

ASSEMBLY BILL NO. 498—COMMITTEE ON JUDICIARY

MARCH 22, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions concerning certain actions to determine paternity. (BDR 11-1403)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets **[omitted-material]** is material to be omitted.

AN ACT relating to parentage; creating a conclusive presumption of paternity in certain circumstances; expanding the persons authorized to perform certain tests to determine paternity; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 **Section 1** of this bill provides that if the results of a blood test or genetic test
2 establish a probability of the alleged father's paternity of 99 percent or more, the
3 results of such a test create a conclusive presumption of paternity. (NRS 126.051)
4 **Sections 3 and 5** of this bill amend existing law to provide that an employee of
5 the Division of Welfare and Supportive Services of the Department of Health and
6 Human Services, the district attorney or the Attorney General is authorized to
7 perform certain tests for the typing of blood or the taking of specimens for genetic
8 identification in paternity cases. (NRS 126.121, 652.210)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 126.051 is hereby amended to read as follows:
2 126.051 1. A man is presumed to be the natural father of a
3 child if:
4 (a) He and the child's natural mother are or have been married
5 to each other and the child is born during the marriage, or within
6 285 days after the marriage is terminated by death, annulment,
7 declaration of invalidity or divorce, or after a decree of separation is
8 entered by a court.



* A B 4 9 8 *

(b) He and the child's natural mother were cohabiting for at least 6 months before the period of conception and continued to cohabit through the period of conception.

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

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 285 days after its termination by death, annulment, declaration of invalidity or divorce; or

(2) If the attempted marriage is invalid without a court order, the child is born within 285 days after the termination of cohabitation.

(d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.

~~[(e) Blood]~~

2. A conclusive presumption that a man is the natural father of a child is established if tests for the typing of blood or tests for genetic identification made pursuant to NRS 126.121 show a probability of 99 percent or more that he is the father.

~~[2-]~~ **3.** A presumption under ~~[this section]~~ **subsection 1** may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

Sec. 2. NRS 126.101 is hereby amended to read as follows:

126.101 1. The child must be made a party to the action. If he is a minor, he must be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. If a district attorney brings an action pursuant to NRS 125B.150 and the interests of the child:

(a) Are adequately represented by the appointment of the district attorney as his guardian ad litem, the district attorney shall act as guardian ad litem for the child without the need for court appointment.

(b) Are not adequately represented by the appointment of the district attorney as his guardian ad litem, the Division of Welfare and Supportive Services of the Department of Health and Human Services must be appointed as guardian ad litem in the case.



2. The natural mother and a man presumed to be the father under NRS 126.051 must be made parties, but if more than one man is presumed to be the natural father, only a man presumed pursuant to subsection 2 **or 3** of NRS 126.051 is an indispensable party. Any other presumed or alleged father may be made a party.

3. The court may align the parties.

Sec. 3. NRS 126.121 is hereby amended to read as follows:

126.121 1. The court may, and shall upon the motion of a party, order the mother, child, alleged father or any other person so involved to submit to one or more tests for the typing of blood or taking of specimens for genetic identification to be made by **the employee of an enforcing authority**, qualified physicians or other qualified persons, under such restrictions and directions as the court or judge deems proper. Whenever such a test is ordered and made, the results of the test must be received in evidence and must be made available to a judge, master or referee conducting a hearing pursuant to NRS 126.111. Unless a party files a written objection to the result of a test at least 30 days before the hearing at which the result is to be received in evidence, the result is admissible as evidence of paternity without foundational testimony or other proof of authenticity or accuracy. The order for such a test also may direct that the testimony of the experts and of the persons so examined may be taken by deposition or written interrogatories.

2. If any party refuses to submit to or fails to appear for a test ordered pursuant to subsection 1, the court may presume that the result of the test would be adverse to the interests of that party or may enforce its order if the rights of others and the interests of justice so require.

3. The court, upon reasonable request by a party, shall order that independent tests for determining paternity be performed by other experts or qualified laboratories.

4. In all cases, the court shall determine the number and qualifications of the experts and laboratories.

5. ***As used in this section, "enforcing authority" means the Division of Welfare and Supportive Services of the Department of Health and Human Services, its designated representative, a district attorney or the Attorney General when acting pursuant to NRS 425.380.***

Sec. 4. NRS 128.150 is hereby amended to read as follows:

128.150 1. If a mother relinquishes or proposes to relinquish for adoption a child who has:

(a) A presumed father ~~pursuant to~~ **pursuant to** NRS 126.051;

(b) A father whose relationship to the child has been determined by a court; or



(c) A father as to whom the child is a legitimate child under chapter 126 of NRS, under prior law of this State or under the law of another jurisdiction,

➔ and the father has not consented to the adoption of the child or relinquished the child for adoption, a proceeding must be brought pursuant to this chapter and a determination made of whether a parent and child relationship exists and if so, if it should be terminated.

2. If a mother relinquishes or proposes to relinquish for adoption a child who does not have:

(a) A presumed father ~~[under subsection 1 of]~~ **pursuant to** NRS 126.051;

(b) A father whose relationship to the child has been determined by a court;

(c) A father as to whom the child is a legitimate child under chapter 126 of NRS, under prior law of this State or under the law of another jurisdiction; or

(d) A father who can be identified in any other way, ➔ or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court.

3. In an effort to identify and protect the interests of the natural father, the court which is conducting a proceeding pursuant to this chapter shall cause inquiry to be made of the mother and any other appropriate person. The inquiry must include the following:

(a) Whether the mother was married at the time of conception of the child or at any time thereafter.

(b) Whether the mother was cohabiting with a man at the time of conception or birth of the child.

(c) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy.

(d) Whether any man has formally or informally acknowledged or declared his possible paternity of the child.

4. If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each must be given notice of the proceeding in accordance with subsection 6 of this section or with this chapter, as applicable. If any of them fails to appear or, if appearing, fails to claim custodial rights, such failure constitutes abandonment of the child. If the natural father or a man representing himself to be the



1 natural father, claims custodial rights, the court shall proceed to
2 determine custodial rights.

3 5. If, after the inquiry, the court is unable to identify the natural
4 father or any possible natural father and no person has appeared
5 claiming to be the natural father and claiming custodial rights, the
6 court shall enter an order terminating the unknown natural father's
7 parental rights with reference to the child. Subject to the disposition
8 of any appeal, upon the expiration of 6 months after an order
9 terminating parental rights is issued under this subsection, or this
10 chapter, the order cannot be questioned by any person in any
11 manner or upon any ground, including fraud, misrepresentation,
12 failure to give any required notice or lack of jurisdiction of the
13 parties or of the subject matter.

14 6. Notice of the proceeding must be given to every person
15 identified as the natural father or a possible natural father in the
16 manner provided by law and the Nevada Rules of Civil Procedure
17 for the service of process in a civil action, or in any manner the
18 court directs. Proof of giving the notice must be filed with the court
19 before the petition is heard.

20 **Sec. 5.** NRS 652.210 is hereby amended to read as follows:

21 652.210 ~~{No}~~

22 **1. Except as otherwise provided in subsection 2 and NRS**
23 **126.121, no** person other than a licensed physician, a licensed
24 optometrist, a licensed practical nurse, a registered nurse, a licensed
25 physician assistant, a certified osteopathic physician's assistant, a
26 certified intermediate emergency medical technician, a certified
27 advanced emergency medical technician, a practitioner of
28 respiratory care licensed pursuant to chapter 630 of NRS or a
29 licensed dentist may manipulate a person for the collection of
30 specimens ~~. {, except that}~~

31 **2. The** technical personnel of a laboratory may collect blood,
32 remove stomach contents, perform certain diagnostic skin tests or
33 field blood tests or collect material for smears and cultures.

