

ORIGINAL SENATE
FILE NO. 0137

ENROLLED ACT NO. 56, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

AN ACT relating to domestic relations; providing procedures for the disestablishment of paternity as specified; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 14-2-823(e) and by creating new subsections (f) through (p) is amended to read:

14-2-823. Binding effect of determination of parentage.

(e) ~~A party to~~ An adjudication of the paternity of a child issued by a court of this state or by the filing of an acknowledgment of paternity pursuant to W.S. 14-2-605 without the benefit of genetic testing, may ~~challenge~~ be challenged by a party to the adjudication only ~~under the laws of this state relating to appeal, vacation of judgments or other judicial review if post-adjudication genetic testing proves that the adjudicated father is not the biological father of the child pursuant to W.S. 14-2-817.~~ This section does not apply to any of the following:

(i) A paternity determination made in or by a foreign jurisdiction or a paternity determination which has been made in or by a foreign jurisdiction and registered in this state in accordance with the Uniform Interstate Family Support Act;

(ii) A paternity determination based upon a court or administrative order of this state if the order was entered based upon blood or genetic test results which demonstrate that the alleged father was not excluded and that the probability of the alleged father's paternity was ninety-nine percent (99%) or higher.

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(f) A petition for disestablishment of paternity shall be filed:

(i) In the district court in which the paternity order is filed;

(ii) In the case of an adjudication as a result of the filing of an acknowledgment of paternity pursuant to W.S. 14-2-605, notwithstanding any other provision of this chapter, the petition shall be filed within the earlier of two (2) years after the petitioner knew or should have known that the paternity of the child was at issue or as provided in W.S. 14-2-809(b).

(iii) In the case of an adjudication issued by a court of this state, the petition shall be filed only by the mother of the child, the adjudicated father of the child, the child, if the child was a party to the adjudication, or the legal representative of any of these parties. A petition filed by an individual who is not a party to the adjudication shall be filed pursuant to W.S. 14-2-809. The petition under this paragraph shall be filed no later than two (2) years after the petitioner knew or should have known that the paternity of the child was at issue.

(g) The court shall appoint an attorney to represent the best interests of a child if the court finds that the best interests of the child is not adequately represented. In cases concerning an adjudication of paternity pursuant to subsection (c) of this section, the court shall appoint an attorney to represent the best interests of the child. In determining the best interests of the child, the court shall consider the following factors:

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(i) The length of time between the proceeding to adjudicate parentage and the time that the adjudicated father was placed on notice that he might not be the genetic father;

(ii) The length of time during which the adjudicated father has assumed the role of the father of the child;

(iii) The facts surrounding the adjudicated father's discovery of his possible nonpaternity;

(iv) The nature of the relationship between the child and the adjudicated father;

(v) The age of the child;

(vi) The harm that may result to the child if adjudicated paternity is successfully disproved;

(vii) The nature of the relationship between the child and any alleged father;

(viii) The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child; and

(ix) Other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the adjudicated father or the chance of other harm to the child.

(h) The court may order genetic testing pursuant to article 7 of this chapter.

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(j) The court may grant relief on the petition filed in accordance with this section upon a finding by the court of all of the following:

(i) The relief sought is in the best interests of the child pursuant to the factors in this section;

(ii) The genetic test upon which the relief is granted was properly conducted;

(iii) The adjudicated father has not adopted the child;

(iv) The child is not a child whose paternity is governed by article 9 of this chapter;

(v) The adjudicated father did not act to prevent the biological father of the child from asserting his paternal rights with respect to the child.

(k) If the court determines that test results conducted in accordance with W.S. 14-2-703 and 14-2-704 exclude the adjudicated father as the biological father, the court may nonetheless dismiss the action to overcome paternity and affirm the paternity adjudication if:

(i) The adjudicated father requests that paternity be preserved and that the parent-child relationship be continued; or

(ii) The court finds that it is in the best interests of the child to preserve paternity. In determining the best interests of the child, the court shall consider all of the factors listed in this section.

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(m) If the court finds that the adjudication of paternity should be vacated, in accordance with all of the conditions prescribed, the court shall enter an order which provides all of the following:

(i) That the disestablishment of paternity is in the best interests of the child pursuant to the factors in this section;

(ii) That the adjudicated father is not the biological father of the child;

(iii) That the adjudicated father's parental rights and responsibilities are terminated as of the date of the filing of the order;

(iv) That the birth records agency shall amend the child's birth certificate by removing the adjudicated father's name, if it appears thereon, and issue a new birth certificate for the child;

(v) That the adjudicated father is relieved of any and all future support obligations owed on behalf of the child from the date that the order determining that the established father is not the biological father is filed;

(vi) That any unpaid support due prior to the date the order determining that the adjudicated father is not the biological father is filed, is due and owing;

(vii) That the adjudicated father has no right to reimbursement of past child support paid to the mother, the state of Wyoming or any other assignee of child support.

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(n) Participation of the Title IV-D agency in an action brought under this section shall be limited as follows:

(i) The Title IV-D agency shall only participate in actions if services are being provided by the Title IV-D agency pursuant to title 20 chapter 6 of the Wyoming Statutes;

(ii) When services are being provided by the Title IV-D agency under title 20 chapter 6 of the Wyoming Statutes, the Title IV-D agency may assist in obtaining genetic tests pursuant to article 7 of this chapter;

(iii) An attorney acting on behalf of the Title IV-D agency represents the state of Wyoming in any action under this section. The Title IV-D agency's attorney is not the legal representative of the mother, the adjudicated father or the child in any action brought under this section.

(o) The costs of genetic testing, the fee of any guardian ad litem and all court costs shall be paid by the person bringing the action to overcome paternity unless otherwise provided by law.

(p) A man presumed to be the father of a child without adjudication of paternity may bring a proceeding to adjudicate paternity pursuant to W.S. 14-2-807.

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Section 2. This act is effective July 1, 2005.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk