TITLE 7
SPECIAL PROCEEDINGS

CHAPTER 11
PROCEEDINGS TO ESTABLISH PATERNITY

7-1101. TITLE OF ACT. This act shall be known as the Paternity Act.

[7-1101, added 1969, ch. 93, sec. 25, p. 318.]

7-1102. JURISDICTION OF DISTRICT COURT. The district courts shall have exclusive original jurisdiction in proceedings to establish paternity and, in any such proceeding in which it makes a finding of paternity, to order support and determine custody, as set forth in this act.

[7-1102, added 1969, ch. 93, sec. 1, p. 318.]

7-1103. DEFINITIONS. When used in this act:

(1) The phrase "child conceived or born out of wedlock" refers to a child who is conceived outside of lawful matrimony but has not yet been born or who is begotten and born outside of lawful matrimony.

(2) The word "child" refers to child conceived or born out of wedlock.

(3) The word "mother" refers to the mother of a child conceived or born out of wedlock.

(4) The word "father" refers to the biological father of a child conceived or born out of wedlock.

(5) The word "court" refers to the district court which is hearing the cause.

[7-1103, added 1969, ch. 93, sec. 2, p. 318; am. 1988, ch. 132, sec. 1, p. 235; am. 2019, ch. 295, sec. 1, p. 876.]

7-1104. ORDER FIXES LEGAL RELATIONSHIPS. After an order of filiation has been made as herein provided, the legal status and legal relationships and the rights and obligations between a person and his descendants, and between a person and his parents, their descendants and kindred, are the same for all persons, whether or not the parents have been married.

[7-1104, added 1969, ch. 93, sec. 3, p. 318.]

7-1105. PARENTS LIABLE FOR SUPPORT AND EDUCATION -- DECEASED PARENT -- LIABILITY OF ESTATE. Each parent of a child conceived or born out of wedlock is liable for the necessary support and education of the child and for the child's funeral expenses. If a parent dies, an order of support or a judicially approved settlement made prior to that parent's death shall be enforceable as a claim against the deceased parent's estate in an amount to be determined by the probate court not greater than is provided in the order of settlement, having regard to the age of the child, the ability of the surviving parent to support and educate it, the amount of property left by the deceased parent, and the number, age and financial condition of those other persons legally entitled to support by the deceased parent during his or her lifetime.

[7-1105, added 1969, ch. 93, sec. 4, p. 318; am. 2019, ch. 295, sec. 2, p. 876.]

7-1106. ACKNOWLEDGMENT OF PATERNITY. (1) A voluntary acknowledgment of paternity for an Idaho birth shall be admissible as evidence of paternity and shall constitute a legal finding of paternity upon the filing of a signed and notarized acknowledgment with the vital statistics unit of the department of health and welfare. If the mother was married at the time of either conception or birth, or between conception and birth, and the husband is not the father of the child, the husband may file an executed and notarized affidavit of nonpaternity if it is accompanied by a voluntary acknowledgment of paternity signed and notarized by the mother and the alleged father. Any party executing an acknowledgment of paternity or affidavit of nonpaternity may file a notarized rescission of such with the vital statistics unit within the earlier of:

(a) Sixty (60) days after the acknowledgment is filed; or

(b) The date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

Such rescission shall be effective upon filing with the vital statistics unit. The vital statistics unit shall notify the other party or parties of the rescission by certified mail.

(2) After the period for rescission, an executed acknowledgment of paternity may be challenged only in court on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the party challenging the acknowledgment. The legal responsibilities, including the obligation to pay child support, of any party to the acknowledgment shall not be stayed except for good cause shown.

(3) The court may enter an order for the support of a child upon execution of a voluntary acknowledgment without further proceedings to establish paternity.

(4) The director shall prescribe forms for acknowledgment of paternity, affidavits of nonpaternity, and rescission thereof, and the board of health and welfare may promulgate such rules as are necessary to prescribe forms and establish fees to recover costs of maintaining such system.

[7-1106, added 1969, ch. 93, sec. 5, p. 318; am. 1988, ch. 132, sec. 2, p. 235; am. 1994, ch. 237, sec. 1, p. 746; am. 1995, ch. 234, sec. 1, p. 791; am. 1996, ch. 49, sec. 1, p. 144; am. 1998, ch. 106, sec. 1, p. 363.]

7-1107. LIMITATION OF ACTION. (1) Except as provided in section 16-1504(10), Idaho Code, a proceeding to establish paternity of the child under the provisions of this chapter may be instituted either before or after the birth of the child but must be instituted before the child reaches the age of majority as defined in section 32-101, Idaho Code.

(2) This section shall apply retroactively and is for the benefit of any dependent child, whether conceived or born before or after the effective date of this act and regardless of the past or current marital status of the parents.

[7-1107, added 1985, ch. 159, sec. 4, p. 422; am. 1986, ch. 221, sec. 1, p. 584; am. 2013, ch. 138, sec. 1, p. 323; am. 2019, ch. 295, sec. 3, p. 877; am. 2020, ch. 330, sec. 2, p. 955.]

7-1108. DEATH OF MOTHER -- PROCEEDINGS CONTINUE. If, after the action is commenced, the mother dies or is judicially determined an incompetent, the proceeding does not abate but may be continued by her executor, administrator, guardian, or such other personal representative as may be appointed by any court of competent jurisdiction.

[7-1108, added 1969, ch. 93, sec. 7, p. 318.]

7-1109. VENUE -- BIRTH OUT OF STATE NO BAR. Proceedings to establish paternity may be originated in the county where the mother or child resides or is found or in the county where the putative father resides or is found. The fact that the child was born outside of the state of Idaho does not bar a proceeding to establish paternity in the county where the putative father resides or is found or in the county where the mother resides or the child is found.

[7-1109, added 1969, ch. 93, sec. 8, p. 318.]

7-1110. PROCEEDINGS -- BY WHOM BROUGHT. Proceedings to establish the paternity of the child and to compel support under this act may be commenced by the mother, whether a minor or not, or by the child's guardian or other person standing in a paternal relation or being the next of kin of the child, or by the department of health and welfare on behalf of a child for whom services are being provided under Title IV-D of the social security act.

[7-1110, added 1969, ch. 93, sec. 9, p. 318; am. 1978, ch. 151, sec. 1, p. 333; am. 1995, ch. 234, sec. 2, p. 792.]

7-1111. COMMENCEMENT OF PROCEEDINGS. (1) Proceedings are commenced by either the filing of a verified voluntary acknowledgment of parentage executed by both the mother and father of the child; or by the filing of a verified complaint, alleging that the person named as defendant is the father of the child and petitioning the court to issue a summons. The service of summons, the complaint, and all pleadings shall be in accordance with the Idaho rules of civil procedure.

(2) A voluntary acknowledgment of parentage may be executed by the mother, whether a minor or not, and the father, whether a minor or not, and regardless of the marital status of the mother or father. The acknowledgment shall be verified by both the mother and the father.

[7-1111, added 1969, ch. 93, sec. 10, p. 318; am. 1988, ch. 132, sec. 3, p. 236.]

7-1112. WARRANT FOR ARREST -- WHEN ISSUED. The court may issue a warrant, directing the defendant be arrested and brought before the court, when a petition is presented to the court to commence the proceedings and it appears that:

(1) the summons cannot be served; or
(2) the defendant has failed to obey the summons; or
(3) the defendant is likely to leave the jurisdiction; or
(4) a summons, in the court's opinion, would be ineffectual; or
(5) the safety of the plaintiff is endangered; or
(6) a defendant on bail or on parole has failed to appear.

[7-1112, added 1969, ch. 93, sec. 11, p. 318.]

7-1113. BOND. The court before whom the defendant is taken under the preceding section may require an undertaking to appear or in default thereof may place the defendant in custody.

[7-1113, added 1969, ch. 93, sec. 12, p. 318.]

7-1114. TRIAL BY COURT -- TESTIMONY ON ACCESS -- CORROBORATION REQUIRED. The trial shall be by the court without a jury. If the mother is married both she and her husband may testify to nonaccess. If the defendant shall offer testimony of access by others at or about the time charged in the complaint, such testimony shall not be competent or sufficient to base a finding of access unless corroborated by other acts and circumstances tending to prove such access.

[7-1114, added 1969, ch. 93, sec. 13, p. 318.]

7-1115. TESTIMONY AND EVIDENCE RELATING TO PATERNITY. Evidence relating to paternity, whether given at the trial or the pretrial hearing, may include, but is not limited to:

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

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

(3) The statistical probability of the alleged father's paternity based upon the genetic tests; or

(4) Medical, scientific or genetic evidence relating to the alleged father's paternity of the child based on tests performed by experts; or

(5) A voluntary acknowledgment of paternity executed under section 7-1106, Idaho Code.

[7-1115, added 1982, ch. 127, sec. 2, p. 364; am. 1995, ch. 234, sec. 3, p. 792.]

7-1116. GENETIC TESTS. (1) The court may, and upon request of a party shall, require the child, mother, alleged father, or any male witness who testifies or will testify about his sexual relations with the mother at a possible time of conception to submit to genetic tests. The department of health and welfare may order or the individuals may voluntarily agree to such tests. The tests shall be performed by an expert qualified as an examiner of genetic markers. Verified documentation of the chain of custody of the genetic evidence is competent evidence to establish chain of custody. A verified expert's report prepared by a laboratory approved by the American association of blood banks or other accreditation body shall be admitted at trial unless a challenge to the testing procedures or the genetic analysis has been made twenty-one (21) days before trial. The genetic test report must be served upon the defendant party with the complaint or as soon as it is obtained, and in any event at least twenty-eight (28) days before a trial together with a notice that the genetic test will be admitted unless a challenge to the testing procedures or the genetic analysis has been made by a party at least twenty-one (21) days before trial. A genetic test result with

a probability of paternity of at least ninety-eight percent (98%) shall create a rebuttable presumption of paternity.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of genetic markers present on blood cells and components. Additional tests performed by other experts of the same qualifications may be ordered by the court at the expense of the party requesting additional testing.

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

(4) The requesting party shall pay the expense of genetic testing; however, the cost of genetic testing shall be recovered by the prevailing party in the action.

(5) Whenever the results of the tests exclude any male witness from possible paternity, the tests shall be conclusive evidence of nonpaternity of the male witness. The refusal of any party to submit to the genetic tests shall be disclosed to the court and is subject to the sanctions within the jurisdiction of the court. If the action was brought by the child's mother, but she refuses to submit herself or the child to genetic tests, the action shall be dismissed.

(6) Any party calling a male witness for the purpose of testifying that he had sexual intercourse with the mother at any possible time of conception shall provide all other parties with the name and address of the witness twenty (20) days before the trial or pretrial hearing. If a male witness is produced at the hearing for the purpose stated in this subsection, but the party calling the witness failed to provide the twenty (20) day notice, the court may adjourn the proceeding for the purpose of taking a genetic test of the witness prior to hearing the testimony of the witness if the court finds that the party calling the witness acted in good faith.

(7) Any individual may object to such an order of the department of health and welfare by filing an objection with the court.

[7-1116, added 1982, ch. 127, sec. 3, p. 365; am. 1994, ch. 237, sec. 2, p. 747; am. 1995, ch. 234, sec. 4, p. 792; am. 1996, ch. 49, sec. 2, p. 145; am. 1997, ch. 195, sec. 1, p. 552.]

7-1117. EXPERT WITNESSES APPOINTED BY COURT -- COMPENSATION -- PAYMENT. The compensation of each expert witness appointed by the court shall be fixed at a reasonable amount. It shall be paid as the court shall order. The court may order that it be paid by the parties in such proportions and at such times as it shall prescribe, or that the proportion of any party be paid by the county, and that, after payment by the parties or the county or both, all or part or none of it be taxed as costs in the action. The fee of an expert witness called by a party but not appointed by the court shall be paid by the party calling him but shall not be taxed as costs in the action.

[7-1117, added 1969, ch. 93, sec. 16, p. 318.]

7-1118. EXPERT TESTIMONY -- WHEN ACTION DISMISSED. If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, are that the defendant is not the father of the child, the question of paternity shall be resolved accordingly, and the action shall be dismissed with costs awarded to the defendant. If the experts disagree in their findings or conclusions, the action shall proceed.

[7-1118, added 1969, ch. 93, sec. 17, p. 318.]

7-1119. PRESUMPTION OF LEGITIMACY -- WHEN REBUTTED. The presumption of legitimacy of a child born during wedlock is overcome by:

(1) Genetic tests which show that the husband is not the father of the child; or

(2) An affidavit of nonpaternity signed by the natural mother and her husband and an affidavit of paternity signed by the natural mother and natural father.

[7-1119, added 1969, ch. 93, sec. 18, p. 318; am. 1995, ch. 234, sec. 5, p. 793.]

7-1120. ORDER OF FILIATION. If the court finds the defendant is the father of the child, it shall make an order of filiation, declaring paternity.

[7-1120, added 1969, ch. 93, sec. 19, p. 318.]

7-1121. ORDER FOR SUPPORT -- CONTINUANCE BEYOND AGE OF 18 -- OTHER PAYMENTS BY FATHER. (1) In a proceeding in which the court has made an order of filiation, the court may direct a father possessed of sufficient means or able to earn such means to pay monthly or at other fixed periods a fair and reasonable sum for the support and education of the child until the child is eighteen (18) years of age. If the child continues his high school education subsequent to reaching the age of eighteen (18) years, the court may, in its discretion, order the continuation of support payments until the child discontinues his high school education or reaches the age of nineteen (19) years, whichever is sooner.

(2) The order of filiation may direct the father to pay or reimburse amounts paid for the support of the child prior to the date of the order of filiation and may also direct him to pay or reimburse amounts paid for: (a) the funeral expenses if the child has died; (b) the necessary expenses incurred by or for the mother in connection with her confinement and recovery; and (c) such expenses in connection with the pregnancy of the mother as the court may deem proper.

(3) If the father is a minor at the time the order is entered, the order shall continue in effect as a valid order after the father reaches majority, and cannot be disaffirmed by the minor himself or personal representatives.

(4) Upon the receipt of a genetic test result with a probability of paternity of at least ninety-eight percent (98%) the court shall, upon motion by a party, order temporary support for the child pending a final order of paternity and support. The support shall be in accordance with the Idaho child support guidelines.

(5) All child support orders shall notify the obligor that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code. Failure to include this provision does not affect the validity of the support order. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.

[7-1121, added 1969, ch. 93, sec. 20, p. 318; am. 1986, ch. 222, sec. 6, p. 606; am. 1988, ch. 132, sec. 4, p. 236; am. 1990, ch. 361, sec. 2, p. 975; am. 1990, ch. 410, sec. 2, p. 1138; am. 1996, ch. 49, sec. 3, p. 146; am. 1997, ch. 197, sec. 1, p. 555; am. 1998, ch. 292, sec. 2, p. 930.]

7-1122. PAYMENT TO MOTHER OR TRUSTEE -- REPORT TO COURT. (1) The court may require the payment to be made to the mother or to some person or corporation designated by the court as trustee. If the child is likely to become a public charge on a county or city, the public assistance official of that county or city shall be designated as trustee. If the mother does not reside within the county in which the court is located, the court shall direct payment to be made to a trustee.

(2) The trustee shall report to the court annually or more often, as the court may direct, the amounts received and paid over.

[7-1122, added 1969, ch. 93, sec. 21, p. 318.]

7-1123. CHANGE OF TRUSTEE. The court, on motion of the plaintiff or otherwise, may at any time for good cause shown substitute another trustee for the one designated and acting.

[7-1123, added 1969, ch. 93, sec. 22, p. 318.]

7-1124. FULL FAITH AND CREDIT. A voluntary acknowledgment of paternity or a determination of paternity by a court or administrative body of any state must be accepted as determinative by the courts of this state and shall be entitled to full faith and credit.

[7-1124, added 1994, ch. 237, sec. 3, p. 748.]

7-1125. NO RIGHT TO JURY TRIAL. There shall be no right to a jury trial in proceedings under this chapter.

[7-1125, added 1996, ch. 49, sec. 4, p. 147.]

7-1126. CUSTODY OF CHILDREN -- BEST INTEREST. In any proceeding to determine custody under the provisions of this chapter, the court shall apply sections 32-717 through 32-717E, Idaho Code. However, the court shall not consider whether or not the mother or father did or did not voluntarily consent to the adoption of the child or to the relinquishment of parental rights in determining best interest of the child.

[7-1126, added 2013, ch. 138, sec. 2, p. 323.]