



General Assembly

February Session, 2020

Raised Bill No. 317

LCO No. 2203



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 46b-171 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective October*
3 *1, 2020*):

4 (b) (1) Except as provided in subdivisions (2) and (3) of this
5 subsection, a judgment of paternity entered by the Superior Court or
6 family support magistrate pursuant to this chapter may not be opened
7 or set aside unless a motion to open or set aside is filed not later than
8 four months after the date on which the judgment was entered, and only
9 upon a showing of reasonable cause, or that a valid defense to the
10 petition for a judgment of paternity existed, in whole or in part, at the
11 time judgment was rendered, and that the person seeking to open or set
12 aside the judgment was prevented by mistake, accident or other
13 reasonable cause from making a valid defense. The court or a family
14 support magistrate may not order genetic testing to determine paternity
15 unless such court or magistrate determines that the person seeking to

16 open or set aside the judgment of paternity pursuant to this subdivision
17 has made such a showing of reasonable cause or established the
18 existence of a valid defense.

19 (2) The Superior Court or a family support magistrate may consider
20 a motion to open or set aside a judgment of paternity filed more than
21 four months after such judgment was entered if such court or magistrate
22 determines that the judgment was entered due to fraud, duress or
23 material mistake of fact, with the burden of proof on the person seeking
24 to open or set aside such judgment. A court or family support magistrate
25 may not order genetic testing to determine paternity unless such court
26 or magistrate determines that the person seeking to open or set aside the
27 judgment of paternity under this subdivision has met such burden.

28 (3) If the court or family support magistrate, as the case may be,
29 determines that the person seeking to open or set aside a judgment of
30 paternity under subdivision (2) of this subsection has met his or her
31 burden of demonstrating fraud, duress or material mistake of fact, such
32 court or magistrate shall set aside the judgment only upon determining
33 that doing so is in the best interest of the child. In evaluating the best
34 interest of the child, the court or magistrate may consider, but shall not
35 be limited to, the following factors:

36 (A) Any genetic information available to the court or family support
37 magistrate concerning paternity;

38 (B) The past relationship between the child and (i) the person
39 previously adjudged father of the child, and (ii) such person's family;

40 (C) The child's future interests in knowing the identity of his or her
41 biological father;

42 (D) The child's potential emotional and financial support from his or
43 her biological father; and

44 (E) Any potential harm the child may suffer by disturbing the
45 judgment of paternity, including loss of a parental relationship and loss

46 of financial support.

47 (4) During the pendency of any motion to open or set aside a
48 judgment of paternity filed pursuant to this subsection, any
49 responsibilities arising from such earlier judgment shall continue,
50 except for good cause shown.

51 [(b)] (5) Whenever the Superior Court or family support magistrate
52 [reopens] opens a judgment of paternity [entered] pursuant to this
53 [section] subsection in which (A) a person was found to be the father of
54 a child who is or has been supported by the state, and (B) the court or
55 family support magistrate finds that the person adjudicated the father
56 is not the father of the child, the Department of Social Services shall
57 refund to such person any money paid to the state by such person
58 during the period such child was supported by the state.

59 Sec. 2. Subsection (a) of section 46b-172 of the general statutes is
60 repealed and the following is substituted in lieu thereof (*Effective October*
61 *1, 2020*):

62 (a) (1) In lieu of or in conclusion of proceedings under section 46b-
63 160, a written acknowledgment of paternity executed and sworn to by
64 the putative father of the child when accompanied by (A) an attested
65 waiver of the right to a blood test, the right to a trial and the right to an
66 attorney, (B) a written affirmation of paternity executed and sworn to
67 by the mother of the child, and (C) if the person subject to the
68 acknowledgment of paternity is an adult eighteen years of age or older,
69 a notarized affidavit affirming consent to the voluntary
70 acknowledgment of paternity, shall have the same force and effect as a
71 judgment of the Superior Court. It shall be considered a legal finding of
72 paternity without requiring or permitting judicial ratification, and shall
73 be binding on the person executing the same whether such person is an
74 adult or a minor, subject to subdivision (2) of this subsection. Such
75 acknowledgment shall not be binding unless, prior to the signing of any
76 affirmation or acknowledgment of paternity, the mother and the
77 putative father are given oral and written notice of the alternatives to,

78 the legal consequences of, and the rights and responsibilities that arise
79 from signing such affirmation or acknowledgment. The notice to the
80 mother shall include, but shall not be limited to, notice that the
81 affirmation of paternity may result in rights of custody and visitation,
82 as well as a duty of support, in the person named as father. The notice
83 to the putative father shall include, but not be limited to, notice that such
84 father has the right to contest paternity, including the right to
85 appointment of counsel, a genetic test to determine paternity and a trial
86 by the Superior Court or a family support magistrate and that
87 acknowledgment of paternity will make such father liable for the
88 financial support of the child until the child's eighteenth birthday. In
89 addition, the notice shall inform the mother and the father that DNA
90 testing may be able to establish paternity with a high degree of accuracy
91 and may, under certain circumstances, be available at state expense. The
92 notices shall also explain the right to rescind the acknowledgment, as
93 set forth in subdivision (2) of this subsection, including the address
94 where such notice of rescission should be sent, and shall explain that the
95 acknowledgment cannot be challenged after sixty days, except in court
96 upon a showing of fraud, duress or material mistake of fact.

97 (2) The mother and the acknowledged father shall have the right to
98 rescind such affirmation or acknowledgment in writing within the
99 earlier of (A) sixty days, or (B) the date of an agreement to support such
100 child approved in accordance with subsection (b) of this section or an
101 order of support for such child entered in a proceeding under subsection
102 (c) of this section.

103 (3)(A) An acknowledgment executed in accordance with subdivision
104 (1) of this subsection may be challenged in court or before a family
105 support magistrate after the rescission period only on the basis of fraud,
106 duress or material mistake of fact which may include evidence that he
107 is not the father, with the burden of proof upon the challenger. A court
108 or family support magistrate may not order genetic testing to determine
109 paternity unless the court or magistrate, as the case may be, determines
110 that the challenger has met such burden.

111 (B) If the court or family support magistrate, as the case may be,
112 determines that the challenger has met his or her burden under
113 subparagraph (A) of this subdivision, the acknowledgment of paternity
114 shall be set aside only if such court or magistrate determines that doing
115 so is in the best interest of the child. In evaluating the best interest of the
116 child, the court or magistrate may consider, but shall not be limited to,
117 the following factors:

118 (i) Any genetic information available to the court concerning
119 paternity;

120 (ii) The past relationship between the child and (I) the person who
121 executed an acknowledgment of paternity, and (II) such person's family;

122 (iii) The child's future interests in knowing the identity of his or her
123 biological father;

124 (iv) The child's potential emotional and financial support from his or
125 her biological father; and

126 (v) Any potential harm the child may suffer by disturbing the
127 acknowledgment of paternity, including loss of a parental relationship
128 and loss of financial support.

129 (C) During the pendency of any [such] challenge to a previous
130 acknowledgment of paternity, any responsibilities arising from such
131 acknowledgment shall continue except for good cause shown.

132 [(3)] (4) All written notices, waivers, affirmations and
133 acknowledgments required under subdivision (1) of this subsection,
134 and rescissions authorized under subdivision (2) of this subsection, shall
135 be on forms prescribed by the Department of Public Health, provided
136 such acknowledgment form includes the minimum requirements
137 specified by the Secretary of the United States Department of Health and
138 Human Services. All acknowledgments and rescissions executed in
139 accordance with this subsection shall be filed in the paternity registry
140 established and maintained by the Department of Public Health under

141 section 19a-42a.

142 [(4)] (5) An acknowledgment of paternity signed in any other state
143 according to its procedures shall be given full faith and credit by this
144 state.

145 Sec. 3. Section 46b-172a of the general statutes is repealed and the
146 following is substituted in lieu thereof (*Effective October 1, 2020*):

147 (a) Any person claiming to be the father of a child who was born out
148 of wedlock and for whom paternity has not yet been established may
149 file a claim for paternity with the Probate Court for the district in which
150 either the mother or the child resides, on forms provided by such court.
151 The claim may be filed at any time during the life of the child, whether
152 before, on or after the date the child reaches the age of eighteen, or after
153 the death of the child, but not later than sixty days after the date of notice
154 under section 45a-716. The claim shall contain the claimant's name and
155 address, the name and last-known address of the mother and the month
156 and year of the birth or expected birth of the child. Not later than five
157 days after the filing of a claim for paternity, the court shall cause a
158 certified copy of such claim to be served upon the mother or prospective
159 mother of such child by personal service or service at her usual place of
160 abode, and to the Attorney General by first class mail. The Attorney
161 General may file an appearance and shall be and remain a party to the
162 action if the child is receiving or has received aid or care from the state,
163 or if the child is receiving child support enforcement services, as defined
164 in subdivision (2) of subsection (b) of section 46b-231. The claim for
165 paternity shall be admissible in any action for paternity under section
166 46b-160, and shall estop the claimant from denying his paternity of such
167 child and shall contain language that he acknowledges liability for
168 contribution to the support and education of the child after the child's
169 birth and for contribution to the pregnancy-related medical expenses of
170 the mother.

171 (b) If a claim for paternity is filed by the father of any minor child
172 who was born out of wedlock, the Probate Court shall schedule a

173 hearing on such claim, send notice of the hearing to all parties involved
174 and proceed accordingly.

175 (c) The child shall be made a party to the action and shall be
176 represented by a guardian ad litem appointed by the court in
177 accordance with section 45a-708. Payment shall be made in accordance
178 with such section from funds appropriated to the Judicial Department,
179 except that, if funds have not been included in the budget of the Judicial
180 Department for such purposes, such payment shall be made from the
181 Probate Court Administration Fund.

182 (d) In the event that the mother or the claimant father is a minor, the
183 court shall appoint a guardian ad litem to represent him or her in
184 accordance with the provisions of section 45a-708. Payment shall be
185 made in accordance with said section from funds appropriated to the
186 Judicial Department, except that, if funds have not been included in the
187 budget of the Judicial Department for such purposes, such payment
188 shall be made from the Probate Court Administration Fund.

189 (e) By filing a claim under this section, the putative father submits to
190 the jurisdiction of the Probate Court.

191 (f) Once alleged parental rights of the father have been adjudicated in
192 his favor under subsection (b) of this section, or acknowledged as
193 provided for under section 46b-172, as amended by this act, his rights
194 and responsibilities shall be equivalent to those of the mother, including
195 those rights defined under section 45a-606. Thereafter, disputes
196 involving custody, visitation or support shall be transferred to the
197 Superior Court under chapter 815j, except that the Probate Court may
198 enter a temporary order for custody, visitation or support until an order
199 is entered by the Superior Court.

200 (g) Failing perfection of parental rights as prescribed by this section,
201 any person claiming to be the father of a child who was born out of
202 wedlock (1) who has not been adjudicated the father of such child by a
203 court of competent jurisdiction, [or] (2) who has not acknowledged in
204 writing that he is the father of such child, [or] (3) who has not

205 contributed regularly to the support of such child, or (4) whose name
206 does not appear on the birth certificate, shall cease to be a legal party in
207 interest in any proceeding concerning the custody or welfare of the
208 child, including, but not limited to, guardianship and adoption, unless
209 he has shown a reasonable degree of interest, concern or responsibility
210 for the child's welfare.

211 (h) Notwithstanding the provisions of this section, after the death of
212 the father of a child born out of wedlock, a party deemed by the court
213 to have a sufficient interest may file a claim for paternity on behalf of
214 such father with the Probate Court for the district in which either the
215 putative father resided or the party filing the claim resides. If a claim for
216 paternity is filed pursuant to this subsection, the Probate Court shall
217 schedule a hearing on such claim, send notice of the hearing to all parties
218 involved and proceed accordingly.

219 (i) (1) Except as provided in subdivisions (2) and (3) of this subsection,
220 a judgment of paternity entered under this section may not be opened
221 or set aside unless a motion to open or set aside is filed with the Probate
222 Court district that entered such judgment not later than four months
223 after the date on which it was entered, and only upon a showing of
224 reasonable cause, or that a valid defense to the claim for a judgment of
225 paternity existed, in whole or in part, at the time judgment was entered,
226 and that the person seeking to open or set aside such judgment was
227 prevented by mistake, accident or other reasonable cause from making
228 a valid defense. The Probate Court may not order genetic testing to
229 determine paternity unless and until the court determines that the
230 person seeking to open or set aside the judgment of paternity pursuant
231 to this subdivision has made such a showing of reasonable cause or
232 established the existence of a valid defense.

233 (2) The Probate Court in the district where a judgment of paternity
234 was entered pursuant to this section may consider a motion to open or
235 set aside such judgment filed more than four months after such
236 judgment was rendered if such court determines that the judgment was
237 rendered due to fraud, duress or material mistake of fact, with the

238 burden of proof on the person seeking to open or set aside such
239 judgment. Such court may not order genetic testing to determine
240 paternity unless and until the court determines that the person seeking
241 to open or set aside the judgment of paternity under this subdivision
242 has met such burden.

243 (3) If such court determines that the person seeking to open or set
244 aside a judgment of paternity under subdivision (2) of this subsection
245 has met his or her burden of demonstrating fraud, duress or material
246 mistake of fact, such court shall set aside the judgment only upon
247 determining that doing so is in the best interest of the child. In
248 evaluating the best interest of the child, the court may consider, but shall
249 not be limited to, the following factors:

250 (A) Any genetic information available to the court concerning
251 paternity;

252 (B) The past relationship between the child and (i) the person
253 previously adjudged father of the child, and (ii) such person's family;

254 (C) The child's future interests in knowing the identity of his or her
255 biological father;

256 (D) The child's potential emotional and financial support from his or
257 her biological father; and

258 (E) Any potential harm the child may suffer by disturbing the
259 judgment of paternity, including loss of a parental relationship and loss
260 of financial support.

261 (4) Upon the filing of any motion to open and set aside a judgment of
262 paternity filed pursuant to this subsection, the Probate Court shall
263 schedule a hearing on the motion and provide notice of the hearing and
264 a copy of the motion to all interested parties, including the Attorney
265 General.

266 (5) During the pendency of any motion to open or set aside a
267 judgment of paternity filed pursuant to this subsection, any

268 responsibilities arising from such earlier judgment shall continue,
269 except for good cause shown.

This act shall take effect as follows and shall amend the following sections:

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|-----------|------------------------|------------|
| Section 1 | <i>October 1, 2020</i> | 46b-171(b) |
| Sec. 2 | <i>October 1, 2020</i> | 46b-172(a) |
| Sec. 3 | <i>October 1, 2020</i> | 46b-172a |

Statement of Purpose:

To clarify court procedures with respect to the opening or setting aside of a paternity judgment entered by the Superior Court, a family support magistrate or the Probate Court.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]