

# The 2012 Revocation of Paternity Act

By Audra McClure

**T**he Revocation of Paternity Act, MCL 722.1431 *et seq.*, was signed and became effective on June 12, 2012. Its declared purpose is to “provide procedures to determine the paternity of children in certain circumstances [and] to allow acknowledgments, determinations, and judgments relating to paternity to be set aside in certain circumstances....”<sup>1</sup> The law does not replace or eliminate the Paternity Act or the Acknowledgment of Parentage Act.

The act is, in large part, an attempt to provide a remedy for biological fathers who have no way of initiating a relationship with their children because of Michigan law. It does not serve as a sweeping reform to Michigan’s paternity procedures, but does create a new process for revoking paternity in certain situations and establishing paternity in others. This article outlines the procedures in each of the most common situations as they were dealt with before June 12, 2012, and how they will be addressed now under the act.

Before June 12, 2012, paternity could be disestablished several ways. Perhaps most colloquially known among family law practitioners was the *Serafin* hearing,<sup>2</sup> in which a husband or wife could testify as to “lack of access” to help the court establish by clear and convincing evidence that a child was not a product of a marriage. The Revocation of Paternity Act outlines a new mechanism for a determination that a child is born out of wedlock.<sup>3</sup> The requirements for such a determination depend on who is filing the action: the mother, the presumed father,<sup>4</sup> an alleged father,<sup>5</sup> or the Department of Human Services. There are also time constraints for this type of action, generally within three years of the child’s birth.

This article leaves it to the reader to inquire about detailed requirements for filing

in these specific scenarios, but notes a couple of interesting requirements:

- If the alleged father is filing and the child was conceived and born while the mother was married to someone else, the alleged father must not have known or had reason to know that the mother was married at the time, and all three parties must have acknowledged the true biological relationship.<sup>6</sup> Once the petitioner makes his or her required showing of paternity, the court can still decline to find the child born out of wedlock after considering the best interest factors.<sup>7</sup>
- A mother initiating an action has a significantly higher burden to begin an action than a presumed father.
- *Serafin* hearings may still be used for two years after the Revocation of Paternity Act’s effective date.<sup>8</sup>
- A father with prior support obligations incurred before the action was filed is not relieved by an action filed under the act.<sup>9</sup>

Another possible scenario occurs when the parties were not married when the child was born but the father signed an acknowledgment of parentage. The old procedure was set up by MCL 722.1011. The new mechanism under the Revocation of Paternity Act

is very similar. It provides that the mother, the acknowledged father,<sup>10</sup> an alleged father, or the prosecuting attorney may, within three years of the child’s birth or the signing of the acknowledgment of parentage (whichever is later), file an action<sup>11</sup> including an affidavit indicating one of the following applies: (1) mistake of fact, (2) newly discovered evidence, (3) fraud, (4) misrepresentation or misconduct, or (5) duress in signing the acknowledgment.<sup>12</sup> If the affidavit is sufficient, the court must order genetic testing. The main difference between the old law and the new act is that the child no longer has standing to revoke, but the alleged father does.

If the court has issued an order of filiation (i.e., the court has determined who the father is) based on the father’s nonparticipation in the proceedings, the act provides a narrow basis for revoking that determination.<sup>13</sup> The motion must be made by the time the child turns three or within one year of the original order of filiation. The mother, alleged father, or affiliated father may file the motion. The act further provides reasonable attorney fees incurred by another party if the motion is denied.

Several family-law-focused publications have discussed the Revocation of Paternity Act in detail.<sup>14</sup> The courts have also been busy addressing the new issues raised by

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the law, as evidenced by the volume of unpublished cases coming from the Michigan Court of Appeals and at least three published cases at the date of the writing of this article.<sup>15</sup> Many issues remain open, such as how the addressed scenarios might be handled in an adoption context or a surrogacy arrangement, how the doctrines of res judicata and collateral estoppel might apply, and the definition of words and phrases such as “if the court finds...that the affidavit is sufficient,” etc.

This act does not enact staggering changes to Michigan law, but rather recognizes some of the changes in public opinion about relationships and marriage while attempting to create a few more appropriate remedies for parents. It gives the courts broad discretion, keeping the best interests of children in mind, but also gives adults (especially fathers) opportunities they might not have had before. ■



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## ENDNOTES

1. MCL 722.1431, *et seq.*, Preamble.
2. See generally *Serafin v Serafin*, 401 Mich 629; 258 NW2d 461 (1977) (holding that Lord Mansfield's rule—which barred spousal declarations of non-access for the purpose of showing a child was not the product of the marriage—had outlived its usefulness, and stated that, while there is still a strong presumption of legitimacy, a husband or wife can testify).
3. MCL 722.1441.
4. Defined by the act as a man who is presumed to be the child's father by virtue of his marriage to the child's mother at the time of the child's conception or birth. MCL 722.1433(4).
5. Defined by the act as a man who by his actions could have fathered the child. MCL 722.1433(3).
6. MCL 722.1441(3)(a)(i)–(ii).
7. Listed at MCL 722.1443(4).
8. MCL 722.1443(10).
9. MCL 722.1443(3).
10. Defined by the act as one who has signed an affidavit of parentage under the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*; MCL 722.1433(1).
11. Such an action would be filed using the paternity case code, although it's possible that a new case code will be established in the future.
12. MCL 722.1437(2).
13. See MCL 722.1439.
14. See Arigiroffe & Shiemke, *The 2012 Revocation of Paternity Act: Highlights & potential issues*, 43 Mich Family Law J 28 (March 2013).
15. See *In re Daniels Estate*, 301 Mich App 450; 837 NW2d 1 (2013); *Grimes v Van Hook-Williams*, 302 Mich App 521; 839 NW2d 237 (2013) (establishing that when the alleged father knew of the mother's marriage to the presumed father, the alleged father lacked standing); *In re Moiles*, 303 Mich App 59; \_\_\_ NW2d \_\_\_ (2013) (discussing revoking an acknowledgment of parentage).