

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 863 Session of
2005

INTRODUCED BY WILT, LEH, ARMSTRONG, BASTIAN, BELFANTI,
BENNINGHOFF, CALTAGIRONE, CAPPELLI, CREIGHTON, DALLY,
DENLINGER, FAIRCHILD, GEIST, HARRIS, M. KELLER, LEACH,
R. MILLER, O'NEILL, PHILLIPS, PICKETT, SATHER, R. STEVENSON,
TIGUE AND YOUNGBLOOD, MARCH 14, 2005

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 14, 2005

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, further providing for determination of
3 paternity and for visitation rights and partial custody when
4 there is a deceased parent.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Sections 5104 heading and (a), (b), (c), (d) and
8 (g) and 5311 of Title 23 of the Pennsylvania Consolidated
9 Statutes are amended to read:

10 § 5104. [Blood tests] Tests to determine paternity.

11 (a) [Short title of section.--This section shall be known
12 and may be cited as the Uniform Act on Blood Tests to Determine
13 Paternity.] Testing.--A test to determine paternity shall be
14 conducted in accordance with this section. The test shall be
15 conducted upon blood, deoxyribonucleic acid (DNA) or both.

16 (b) Scope of section.--

17 (1) Civil matters.--This section shall apply to all

1 civil matters.

2 (2) Criminal proceedings.--This section shall apply to
3 all criminal proceedings subject to the following limitations
4 and provisions:

5 (i) An order for the tests shall be made only upon
6 application of a party or on the initiative of the court.

7 (ii) The compensation of the experts shall be paid
8 by the party requesting the [blood] test or by the
9 county, as the court shall direct.

10 (iii) The court may direct a verdict of acquittal
11 upon the conclusions of all the experts under subsection
12 (f). Otherwise, the case shall be submitted for
13 determination upon all the evidence.

14 (iv) The refusal of a defendant to submit to the
15 tests may not be used in evidence against the defendant.

16 (c) Authority for test.--In any matter subject to this
17 section in which paternity, parentage or identity of a child is
18 a relevant fact, the court, upon its own initiative or upon
19 suggestion made by or on behalf of any person whose blood or DNA
20 is involved, may or, upon motion of any party to the action made
21 at a time so as not to delay the proceedings unduly, shall order
22 the mother, child and alleged father to submit to blood tests,
23 DNA tests or both. If any party refuses to submit to the tests,
24 the court may resolve the question of paternity, parentage or
25 identity of a child against the party or enforce its order if
26 the rights of others and the interests of justice so require.

27 (d) Selection of experts.--The tests shall be made by
28 experts qualified as examiners of blood types or DNA
29 identification, who shall be appointed by the court. The experts
30 shall be called by the court as witnesses to testify to their

1 findings and shall be subject to cross-examination by the
2 parties. Any party or person at whose suggestion the tests have
3 been ordered may demand that other experts qualified as
4 examiners of blood types or DNA identification perform
5 independent tests under order of court, the results of which may
6 be offered in evidence. The number and qualifications of experts
7 shall be determined by the court.

8 * * *

9 (g) Effect on presumption of [legitimacy] paternity.--The
10 presumption of [legitimacy] paternity of a child born during
11 wedlock as heretofore recognized in this Commonwealth is
12 reaffirmed and made subject to the following provisions:

13 (1) Upon petition for testing in an action in which
14 paternity of the child is an issue filed not later than five
15 years after the child's birth, the court shall permit testing
16 to rebut the presumption of paternity provided that the
17 overall interests of justice, including the best interests of
18 the child, would not be unreasonably harmed and:

19 (i) the parties subject to the presumption are
20 divorced or irreconcilably separated, and one or both
21 assert reasonable grounds to believe that application of
22 the presumption is likely to result in an incorrect
23 paternity determination; or

24 (ii) the parties subject to the presumption mutually
25 agree to submit to and be bound by the testing.

26 (2) The presumption of paternity is overcome if the
27 court finds that the conclusions of all the experts as
28 disclosed by the evidence based upon the tests show that the
29 husband is not the father of the child.

30 § 5311. When parent deceased.

1 (a) Parents and grandparents.--If a parent of an unmarried
2 child is deceased, the parents or grandparents of the deceased
3 parent may be granted reasonable partial custody or visitation
4 rights, or both, to the unmarried child by the court upon a
5 finding that partial custody or visitation rights, or both,
6 would be in the best interest of the child and would not
7 interfere with the parent-child relationship. The court shall
8 consider the amount of personal contact between the parents or
9 grandparents of the deceased parent and the child prior to the
10 application.

11 (b) Siblings.--If a parent of an unmarried child is the
12 victim of criminal homicide perpetrated by the other parent, the
13 siblings of the deceased parent may be granted reasonable
14 partial custody or visitation rights, or both, to the unmarried
15 child by the court upon a finding that partial custody or
16 visitation rights, or both, would be in the best interest of the
17 child and would not interfere with any order or determination
18 under section 5303 (relating to award of custody, partial
19 custody or visitation). The court shall consider the amount of
20 personal contact between the siblings of the deceased parent and
21 the child prior to the application.

22 Section 2. This act shall take effect in 60 days.