

RESOLUTION 10-03-2008

DIGEST

Paternity: Extension of Time to Conduct DNA Testing

Amends Family Code section 7646 to extend challenges to paternity testing up to 10 years.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Family Code section 7646 to extend challenges to paternity testing up to 10 years. This resolution should be disapproved because it imposes an undue burden on courts to award child support and manage potential challenges.

This resolution would effectively halt the ability of judges to make orders that are in the best interest of children. This resolution extends the time for challenging paternity results using DNA to 10 years if a man is adjudged to be the father before the effective date of this section and if there was a default judgment. As the time limitations proposed by this resolution are extraordinarily long, this resolution in effect works against the best interests of families and children because ancillary orders (e.g., child support, visitation, and custody) would be subject to longstanding challenge.

This resolution is similar to S.B. 1333 and Assembly Bill 2240, currently pending in the legislature. On September 26, 2002, another variant, Assembly Bill 2240 (Ashburn) was vetoed by the then governor, and was subsequently revived in another bill that also was unsuccessful.

SECTION/COMMITTEE REPORTS

FAMILY LAW SECTION

APPROVE AS AMENDED

The Family Law Section Executive Committee approves this resolution provided that the resolution is amended to reduce the period of the statute of limitations to five years rather than ten as proposed in this resolution. This resolution amends Family Code §7646 by extending the time to ten years for a father to challenge paternity using DNA if that person was adjudged to be the father (1) before the effective date of this section and (2) if there was a default judgment. The Executive Committee recommends that the resolution be amended to cover default judgments within a five-year period commencing January 1, 2005.

This position is only that of the Family Law Section of the State Bar of California. This position has not been adopted by either the State Bar Board of Governors or overall membership and is not to be construed as representing the position of the State Bar of California.

Membership in the Family Law Section is voluntary, and funding for section activities, including all legislative activities, is obtained entirely from voluntary services.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Family Code section 7646 to read as follows:

- 1 §7646
2 (a) Notwithstanding any other provision of law, a judgment establishing paternity
3 may be set aside or vacated upon a motion by the previously established mother of a child,
4 the previously established father of a child, the child, or the legal representative of any of
5 these persons if genetic testing indicates that the previously established father of a child is
6 not the biological father of the child. The motion shall be brought within one of the
7 following time periods:
8 (1) Within a two-year period commencing with the date on which the previously
9 established father knew or should have known of a judgment that established him as the
10 father of the child or commencing with the date the previously established father knew or
11 should have known of the existence of an action to adjudicate the issue of paternity,
12 whichever is first, except as provided in paragraph (2) or (3) of this subdivision.
13 (2) Within a two-year period commencing with the date of the child's birth if
14 paternity was established by a voluntary declaration of paternity. Nothing in this paragraph
15 shall bar any rights under subdivision (c) of Section 7575.
16 (3) In the case of any previously established father who is the legal father as a result
17 of a default judgment as of the effective date of this section, within a ~~two-year~~ten-year
18 period commencing with the enactment of this section.
19 (b) Subdivision (a) does not apply if the child is presumed to be a child of a
20 marriage pursuant to Section 7540.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS:

Existing Law: A person who has had a judgment establishing paternity may challenge that judgment based upon DNA evidence but there are strict time limits for the bringing of the motion. Subdivision (3) expired 2 years after the effective date of the statute. The statute became effective January 1, 2005, and expired January 1, 2007.

This Resolution: Extends the time to 10 years for a father to challenge paternity using DNA if the person was adjudged to be the father 1) before the effective date of this section and 2) there was a default judgment.

The Problem: This law allowed fathers to use DNA testing to disprove paternity but set forth strict time frames. For dad's who had paternity adjudicated through a default judgment before the section was enacted, they only had two years to make their challenge. Unfortunately, because of lack of publicity about the statute the law was not used to its full advantage. This resolution extends the time frame to 10 years from the effective date (to January 1, 2015). Fundamental fairness dictates that persons who are not the father should be allowed to challenge a default judgment to the contrary.

IMPACT STATEMENT:

This proposed resolution does not affect any other law, statute or rule.

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COUNTERARGUMENTS

THE BAR ASSOCIATION OF SAN FRANCISCO

A man determined to be a child's father as of January 1, 2005 by default judgment has already had two years to seek genetic testing to verify paternity. While a father's right to vacate a judgment entered erroneously is important, it must be balanced against the complete upheaval such action would likely cause for a child. To allow a father *10 years* to vacate a default judgment, without even requiring a showing as to a reasonable ground for delay, is certainly not in the child's best interest. Fundamental fairness must give fathers a reasonable period of time in which to act to verify paternity, but must also balance the child's interest in finality as to legal relationships.

SAN DIEGO COUNTY BAR ASSOCIATION

This resolution seeks to reenact a section of the law that expired by its own terms on January 1, 2007. The proponent claims that lack of publicity hurt the use of the prior law. However, rather than adopt another two year timeframe, this resolution would impose a ten year timeframe, which appears to be beyond reasonable limits and against the best interests of the children.