

CHAMBER ACTION

1 The Justice Council recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to paternity; permitting a petition to set  
7 aside a determination of paternity; specifying contents of  
8 the petition; providing standards upon which relief shall  
9 be granted; providing remedies; providing that child  
10 support obligations shall not be suspended while a  
11 petition is pending; providing for genetic testing;  
12 providing for assessment of costs and attorney's fees;  
13 providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
17 Section 1. (1) In any action in which a male is required  
18 to pay child support as the father of a child, a petition to set  
19 aside a determination of paternity may be made at any time upon  
20 the grounds set forth in this section. Any such petition shall  
21 be filed in the circuit court and shall be served on the mother  
22 or other legal guardian or custodian. The petition shall  
23 include:

24        (a) An affidavit executed by the petitioner that newly  
 25 discovered evidence has come to the petitioner's knowledge since  
 26 the entry of judgment.

27        (b) The results of scientific tests that are generally  
 28 acceptable within the scientific community to show a probability  
 29 of paternity, administered within 90 days prior to the filing of  
 30 such petition, which results indicate that the male ordered to  
 31 pay such child support cannot be the father of the child for  
 32 whom support is required. A male who suspects he is not the  
 33 father but does not have access to the child to have genetic  
 34 testing performed may file a petition requesting the court to  
 35 order the child to be tested.

36        (c) An affidavit executed by the petitioner stating that  
 37 the petitioner is current on all child support payments for the  
 38 child for whom relief is sought.

39        (2) The court shall grant relief on a petition filed in  
 40 accordance with subsection (1) upon a finding by the court of  
 41 all of the following:

42            (a) The genetic test required in paragraph (1)(b) was  
 43 properly conducted.

44            (b) The male ordered to pay child support is current on  
 45 all child support payments.

46            (c) The male ordered to pay child support has not adopted  
 47 the child.

48            (d) The child was not conceived by artificial insemination  
 49 while the male ordered to pay child support and the child's  
 50 mother were in wedlock.

51 (e) The male ordered to pay child support did not act to  
 52 prevent the biological father of the child from asserting his  
 53 paternal rights with respect to the child.

54 (f) The male ordered to pay child support with knowledge  
 55 that he is not the biological father of the child has not:

56 1. Married the mother of the child and voluntarily assumed  
 57 the parental obligation and duty to pay child support;

58 2. Acknowledged his paternity of the child in a sworn  
 59 statement;

60 3. Been named as the child's biological father on the  
 61 child's birth certificate with his consent;

62 4. Been required to support the child because of a  
 63 voluntary written promise;

64 5. Received written notice from any state agency or any  
 65 court directing him to submit to genetic testing which he  
 66 disregarded;

67 6. Signed a voluntary acknowledgment of paternity as  
 68 provided in s. 742.10(4), Florida Statutes; or

69 7. Proclaimed himself to be the child's biological father.

70 (3) In the event the petitioner fails to make the  
 71 requisite showing required by this section, the court shall deny  
 72 the petition.

73 (4) In the event relief is granted pursuant to this  
 74 section, relief shall be limited to the issues of prospective  
 75 child support payments and termination of parental rights,  
 76 custody, and visitation rights. The male's previous status as  
 77 father continues to be in existence until the order granting  
 78 relief is rendered. All previous lawful actions taken based on

79 | reliance on that status are confirmed. This section shall not be  
 80 | construed to create a cause of action to recover child support  
 81 | that was previously paid.

82 | (5) The duty to pay child support and other legal  
 83 | obligations for the child shall not be suspended while the  
 84 | petition is pending except for good cause shown. However, the  
 85 | court may order the child support to be held in the registry of  
 86 | the court until final determination of paternity has been made.

87 | (6)(a) In an action brought pursuant to this section, if  
 88 | the genetic test results submitted in accordance with paragraph  
 89 | (1)(b) are provided solely by the male ordered to pay child  
 90 | support, the court on its own motion may, and on the petition of  
 91 | any party shall, order the child's mother, the child, and the  
 92 | male ordered to pay child support to submit to genetic tests.  
 93 | The court shall provide that such genetic testing be done no  
 94 | more than 30 days after the court issues its order.

95 | (b) If the mother of the child or the male ordered to pay  
 96 | child support willfully fails to submit to genetic testing or if  
 97 | either such party is the custodian of the child and willfully  
 98 | fails to submit the child for testing, the court shall issue an  
 99 | order determining the relief on the petition against the party  
 100 | so failing to submit to genetic testing. If a party shows good  
 101 | cause for failing to submit to genetic testing, such failure  
 102 | shall not be considered willful.

103 | (c) The party requesting genetic testing shall pay any  
 104 | fees charged for the tests. If the custodian of the child is  
 105 | receiving services from an administrative agency in its role as  
 106 | an agency providing enforcement of child support orders, that

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107 | agency shall pay the cost of genetic testing if it requests the  
108 | test and may seek reimbursement for the fees from the person  
109 | against whom the court assesses the costs of the action.

110 |       (7) If relief on a petition filed in accordance with this  
111 | section is not granted, the court shall assess the costs of the  
112 | action and attorney's fees against the petitioner.

113 |       Section 2. This act shall take effect July 1, 2005.