

CERTIFICATION OF ENROLLMENT

SENATE BILL 6221

Chapter 146, Laws of 1994

53rd Legislature
1994 Regular Session

GENETIC TESTING TO DETERMINE PARENTAGE

EFFECTIVE DATE: 6/9/94

Passed by the Senate February 15, 1994
YEAS 48 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House March 3, 1994
YEAS 98 NAYS 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved March 28, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6221** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

March 28, 1994 - 11:52 a.m.

**Secretary of State
State of Washington**

SENATE BILL 6221

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

By Senators A. Smith and Quigley

Read first time 01/17/94. Referred to Committee on Law & Justice.

1 AN ACT Relating to genetic testing to determine parentage; and
2 amending RCW 26.26.100, 26.26.110, 26.26.120, 26.26.140, and
3 74.20A.056.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 26.26.100 and 1984 c 260 s 32 are each amended to read
6 as follows:

7 (1) The court may, and upon request of a party shall, require the
8 child, mother, and any alleged father who has been made a party to
9 submit to blood tests or genetic tests of blood, tissues, or other
10 bodily fluids. If an alleged father objects to a proposed order
11 requiring him to submit to paternity blood or genetic tests, the court
12 may require the party making the allegation of possible paternity to
13 provide sworn testimony, by affidavit or otherwise, stating the facts
14 upon which the allegation is based. The court shall order blood or
15 genetic tests if it appears that a reasonable possibility exists that
16 the requisite sexual contact occurred. The tests shall be performed by
17 an expert in paternity blood or genetic testing appointed by the court.
18 The expert's verified report identifying the blood or genetic
19 characteristics observed is admissible in evidence in any hearing or

1 trial in the parentage action, if (a) the alleged or presumed father
2 has had the opportunity to gain information about the security,
3 validity, and interpretation of the tests and the qualifications of any
4 experts, and (b) the report is accompanied by an affidavit from the
5 expert which describes the expert's qualifications as an expert and
6 analyzes and interprets the results. Verified documentation of the
7 chain of custody of the blood or genetic samples tested is admissible
8 to establish the chain of custody. The court may consider published
9 sources as aids to interpretation of the test results.

10 (2) The court, upon request by a party, shall order that additional
11 blood or genetic tests be performed by the same or other experts
12 qualified in paternity blood or genetic testing, if the party
13 requesting additional tests advances the full costs of the additional
14 testing within a reasonable time. The court may order additional
15 testing without requiring that the requesting party advance the costs
16 only if another party agrees to advance the costs or if the court
17 finds, after hearing, that (a) the requesting party is indigent, and
18 (b) the laboratory performing the initial tests recommends additional
19 testing or there is substantial evidence to support a finding as to
20 paternity contrary to the initial blood or genetic test results. The
21 court may later order any other party to reimburse the party who
22 advanced the costs of additional testing for all or a portion of the
23 costs.

24 (3) In all cases, the court shall determine the number and
25 qualifications of the experts.

26 **Sec. 2.** RCW 26.26.110 and 1984 c 260 s 33 are each amended to read
27 as follows:

28 Evidence relating to paternity may include:

29 (1) Evidence of sexual intercourse between the mother and alleged
30 father at any possible time of conception;

31 (2) An expert's opinion concerning the statistical probability of
32 the alleged father's paternity based upon the duration of the mother's
33 pregnancy;

34 (3) An expert's opinion concerning the impossibility or the
35 statistical probability of the alleged father's paternity based upon
36 blood or genetic test results;

37 (4) Medical or anthropological evidence relating to the alleged
38 father's paternity of the child based on tests performed by experts.

1 If a man has been identified as a possible father of the child, the
2 court may, and upon request of a party shall, require the child, the
3 mother, and the man to submit to appropriate tests; and

4 (5) All other evidence relevant to the issue of paternity of the
5 child.

6 **Sec. 3.** RCW 26.26.120 and 1984 c 260 s 34 are each amended to read
7 as follows:

8 (1) An action under this chapter is a civil action governed by the
9 rules of civil procedures. The mother of the child and the alleged
10 father are competent to testify and may be compelled to testify.

11 (2) Upon refusal of any witness, including a party, to testify
12 under oath or produce evidence of any other kind on the ground that the
13 witness may be incriminated thereby, and if a prosecuting attorney
14 requests the court to order that person to testify or provide the
15 evidence, the court shall then hold a hearing and shall so order,
16 unless it finds that to do so would be clearly contrary to the public
17 interest, and that person shall comply with the order.

18 If, but for this section, the witness would have been privileged to
19 withhold the answer given or the evidence produced, the witness may not
20 refuse to comply with the order on the basis of the privilege against
21 self-incrimination; but the witness shall not be prosecuted or
22 subjected to criminal penalty or forfeiture for or on account of any
23 transaction, matter, or fact concerning which the witness has been
24 ordered to testify pursuant to this section. The witness may
25 nevertheless be prosecuted for failing to comply with the order to
26 answer, or for perjury or for offering false evidence to the court.

27 (3) Testimony of a physician concerning the medical circumstances
28 of the pregnancy and the condition and characteristics of the child
29 upon birth is not privileged.

30 (4) In an action against an alleged father, evidence offered by the
31 alleged father with respect to a man who has not been joined as a party
32 concerning the nonparty's sexual intercourse with the mother at or
33 about the probable time of conception of the child is admissible in
34 evidence only if the nonparty has undergone and made available to the
35 court blood or genetic tests, (~~(including the human leukocyte antigen~~
36 ~~(HLA) test or other tests of comparable exclusionary power,~~) the
37 results of which do not exclude the possibility of the nonparty's
38 paternity of the child.

1 (5) The trial shall be by the court without a jury.

2 **Sec. 4.** RCW 26.26.140 and 1984 c 260 s 35 are each amended to read
3 as follows:

4 The court may order reasonable fees of experts and the child's
5 guardian ad litem, and other costs of the action, including blood or
6 genetic test costs, to be paid by the parties in proportions and at
7 times determined by the court. The court may order that all or a
8 portion of a party's reasonable attorney's fees be paid by another
9 party, except that an award of attorney's fees assessed against the
10 state or any of its agencies or representatives shall be under RCW
11 4.84.185.

12 **Sec. 5.** RCW 74.20A.056 and 1989 c 55 s 3 are each amended to read
13 as follows:

14 (1) If an alleged father has signed an affidavit acknowledging
15 paternity which has been filed with the state office of vital
16 statistics, the office of support enforcement may serve a notice and
17 finding of parental responsibility on him. Service of the notice shall
18 be in the same manner as a summons in a civil action or by certified
19 mail, return receipt requested. The notice shall have attached to it
20 a copy of the affidavit and shall state that:

21 (a) The alleged father may file an application for an adjudicative
22 proceeding at which he will be required to appear and show cause why
23 the amount stated in the finding of financial responsibility as to
24 support is incorrect and should not be ordered;

25 (b) An alleged father may request that a blood or genetic test be
26 administered to determine whether such test would exclude him from
27 being a natural parent and, if not excluded, may subsequently request
28 that the office of support enforcement initiate an action in superior
29 court to determine the existence of the parent-child relationship; and

30 (c) If the alleged father does not request that a blood or genetic
31 test be administered or file an application for an adjudicative
32 proceeding, the amount of support stated in the notice and finding of
33 parental responsibility shall become final, subject only to a
34 subsequent determination under RCW 26.26.060 that the parent-child
35 relationship does not exist.

36 (2) An alleged father who objects to the amount of support
37 requested in the notice may file an application for an adjudicative

1 proceeding up to twenty days after the date the notice was served. An
2 application for an adjudicative proceeding may be filed within one year
3 of service of the notice and finding of parental responsibility without
4 the necessity for a showing of good cause or upon a showing of good
5 cause thereafter. An adjudicative proceeding under this section shall
6 be pursuant to RCW 74.20A.055. The only issues shall be the amount of
7 the accrued debt, the amount of the current and future support
8 obligation, and the reimbursement of the costs of blood or genetic
9 tests if advanced by the department.

10 (3) If the application for an adjudicative proceeding is filed
11 within twenty days of service of the notice, collection action shall be
12 stayed pending a final decision by the department. If no application
13 is filed within twenty days:

14 (a) The amounts in the notice shall become final and the debt
15 created therein shall be subject to collection action; and

16 (b) Any amounts so collected shall neither be refunded nor returned
17 if the parent is later found not to be the father.

18 (4) An alleged father who denies being a responsible parent may
19 request that a blood or genetic test be administered at any time. The
20 request for testing shall be in writing and served on the office of
21 support enforcement personally or by registered or certified mail. If
22 a request for testing is made, the department shall arrange for the
23 test and, pursuant to rules adopted by the department, may advance the
24 cost of such testing. The department shall mail a copy of the test
25 results by certified mail, return receipt requested, to the alleged
26 father's last known address.

27 (5) If the test excludes the alleged father from being a natural
28 parent, the office of support enforcement shall file a copy of the
29 results with the state office of vital statistics and shall dismiss any
30 pending administrative collection proceedings based upon the affidavit
31 in issue. The state office of vital statistics shall remove the
32 alleged father's name from the birth certificate.

33 (6) The alleged father may, within twenty days after the date of
34 receipt of the test results, request the office of support enforcement
35 to initiate an action under RCW 26.26.060 to determine the existence of
36 the parent-child relationship. If the office of support enforcement
37 initiates a superior court action at the request of the alleged father
38 and the decision of the court is that the alleged father is a natural
39 parent, the alleged father shall be liable for court costs incurred.

1 (7) If the alleged father does not request the office of support
2 enforcement to initiate a superior court action, or if the alleged
3 father fails to appear and cooperate with blood or genetic testing, the
4 notice of parental responsibility shall become final for all intents
5 and purposes and may be overturned only by a subsequent superior court
6 order entered under RCW 26.26.060.

Passed the Senate February 15, 1994.

Passed the House March 3, 1994.

Approved by the Governor March 28, 1994.

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