

PATERNITY ESTABLISHMENT
Motion for Genetic Testing Hearing

CS 606.3

SUPERSEDES

CS 606.3, Motion for Genetic Testing Hearing, September 30, 1995

REFERENCES

Intent of section 405-5-233, MCA

Policy

Applicability

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

- 1) A Notice of Parental Responsibility has been served.
- 2) The alleged or presumed father has not returned a signed Statement Concerning Paternity or its equivalent requesting a hearing.
- 3) The alleged or presumed father has not returned a signed Consent to Genetic Testing.
- 4) It appears genetic testing will be necessary to resolve the paternity case.

NOTE:

Option to Wait for Voluntary Testing. If the conditions above apply but the alleged or presumed father has agreed to genetic testing and, in the caseworker's discretion, is likely to appear for and cooperate with testing, the CSED may wait until after the scheduled testing date to determine if the procedures in this section are needed.

Purpose of Motion for Genetic Testing Hearing

The purpose of the motion for a genetic testing hearing is to allow the CSED to initiate procedures to compel genetic testing in a case where genetic testing is necessary to resolve paternity and the alleged or presumed father does not request a hearing on his own. If at any time in the case the alleged or presumed father signs a Consent to Genetic Testing, or actually submits to genetic testing, the motion for hearing is not needed.

Single- and Multiple-Allegation Cases

The need for genetic testing to resolve paternity (condition 4)) applies most commonly in multiple-allegation cases, where default and consent (non-tested) are not available as options. However, in single-allegation cases there are also certain combinations of case facts that would lead the CSED to move for a genetic testing hearing, as in the example below:

EXAMPLE: In a single-allegation case where conditions 1) through 3) apply, if the mother denies the paternity of the alleged or presumed father and the CSED cannot obtain other allegations from the mother and cannot close the case, the obligee is a third-party custodian, or public assistance is involved, genetic testing would be the only way to move the case forward. Note that, because of the mother's denial the CSED would not be in a position to establish the paternity of the alleged or presumed father by default, consent, or presumption.

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Generally, situations fitting the above example will arise when there is a third-party obligee, or the multiple-allegation case has been reduced to a single allegation with the remaining allegation being a presumed father, or the alleged or presumed father is the applicant for services.

Strength of Mother's Denial

When the mother denies the paternity of an alleged or presumed father in a CSED paternity case, the caseworker must determine whether the denial has sufficient substance to prohibit paternity establishment in a single-allegation scenario. Consultation with the CSED staff attorney is recommended. Ideally denials should be submitted in writing.

Procedures

Procedure for Caseworker

1. Upon identifying case where conditions for motion for genetic testing hearing apply, prepares and has signed CS-606.3A Verified Motion for Genetic Testing Hearing, and forwards to Office of Fair Hearings (OFH) together with a copy of Notice of Parental Responsibility, if motion based on mother's denial in single-allegation case, a copy of mother's written denial if any, and stuffers for mother, alleged/presumed father, and their attorneys.

Procedure Caseworker and OFH

2. Proceeds with hearing as in CS 605.3 Notice of Parental Responsibility—Multiple-Allegation Cases or, for motion based on mother's denial, as in CS 605.2 Notice of Parental Responsibility—Single Allegation Cases.

NOTE:

Issue at Hearing. The issue at hearing after a CSED motion for hearing, regardless of the multiple-allegation or single-allegation basis of the motion, is whether there is either a reasonable probability of sexual intercourse during the probable period of conception or a probable existence of a presumption.

Procedures Caseworker

3. If hearing determines alleged or presumed father should be ordered to submit to genetic testing, proceeds with Genetic Testing Subpoena as in CS 605.2; proceeds with testing as in CS 604.1 Genetic Testing, including processing of results.
4. If alleged/presumed father or mother fails to appear for, or submit to, scheduled drawing, takes steps to compel submission by district court order or CSED administrative remedy, as in CS 605.3 and 605.2. Does not attempt to enter default for failure to appear, even in single-allegation case.