to which the law confers or imposes rights,
 29 privileges, duties, and obligations. It includes the mother and child relationship and the father and child
 30 relationship.

1 (3) "Support judgment" or "support order" means an order, whether temporary or final, that
 2 provides for the periodic payment of an amount of money expressed in dollars for the support of a child,
 3 including medical and health needs, child care, education, recreation, clothing, transportation, and other
 4 related expenses and costs specific to the needs of the child."

5
 6 **Section 7.** Section 40-6-105, MCA, is amended to read:

7 **"40-6-105. Presumption of paternity.** (1) A ~~man~~ person is presumed to be the natural father of
 8 a child if any of the following occur:

9 (a) ~~he~~ the person and the child's natural mother are or have been married to each other and the
 10 child is born during the marriage or within 300 days after the marriage is terminated by death, annulment,
 11 declaration of invalidity, or divorce or after a decree of separation is entered by a court;

12 (b) before the child's birth, ~~he~~ the person and the child's natural mother have attempted to marry
 13 each other by a marriage solemnized in apparent compliance with law, although the attempted marriage
 14 is or could be declared invalid, and:

15 (i) if the attempted marriage could be declared invalid only by a court, the child is born during the
 16 attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity,
 17 or divorce; or

18 (ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after
 19 the termination of cohabitation;

20 (c) after the child's birth, ~~he~~ the person and the child's natural mother have married or attempted
 21 to marry each other by a marriage solemnized in apparent compliance with law, although the attempted
 22 marriage is or could be declared invalid, and:

23 (i) ~~he the person has acknowledged~~ THE CHILD'S MOTHER AND THE CHILD'S ALLEGED FATHER
 24 HAVE ACKNOWLEDGED THE ALLEGED FATHER'S ~~his~~ paternity of the child in writing in accordance with
 25 subsection (1)(e) and the acknowledgment is filed with the department of health and environmental
 26 sciences or with the district court for the county where ~~he~~ the person resides or for any county where the
 27 child support enforcement division of the department of social and rehabilitation services maintains a
 28 regional office; or

29 (ii) with ~~his~~ the person's consent, ~~he~~ the person is named as the child's father on the child's birth
 30 certificate; or

1 (iii) ~~he~~ the person is obligated to support the child under a written voluntary promise or by court
2 order;

3 (d) while the child is under the age of majority, ~~he~~ the person receives the child into ~~his~~ the
4 person's home and openly holds out represents the child to be as his the person's natural child; or

5 (e) ~~he~~ the person acknowledges THE CHILD'S MOTHER AND THE CHILD'S ALLEGED FATHER
6 ACKNOWLEDGE THE ALLEGED FATHER'S ~~his~~ paternity of the child in a ~~writing~~ paternity acknowledgment
7 form that is provided by the department of social and rehabilitation services and filed with the department
8 of health and environmental sciences or with the district court of the county where ~~he~~ the person resides,
9 ~~which court or department shall promptly inform the mother of the filing of the acknowledgment, and she~~
10 ~~does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing~~
11 ~~filed with the department of health and environmental sciences or with the district court of the county~~
12 ~~where the acknowledgment was filed~~ or for any county where the child support enforcement division of
13 the department of social and rehabilitation services maintains a regional office. The department of health
14 and environmental sciences or the district court shall accept and file the completed form. As a part of a
15 voluntary acknowledgment process, the department of social and rehabilitation services shall provide
16 information to the parents regarding the rights and responsibilities of acknowledging paternity. If another
17 ~~man~~ person is presumed under this section to be the child's father, acknowledgment may be effected only
18 with the written consent of the presumed father or after the presumption has been rebutted.

19 (f) the scientific evidence resulting from a blood test, whether ordered by a court or administrative
20 agency of competent jurisdiction or agreed to by the parties, shows a 95% or higher statistical probability
21 of paternity.

22 (2) An acknowledgment is binding on a parent who executes it, whether or not the parent is a
23 minor.

24 ~~(2)(3)~~ (3) A presumption under this section may be rebutted in an appropriate action by a
25 preponderance of the evidence. ~~When two or more conflicting presumptions arise, a presumption based~~
26 ~~upon a blood test is sufficient to overcome other presumptions. If there are conflicting presumptions not~~
27 ~~based on blood testing, the presumption that is factually founded on the weightier considerations of policy~~
28 ~~and logic controls.~~

29 (4) A presumption of paternity established under this section is a sufficient basis for establishing
30 a support order."

1 **Section 8.** Section 40-6-115, MCA, is amended to read:

2 "**40-6-115. Civil action.** (1) An action under this part is a civil action governed by the rules of civil
3 procedure. The mother of the child and the alleged father are competent to testify and may be compelled
4 to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

5 (2) Testimony relating to sexual access to the mother by an unidentified ~~man~~ person at any time
6 or by an identified ~~man~~ person at a time other than the probable time of conception of the child is
7 inadmissible in evidence, unless offered by the mother.

8 (3) In an action against an alleged father, evidence offered by ~~him~~ the alleged father with respect
9 to a ~~man~~ person who is not subject to the jurisdiction of the court concerning ~~his~~ sexual intercourse with
10 the mother at or about the probable time of conception of the child is admissible in evidence only if the
11 alleged father has undergone and made available to the court blood tests, the results of which do not
12 exclude the possibility of ~~his~~ the alleged father's paternity of the child. A ~~man~~ person who is identified and
13 is subject to the jurisdiction of the court ~~shall~~ must be made a defendant in the action.

14 (4) If a blood test has been initially ordered under this part and a party objects to the blood test
15 results, the objection must be filed within 20 days after service of the blood test results. If an objection
16 is filed, the court shall order an additional blood test. If no objection is made, the test results are admissible
17 as evidence of paternity without the need for foundation testimony or other proof of authenticity or
18 accuracy. This subsection does not limit the right of a party to contest the identity of persons submitting
19 to testing.

20 (5) If the alleged father fails to answer or to appear at a scheduled hearing or for a scheduled blood
21 test, the district court shall enter an order declaring the alleged father the legal father of the child. The
22 district court may not enter an order under this section if there is more than one alleged father unless the
23 default applies to only one of them and all others have been excluded by the results of blood testing."

24

25 **Section 9.** Section 40-6-117, MCA, is amended to read:

26 "**40-6-117. Enforcement of judgment or order.** (1) If existence of the father and child relationship
27 is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under
28 prior law, the court may order support payments to be made to the mother, the clerk of the court, or a
29 person, corporation, or agency designated to administer them for the benefit of the child under the
30 supervision of the court.

1 (2) Full faith and credit must be given to a determination of paternity made by any other state,
 2 whether presumed by law, established through voluntary acknowledgment, or established by administrative
 3 or judicial processes.

4 ~~(2)~~(3) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All
 5 remedies for the enforcement of judgments apply.

6 ~~(3)~~(4) (a) A district court judgment, decree, or order that establishes or modifies a child support
 7 obligation must include a provision requiring the child support to be paid to:

8 (i) the legal custodian of the minor child;

9 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child
 10 or collecting child support on behalf of the minor child under a legal assignment of rights; or

11 (B) the court for the benefit of the minor child;

12 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal
 13 custodian; or

14 (iv) any assignee or other person, organization, or agency authorized to receive or collect child
 15 support.

16 (b) A judgment, decree, or order that omits the provision required by subsection ~~(3)(a)~~ (4)(a) is
 17 subject to the requirements of subsection ~~(3)(a)~~ (4)(a) without need for an amendment to the judgment,
 18 decree, or order or for any further action by the court."

19
 20 **Section 10.** Section 40-6-118, MCA, is amended to read:

21 **"40-6-118. Modification of judgment or order.** The court has continuing jurisdiction to modify or
 22 revoke a judgment or order:

23 (1) for future education and support; and

24 (2) with respect to matters listed in 40-6-116(3), 40-6-116(4), and 40-6-117~~(2)~~(3), except that
 25 a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under
 26 40-6-116(4) may specify that the judgment or order may not be modified or revoked."

27
 28 **Section 11.** Section 50-15-210, MCA, is amended to read:

29 **"50-15-210. Paternity acknowledgment.** (1) Upon the birth of a child to a ~~woman~~ mother
 30 unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in

1 which the birth occurs or the midwife who attends the birth shall:

2 (a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment
3 of ~~parentage~~ PATERNITY pursuant to 40-6-105;

4 (b) provide written information, furnished by the department of social and rehabilitation services,
5 describing the rights and responsibilities of ~~parentage~~ PATERNITY, the benefits of having a child's paternity
6 established, and the child's right to receive support; and

7 (c) forward a copy of an acknowledgment signed by the mother and the father to the department.

8 (2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of
9 obtaining an acknowledgment. The department of social and rehabilitation services shall establish ~~by rule~~
10 the amount of reasonable costs, not to exceed the amount for which federal financial participation is
11 available, and the procedures for claiming reimbursement.

12 (3) Hospitals, institutions, and midwives shall use forms prescribed by the department for the
13 acknowledgment of paternity."

14

15 NEW SECTION. SECTION 12. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 1995.

16

-END-



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 36
Representative Ellingson

February 7, 1995 11:57 am
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 36 (third reading copy -- blue).

Signed: _____
Representative Ellingson

And, that such amendments to Senate Bill 36 read as follows:

1. Page 6, line 7.

Following: "(2)"

Strike: "The"

Insert: "If an objection to the paternity blood test is not
timely filed, the"

-END-

SB 36

ADOPT

HOUSE

REJECT

321156CW.Hbk



HOUSE STANDING COMMITTEE REPORT

February 3, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 36** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Grimes

And, that such amendments read:

1. Page 5, lines 1 through 3.
Strike: "If the" on line 1 through "results." on line 3

-END-

AK

Committee Vote:
Yes 18, No 1.

SB 36

HOUSE