

PATERNITY ESTABLISHMENT

Referral to District Court

CS 606.4

SUPERSEDES

CS 606.4, Referral to District Court, September 30, 1995

REFERENCES

MCA § 40-5-236-237

Policy

Applicability

The procedures in this section apply when all of the following conditions are met:

- 1) The CSED has served a Notice of Parental Responsibility (NPR) on the alleged or presumed father or has received a signed Consent to Genetic Testing from him.
- 2) The CSED is establishing the paternity of an alleged or presumed father based on genetic testing results of 95% or higher statistical probability.
- 3) The alleged or presumed father continues to deny paternity.

NOTE:

Referral Not Available from Informal Process. If the alleged or presumed father agreed to genetic testing but never signed a Consent to Genetic Testing and was never served with an NPR, there is no contested CSED case to be referred. If the alleged/presumed father wishes to continue to deny paternity in this situation, he must file a petition of nonpaternity in district court seeking rebuttal of the presumption.

No Delay in Establishing Support Obligation

The CSED does not delay or interrupt its administrative support order establishment procedures when the paternity issue in a case is referred to district court. The alleged or presumed father now the obligor may ask the court to stay the CSED's Notice and Order Concerning Support (NOCS) action, but absent an order from the court the CSED will proceed to establish and enforce a support obligation for the obligor. If the court overcomes the presumption created by the original genetic testing results, the CSED will, as a party to the proceeding, receive notice of the determination and will at that time terminate any support obligation that has been established.

Procedures

Procedures for Caseworker

1. Upon being contacted by alleged/presumed father continuing to deny paternity after receiving positive genetic testing results (95% or higher), proceeds as follows:
 - a. If contact is in writing and is equivalent to form CS 606.4A, Request for Referral to District Court, sends information sheet (second page of Request form) to alleged/presumed father with short cover letter acknowledging receipt of request; proceeds to step 2.
 - b. If contact is not in writing or is not equivalent to form CS 606.4A, Request for Referral to District Court, prepares and sends to alleged/presumed father form CS 606.4A.

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2. Upon receipt of completed Request for Referral to District Court within 20 days after service of genetic testing results, enters appropriate case note and refers Request to staff attorney for action. If request received later than 20 days after service of testing results, consults with staff attorney about whether to proceed with request.

Staff Attorney

3. Upon receipt of Request for Referral to District Court from caseworker, determines whether hearing has been held in the case.
 - a. If a hearing has been held, prepares the following or equivalent documents referring the matter for determination at trial:
 - 1) Petition for referral
 - 2) Notice of referral

Checks the system for any reason to protect participants' personal information in above documents; if found, takes appropriate steps to protect information before proceeding.

Sends above documents to clerk of district court with copies of notice of referral and addressed envelopes for alleged/presumed father, mother, any third-party obligee, and the Office of Fair Hearings (OFH); requests that clerk of court file originals, assign cause number, conform copies, and send conformed copies in envelopes provided. **Separately, sends additional copy of notice of referral directly to alleged/presumed father by certified mail, return receipt requested.** Enters appropriate case note for steps taken.

- b. If no hearing has been held, prepares administrative record in case according to section 40-5-236(2), MCA, as applicable; includes in record any Consent to Genetic Testing. For each participant, checks the system for any reason to protect address or other personal information contained in administrative record. If reason found, takes appropriate steps to protect identified information before proceeding.

Prepares and sends petition, notice, and copies of notice to clerk of district court with request for processing as in step 3a except includes certified copy of administrative record in petition for referral and does not request copy of notice be sent to OFH.

Sends additional copy of notice of referral, along with copy of administrative record, directly to alleged/presumed father by certified mail, return receipt requested. Enters a case note. Skips to step 5.

OFH

4. Upon receipt of conformed copy of notice of referral from district court, prepares administrative record in case according to section 40-5-236(2), MCA. For each participant, checks the system for any reason to protect address or other personal information contained in administrative record. If reason found, takes appropriate steps to protect identified information before proceeding.

Files certified copy of administrative record, with appropriate transmittal document referencing cause number, with district court; sends copies of administrative record to staff attorney and alleged/presumed father and enters appropriate case note.

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Staff Attorney

5. Represents the CSED in paternity trial; arranges for expert testimony on genetic testing as needed.

Caseworker

6. Testifies if called as witness in paternity trial.