

HOUSE BILL NO. 1077

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Cordoza)

A BILL to amend and reenact §§ 20-49.10 and 32.1-257 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-208.1, relating to paternity; genetic tests to determine parentage; relief from paternity; certain actions; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-49.10 and 32.1-257 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-208.1 as follows:

§ 18.2-208.1. Fraudulent statements; paternity determinations; penalty.

Any person who willfully and intentionally gives any material false information for the purpose of determining paternity is guilty of a Class 6 felony.

§ 20-49.10. Relief from legal determination of paternity.

A. An individual may file a petition for relief and, except as provided herein, the court may set aside a final judgment, court order, administrative order, obligation to pay child support or any legal determination of paternity if a scientifically reliable genetic test performed in accordance with this chapter establishes the exclusion of the individual named as a father in the legal determination. The court shall appoint a guardian ad litem to represent the interest of the child. The petitioner shall pay the costs of such test. A court that sets aside a determination of paternity in accordance with this section shall order completion of a new birth record and may order any other appropriate relief, including setting aside an obligation to pay child support. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for relief from a determination of paternity, but only from the date that notice of the petition was served on the nonfiling party.

26 B. A court shall not grant relief from determination of paternity if the individual named as father
27 (i) acknowledged paternity knowing he was not the father, (ii) adopted the child, or (iii) knew that the
28 child was conceived through artificial insemination.

29 C. In addition to any other available relief, an individual relieved of paternity who previously paid
30 support pursuant to a child support order entered in conjunction with the set-aside paternity determination
31 may file an action against the other party for repayment of any such support. Such action shall accrue
32 upon relief of paternity and be commenced within two years upon such relief.

33 D. If an individual's paternity is set aside pursuant to this section, any subsequent petitions for
34 child support against such individual shall be dismissed, unless such individual subsequently adopts such
35 child.

36 **§ 32.1-257. Filing birth certificates; from whom required; signatures of parents.**

37 A. A certificate of birth for each live birth that occurs in the Commonwealth shall be filed with the
38 State Registrar within seven days after such birth. The certificate of birth shall be registered by the State
39 Registrar if it has been completed and filed in accordance with this section.

40 B. When a birth occurs in an institution or en route thereto, the person in charge of such institution
41 or an authorized designee shall obtain the personal data, and prepare the certificate either on forms
42 furnished by the State Registrar or by an electronic process as approved by the Board. Such person or
43 designee shall, if submitting a form, secure the signatures required by the certificate. The physician or
44 other person in attendance shall provide the medical information required by the certificate within five
45 days after the birth. The person in charge of the institution or an authorized designee shall certify to the
46 authenticity of the birth registration either by affixing his signature to the certificate or by an electronic
47 process approved by the Board, and shall file the certificate of birth with the State Registrar within seven
48 days after such birth.

49 C. When a birth occurs outside an institution, the certificate shall be prepared on forms furnished
50 by the State Registrar and filed by one of the following in the indicated order of priority, in accordance
51 with the regulations of the Board:

52 1. The physician in attendance at or immediately after the birth, or in the absence of such physician,

53 2. Any other person in attendance at or immediately after the birth, or in the absence of such a
54 person,

55 3. The mother, the other parent, or, in the absence of the other parent and the inability of the
56 mother, the person in charge of the premises where the birth occurred.

57 C1. When a birth occurs on a moving conveyance within the United States of America and the
58 child is first removed from the conveyance in this Commonwealth, the birth shall be registered in this
59 Commonwealth and the place where the child is first removed from the conveyance shall be considered
60 the place of birth. When a birth occurs on a moving conveyance while in international waters or air space
61 or in a foreign country or its air space and the child is first removed from the conveyance in this
62 Commonwealth, the birth shall be registered in this Commonwealth although the certificate shall indicate
63 the actual place of birth insofar as can be determined.

64 D. If the mother of a child is not married to the natural father of the child at the time of birth or
65 was not married to the natural father at any time during the 10 months next preceding such birth, the name
66 of the father shall not be entered on the certificate of birth without a sworn acknowledgment of paternity,
67 executed subsequent to the birth of the child, of both the mother and of the person to be named as the
68 father. In any case in which a final determination of the paternity of a child has been made by a court of
69 competent jurisdiction pursuant to § 20-49.8, from which no appeal has been taken and for which the time
70 allowed to perfect an appeal has expired, the name of the father and the surname of the child shall be
71 entered on the certificate of birth in accordance with the finding and order of the court.

72 Children born of marriages prohibited by law, deemed null or void, or dissolved by a court shall
73 nevertheless be legitimate and the birth certificate for such children shall contain full information
74 concerning the other parent.

75 For the purpose of birth registration in the case of a child resulting from assisted conception,
76 pursuant to Chapter 9 (§ 20-156 et seq.) of Title 20, the birth certificate of such child shall contain full
77 information concerning the mother's spouse as the other parent of the child and the gestational mother as
78 the mother of the child. Donors of sperm or ova shall not have any parental rights or duties for any such
79 child.

80 In the event that any person desires to have the name of the father entered on the certificate of birth
81 based upon the judgment of paternity of a court of another state, such person shall apply to an appropriate
82 court of the Commonwealth for an order reflecting that such court has reviewed such judgment of paternity
83 and has determined that such judgment of paternity was amply supported in evidence and legitimate for
84 the purposes of Article IV, Section 1 of the Constitution of the United States.

85 If the order of paternity should be appealed, the registrar shall not enter the name of the alleged
86 father on the certificate of birth during the pendency of such appeal. If the father is not named on the
87 certificate of birth, no other information concerning the father shall be entered on the certificate.

88 E. Prior to the entry of an alleged father on the certificate of birth, such alleged father shall be
89 informed of the option to request the administering of scientifically reliable genetic tests, including blood
90 tests, to determine paternity. When a birth occurs in an institution or en route thereto, such alleged father
91 shall be informed of such option by the person in charge of such institution or an authorized designee.
92 When a birth occurs outside an institution, such alleged father shall be informed of such option by the
93 physician in attendance at or immediately after the birth or in the absence of such physician any other
94 person in attendance at or immediately after the birth.

95 If the alleged father chooses to exercise such option, the administering of any such test shall occur
96 as soon as practicable by such institution if the birth occurs in an institution or en route thereto or by the
97 physician in attendance at or immediately after the birth or, in the absence of such physician, by any other
98 person in attendance at or immediately at the birth if the birth occurs outside an institution if such test is
99 readily available at such institution or by such physician or other person in attendance. If such test is not
100 readily available, then such test shall be performed by a third-party testing facility. However, in no
101 instance shall the name of an alleged father go on a birth certificate until paternity has been scientifically
102 determined by such a test, or unless a father has waived the option of having such a test performed.

103 F. Either of the parents of the child shall verify the accuracy of the personal data to be entered on
104 the certificate of birth in time to permit the filing within the seven days prescribed above.

105 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
106 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**

107 appropriation is _____ for periods of imprisonment in state adult correctional facilities;
108 therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia
109 Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-
110 19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for
111 periods of commitment to the custody of the Department of Juvenile Justice.

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