

PATERNITY ESTABLISHMENT

Request for Genetic Testing

CS 601.4

SUPERSEDES

CS 601.4 Request for Genetic Testing, November 12, 1997

REFERENCES

42 USC§666(a)(5); MCA §40-5-233

Policy

In a CSED case an alleged father, a mother, or a child (through the child's custodian) may request the CSED order genetic testing to determine paternity. By law, the CSED must grant the request if it is supported by a sworn statement establishing a reasonable probability of sexual contact or lack of sexual contact (depending on whether the requestor is alleging or denying paternity).

The opportunity to request genetic testing is available regardless of whether the CSED has initiated an administrative paternity action under procedures beginning in section CS 602.1. However, if there is an action in progress, and the CSED orders genetic testing in that action, the request process outlined in this section will be redundant, and the CSED will not order a second test.

The CSED cannot initiate the request process, nor can the process be used as a substitute for any required paternity action; the process will not stop the running of the federal time frames for service of process and establishment. It is offered simply to provide access to testing for parties who can show a legal basis, and for whom testing would not otherwise be ordered. It is expected these situations will be rare. The CSED may excuse parties from genetic testing ordered under this section if there is good cause to do so based on the best interests of the child.

Procedures

CSED Regional Administrative Staff

1. Upon being contacted by a person requesting genetic testing to determine the paternity of a child, or making any equivalent assertion or request, determines whether the requestor is a participant (mother, alleged father, current custodian) listed on the SEARCHS CAPS screen in a CSED case involving the child. If so, refers the requestor to the caseworker for processing of the request. If not, explains requests are accepted only in CSED cases. If the requestor wishes to open a case by applying for CSED services, sends an application packet; if not, takes no further action.

Caseworker

2. Upon being contacted by a participant in a CSED paternity case who requests genetic testing, explains the process for administrative paternity establishment in CSED cases (sections CS 602.1, 602.2, 605.2, and 605.3), and the ways in which that process may result in voluntary or ordered genetic testing. If the requestor is not satisfied the regular establishment process will suit his or her purposes, explains the process for obtaining genetic testing under these PROCEDURES (section CS 601.4). If the requestor wishes to proceed, prepares, and sends form CS-601.4A, Request for Genetic Testing.

PATERNITY ESTABLISHMENT

Request for Genetic Testing

CS 601.4

3. Upon receiving a completed Request for Genetic Testing, enters a SEARCHS case note for the request received. Determines whether the CSED has initiated any formal or informal (NPR or mama/papa letter) paternity establishment actions involving the parties named in the request. If so, coordinates the two processes as applicable, contacting the requestor as needed. (For example, if the requestor is an alleged father in the paternity case, he may prefer to sign the Consent to Genetic Testing rather than submit to an additional interview under oath (see step 5). Or, if the requestor knows there is a good chance the other party will object to the request (see step 8), the requestor may prefer to allow the existing paternity establishment action to advance to the hearing stage.)

Discontinues procedures in this section at any time if the requestor withdraws the request. If the request is withdrawn by telephone, sends a letter confirming the telephone conversation. Enters a SEARCHS case note for the request withdrawn.

4. Reviews the request for completeness and forwards to the regional paralegal staff or designated paternity interviewer.

Paralegal Staff or Designated Paternity Interviewer

5. Schedules a telephone interview with the requestor. Arranges for the requestor to be put under oath at the beginning of the interview; conducts the interview on the evidence of the requestor to determine whether the requestor is alleging paternity, and there is a reasonable probability of the requisite sexual contact between the parties named in the request, or the requestor is denying paternity, and there is a reasonable probability of the nonexistence of sexual contact between the parties.
6. Issues copies to parties listed in a. or b. below based on findings to grant or deny the request for genetic testing.
 - a. Issues with copies to the caseworker and appropriate persons, and the original to the Office of Fair Hearings written findings of fact, conclusions of law, and an agency decision granting the request for genetic testing if the reasonable probability required in step 5 is found. Proceeds to step 7.
 - b. Issues with copies to the caseworker and appropriate persons, and the original to the Office of Fair Hearings written findings of fact, conclusions of law, and an agency decision denying the request for genetic testing if the reasonable probability required in step 5 is not found; proceeds to step 9.

Enters a case note in the system for the genetic testing interview held, and the request granted or denied.

Caseworker

7. If genetic testing request is granted, follows procedures in sections 604.1 Request for Genetic Testing and 605.2 Notice of Parental Responsibility (NPR)—Single Allegation/605.3—NPR Multiple Allegation Cases. Arranges genetic testing; prepares form CS 605-2B, Genetic Testing Subpoena, and obtains the paternity interviewer's signature. Processes the form, monitors for compliance, and takes actions as necessary to compel compliance. Also, coordinates as necessary with any ongoing paternity establishment actions in the case.

PATERNITY ESTABLISHMENT

Request for Genetic Testing

CS 601.4

8. For a request granted in step 6, if a party named in the original request contacts the CSED objecting to the decision, explains the party may submit a request to “quash” (disallow) the order contained in the Genetic Testing Subpoena. In addition, explains (as in step 2) any pertinent ongoing processes that may result in genetic testing independently of the procedures in this section. If the objector still wishes to prevent the genetic testing granted in step 6, prepares and sends form CS 601-4B, Request to Quash Genetic Testing Subpoena.
9. For a request denied in step 6, if the requestor contacts the CSED objecting to the decision, explains the requestor may reapply, but if there is no new information to be presented at the interview, the decision will be the same. If applicable, also discusses possible bases for initiating formal action via an NPR, and proceeds as in section CS 605.2 or 605.3 if appropriate. If asked, explains there is no opportunity for judicial review of the denial.

Office of Fair Hearings/Administrative Law Judge

10. Upon receipt of a properly completed Request to Quash Genetic Testing Subpoena, informs the caseworker, and schedules and conducts a hearing on the request. Issues to be determined at the hearing are the same as those determined at a hearing on an NPR. Issues a decision and order from the hearing.

Caseworker

11. Prepares exhibits and arranges for testimony of witnesses at the hearing. If applicable, coordinates with any other opportunity for hearing that may be pending in the paternity case. Attends and appears as a witness at the hearing. If the decision and order resulting from the hearing upholds the Genetic Testing Subpoena, reschedules testing if necessary and monitors for compliance.