**Section 160.61 Uncontested and Contested Administrative Paternity and Support Establishment**

a) Definitions

1) The definitions contained in Section 103 of the Illinois Parentage Act of 2015 [750 ILCS 46] shall apply to the same terms in this Section.

2) "Service" or "Served" means notice given:

A) by personal service, substitute service at the individual's usual place of abode with some family member or a person residing there who is at least 13 years old, certified mail (with or without return receipt requested) or restricted delivery;

B) *by a person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004* [225 ILCS 447] *or by a registered employee of a private detective agency certified under that Act* [305 ILCS 5/10-4]; or

C) by any method provided by law for service of a summons. (See Sections 2-202, 2-203 and 2-206 of the Code of Civil Procedure[735 ILCS 5]; Sections 10-4 and 10-11 of the Public Aid Code [305 ILCS 5].)

b) Uncontested Administrative Paternity Process

1) Except as otherwise determined, the Department shall establish an individual's paternity of a child through the administrative process set forth in this Section, in Title IV-D cases, wherein the court has not acquired jurisdiction previously, in matters involving:

A) a child and support is sought from the alleged father;

B) a child who is in the physical custody of the alleged father or a caretaker relative other than the child's mother, and support is sought from the alleged father, the mother, or both; or

C) presumed paternity as set forth in Section 204 of the Illinois Parentage Act of 2015 in which a man other than the presumed father has been alleged to be the child's father, and notice has been provided to the alleged and presumed fathers as set forth in this Section.

2) Contact with Responsible Relatives

A) Following the IV-D client interview, the Department shall contact and interview:

i) alleged fathers to establish paternity and support obligations; and

ii) mothers to establish an alleged father's paternity of a child (where the alleged father or a caretaker relative other than the mother has physical custody of the child) and to establish the support obligation of the alleged father, the mother, or both.

B) The purpose of contact and interview shall be to obtain relevant facts, including information concerning the child's paternity and responsible relative income information (for example, paycheck stubs, income tax returns) necessary to establish the child's paternity and to determine the responsible relative's financial ability for use in establishing child support obligations.

3) At least ten working days in advance of the interview, the Department shall serve upon or provide to the alleged father from whom child support is sought, by ordinary mail, a notice of alleged paternity and support obligation, which notice shall contain the following:

A) the IV-D case name and identification number;

B) the name and birthdate of the child;

C) that the alleged father has been identified as the biological father of the child named in the notice, and that, if determined to be the child's father, that person will have a legal obligation to support the child;

D) the date, time, place and purpose of the interview and that the alleged father may be represented by counsel;

E) that the alleged father should bring specified information regarding the alleged father's income and resources to the interview;

F) that upon failure of the alleged father to appear for the interview, administrative paternity and support orders may be entered against the alleged father by default; and

G) that the alleged father may be ordered to pay current support and retroactive support, and to provide health insurance coverage for the child.

4) At least ten working days in advance of the interview, the Department shall serve upon or provide to the child's mother, by ordinary mail, a notice of alleged paternity and support obligation, when a man has been alleged to be the father of the child, the alleged father has physical custody of the child, and support is sought from the mother. The notice shall contain the following:

A) the IV-D case name and identification number;

B) the name and birthdate of the child;

C) that the mother has a legal obligation to support the child;

D) the date, time, place and purpose of the interview and that the mother may be represented by counsel;

E) that the mother should bring specified information regarding the mother's income and resources to the interview;

F) that the mother may be ordered to pay current support and retroactive support, and to provide health insurance coverage for the child;

G) that the alleged father has been identified as the biological father of the child named in the notice, and that, if determined to be the child's father, that person will have a legal obligation to support the child; and

H) that upon failure of the mother to appear for the interview, or to provide necessary information to determine net income:

i) an administrative support order may be entered against the mother by default or the Department may seek court determination of financial ability based upon the guidelines; and

ii) the Department may enter an order finding the alleged father to be the father of the child.

5) At least ten working days in advance of the interview, the Department shall serve upon or provide to the child's mother, by ordinary mail, a notice of alleged paternity and support obligation, when a man has been alleged to be the father of a child, an adult other than a parent of the child has physical custody of the child, and support is sought from the mother and the alleged father. The notice shall contain the following:

A) the IV-D case name and identification number;

B) the name and birthdate of the child;

C) that the mother has a legal obligation to support the child;

D) the date, time, place and purpose of the interview and that the mother may be represented by counsel;

E) that the mother should bring specified information regarding the mother's income and resources to the interview;

F) that the mother may be ordered to pay current support and retroactive support, and to provide health insurance coverage for the child;

G) that the alleged father has been identified as the biological father of the child named in the notice, and that, if determined to be the child's father, that person will have a legal obligation to support the child; and

H) that upon failure of the mother to appear for the interview, or to provide necessary information to determine net income:

i) an administrative support order may be entered against the mother by default or the Department may seek an administrative or court determination of financial ability based upon the guidelines; and

ii) the Department may enter an order finding the alleged father to be the father of the child on the basis of genetic testing.

6) When the man alleged to be the father of a child is different from a man presumed to be the father under Section 204 of the Illinois Parentage Act of 2015, the Department shall send a notice to the presumed father which shall contain the following:

A) the IV-D case name and identification number;

B) the child's name and birthdate;

C) the name of the child's mother;

D) that the man to whom the notice is directed has been identified as the child's presumed father;

E) that another man has been alleged to be the child's father, and the name of that alleged father;

F) that the Department has scheduled an interview with the alleged father for the purpose of determining the child's paternity, and the date, time and place of the interview (the date of the interview shall not be less than ten working days after the date of the notice to the presumed father);

G) that if the presumed father fails to appear at the interview to assert rights as the presumed father, the Department may enter an administrative order finding the alleged father to be the child's father on the basis of genetic testing, or if the alleged father and the child's mother voluntarily sign an acknowledgment that the alleged father is the father of the child; and

H) that counsel may accompany the presumed father to the interview.

7) The Department shall notify each IV-D client of the date, time and place of the alleged father interview and that the client may attend if the client chooses.

8) In cases involving a child:

A) The Department shall provide the alleged father or presumed father and the child's mother an opportunity to establish paternity by voluntarily signing an acknowledgment of paternity (and, in a case in which there is also a presumed parent, an opportunity for the mother and the presumed parent to sign a denial of parentage), after being provided with information concerning the implications of signing the acknowledgment (and denial), including parental rights and responsibilities of child support, retroactive support, health insurance coverage, allocation of parental responsibility, allocation of parenting time, the right to obtain and agree to be bound by the results of genetic testing, and the right to deny paternity and obtain a contested hearing. A presumed father may sign or otherwise authenticate an acknowledgment. If the alleged father, who is not the presumed father, and the child's mother establish paternity by completing the voluntary acknowledgment of paternity (and, in a case in which there is also a presumed parent, the denial of parentage), the voluntary acknowledgment of paternity and, if appropriate, the denial of parentage shall:

i) signed by the appropriate parties in the presence of a witness as required by Section 12 of the Vital Records Act [410 ILCS 535] and this subsection (b). The witness must also sign the voluntary acknowledgment of paternity and, if appropriate, the denial of parentage at the time the appropriate parties sign. For purposes of the voluntary acknowledgment of paternity and, if appropriate, the denial of parentage, a witness must be an adult, age 18 or older, but cannot be a signatory or the child named on the voluntary acknowledgment of paternity or in the case of denial of parentage, cannot be a signatory or child named on the denial; and

ii) filed with the Department. If a voluntary acknowledgment of paternity and/or the denial of parentage is filed prior to or after the birth of a child and the required data elements specified in Section 12(5) of the Vital Records Act are missing, the signatories may be asked to resubmit the document.

B) The Department shall enter and, within 14 days after entry, serve or mail the parties a copy of an administrative paternity order finding the alleged father to be the father of the child in the following circumstances. An acknowledgment of receipt signed by the client or relative or a written statement identifying the place, date, and method of delivery signed by the Department's representative shall be sufficient for purposes of notice to that person. The Department shall enter the order where:

i) the alleged father and the child's mother (and any presumed father) have voluntarily signed an agreement to be bound by the results of genetic testing, and the results of such testing show that the alleged father is not excluded and that the combined paternity index is at least 1000 to 1 and there is a 99.9% probability of paternity;

ii) the alleged father fails to appear for interview in response to the Department's notice of alleged paternity and support obligation served upon the alleged father in a case in which support is sought from the alleged father, or fails to appear for scheduled genetic testing after signing an agreement to be bound by the results of genetic testing;

iii) the child's mother fails to appear for interview in response to the Department's notice of alleged paternity and support obligation served upon the child's mother in a case where the alleged father has physical custody of the child;

iv) the child's mother fails to appear for interview in response to the Department's notice of alleged paternity and support obligation served upon the child's mother in a case where an adult other than a parent of the child has physical custody of the child, the alleged father has voluntarily signed an agreement to be bound by the results of genetic testing, the results of genetic testing show that the alleged father is not excluded, and the combined paternity index is at least 1000 to 1 and there is a 99.9% probability of paternity;

v) the alleged father fails to appear for interview in response to the Department's notice of alleged paternity and support obligation served upon the alleged father (or fails to appear for genetic testing after agreeing to be bound by the results of genetic testing) in a case where an adult other than a parent of the child has physical custody of the child;

vi) the presumed father fails to appear in response to the Department's notice to presumed father served upon the presumed father, the child's mother, and the alleged father have voluntarily signed an agreement to be bound by the results of genetic testing, the results of genetic testing show that the alleged father is not excluded, and the combined paternity index is at least 1000 to 1 and there is a 99.9% probability of paternity; or

vii) the alleged father fails to appear for interview in response to the Department's notice of alleged paternity and support obligation served upon the alleged father, and the presumed father fails to appear in response to the Department's notice to presumed father served upon the presumed father.

C) The Department shall make a determination that the alleged father is not the father of the child where the results of genetic testing exclude the alleged father.

9) An agreement to be bound by the results of genetic testing under subsection (b)(8)(B) shall not be valid when the mother or alleged father is a minor, unless the parent or guardian of the minor mother or minor alleged father also signs the agreement to be bound by the results of genetic testing, except when the mother or alleged father is either emancipated or head of the household that includes the child for whom paternity is being determined.

10) A party aggrieved by entry of an administrative paternity order, pursuant to subsection (b)(8), may have the order vacated if, within 30 days after the authorized mailing or service of the order, the party appears in person at the office at which the party was given notice to appear for an interview pursuant to subsection (b)(3) and files a written request for relief from the order. The Department shall then proceed with the establishment of paternity under this Section. A party may obtain relief under this subsection (b) only once in any proceeding to establish paternity.

11) Rescission of Voluntary Acknowledgment of Paternity or Denial of Parentage

A) A signatory may rescind a voluntary acknowledgment of paternity, and/or a denial of parentage under Section 12 of the Vital Records Act , Article 3 of the Illinois Parentage Act of 2015 and this subsection (b) by signing a rescission of the voluntary acknowledgment of paternity/denial of parentage in the presence of a witness and filing it with the Department by the earlier of:

i) 60 days after the effective date of the acknowledgment of paternity, and/or the denial of parentage, as provided in section 304 of the Illinois Parentage Act of 2015; or

ii) 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.

B) The witness must also sign the rescission of the voluntary acknowledgment of paternity/denial of parentage at the time the parents sign. For purposes of the rescission of the voluntary acknowledgment of paternity/denial of parentage, a witness must be an adult, age 18 or older, but cannot be a signatory or the child named on the rescission.

C) If a signatory of an acknowledgment of paternity or denial of parentage signs a rescission of voluntary acknowledgment of paternity/denial of parentage, the Department shall process the case under this subsection (b).

c) Contested Paternity Hearing Officers

1) Except as otherwise directed by the Department or provided for in this Part, cases in which paternity is contested shall be referred to Department hearing officers to administratively determine paternity. The Department shall provide the alleged father (and any presumed father) with notice and opportunity to contest paternity at a hearing to determine the existence of the father and child relationship. The notice and any administrative hearing shall be governed by 89 Ill. Adm. Code 104.200 through 104.295. Any administrative support order shall be established in accordance with Section 160.60.

2) Notice shall be given to all parties in the manner provided for service of a notice of alleged paternity and support obligation under subsections (a) and (b) or, when necessary, by publication in cases in which the whereabouts of a party or parties are unknown after diligent location efforts by the Department. When service is by publication, the notice shall be published at least once in each week for three consecutive weeks in a newspaper published in the county in which the administrative proceeding is pending. If there is no newspaper published in that county, then the publication shall be in a newspaper published in an adjoining Illinois county having a circulation in the county in which the administrative proceeding is pending. In addition, where service is by publication, the date of the interview stated in the notice shall not be less than 30 days after first publication of the notice.

3) The Department shall enter default paternity determinations in contested administrative cases as provided for under subsection (b). However, when notice of the administrative proceedings was served on a party by publication under subsection (c)(2), a notice of default paternity determination shall be published in the same manner. The notice of default paternity determination shall contain the information required in an administrative paternity order under subsections (d)(1) through (9), except that the notice of default paternity determination shall not include the mother's and father's Social Security numbers. The Department shall not proceed to establish paternity administratively under subsection (c) in those cases in which the court has acquired jurisdiction previously or the custodial parent claims good cause for failing to cooperate in the establishment of paternity and is found to be exempt from cooperating as set forth in Section 160.35.

4) In any case in which the administrative paternity process has been initiated for the custodial parent and the child, and the custodial parent and the child move outside the original county, the paternity determination case shall remain in the original county of venue unless a transfer to another county of proper venue is requested by either party and the Department finds that a change of venue would be equitable and not unduly hamper the administrative paternity process.

d) An administrative paternity order, whether entered under subsection (b) or (c), shall include the following:

1) the IV-D case name and identification number;

2) the name and birthdate of the child for whom paternity is determined;

3) the alleged father's name and Social Security number, if known;

4) the mother's name and Social Security number, if known;

5) a finding that the alleged father is the father of the child, and a statement indicating how paternity was determined (for example, agreement to be bound by the results of genetic testing, default, contested hearing);

6) except in cases in which paternity is administratively determined under subsection (b)(8)(B)(ii), (v) or (viii), or in a contested hearing under subsection (c), a statement informing the client and responsible relative that each has 30 days after the date of mailing (or delivery at the interview) of the administrative paternity order to petition the Department for release from the order and receive a hearing in accordance with 89 Ill. Adm. Code 104.105;

7) in cases in which paternity is administratively determined by default under subsection (b)(8)(B)(ii), (v) or (viii), a statement informing the client and responsible relative of the relief available pursuant to subsection (b)(10);

8) a statement that, more than 30 days after entry of an administrative paternity order, a party aggrieved by entry of the administrative paternity order may petition the Department for release from the order under the provisions of subsection (e); and

9) in cases in which paternity is administratively determined in a contested hearing under subsection (c), a statement informing the client and responsible relative that the order is a final and binding administrative decision, and whether the order is reviewable only under the provisions of the Administrative Review Law [735 ILCS 5/Art. III]; and

10) a statement that the Department shall send a copy of the administrative paternity order to the Department of Public Health (DPH), Office of Vital Records, and that DPH, Office of Vital Records, shall prepare a birth certificate in accordance with the paternity order.

e) Petitions For Release – Extraordinary Remedies

1) Notwithstanding the statements required by subsection (d), more than 30 days after entry of an administrative paternity order under subsection (b) or (c), a party aggrieved by entry of an administrative paternity order may petition the Department for release from the order.

2) Petitions under this subsection (e) must:

A) Cite a meritorious defense to entry of the order.

B) Cite the exercise of due diligence in presenting that defense to the Department.

C) Be filed no later than two years following the entry of the administrative paternity order, except that times listed below shall be excluded in computing the two years:

i) time during which the person seeking relief is under legal disability;

ii) time during which the person seeking relief is under duress; and

iii) time during which the ground for relief is concealed from the person seeking relief.

D) Be supported by affidavit or other appropriate showing as to matters not supported by the record.

3) Notice of the filing of the petition must be given and a copy of the petition must be served on the other parent by certified mail, return receipt requested or by any manner provided by law for service of process. The filing of a petition under this subsection (e) does not affect the validity of the administrative paternity order.

f) When the paternity of a child has been administratively established under subsection (b) or (c), the Department shall enter an administrative support order under the process set forth in Section 160.60.

g) In cases in which a final administrative determination of paternity is pending, but there is clear and convincing evidence of paternity based upon the results of genetic testing and upon motion of a party, the Department shall enter a temporary order for support in the manner provided for in Section 160.60.

h) The Department shall notify the Department of Public Health of final administrative paternity determinations, voluntary acknowledgments of paternity, denials of paternity and rescissions of paternity.

i) In cases in which a child's certificate of birth is on file in a state other than Illinois and any of the circumstances stated in this subsection occur, the Department shall forward to the other state a copy of the final administrative determination of paternity or the voluntary acknowledgment of paternity (and the presumed father's denial of paternity, if applicable) or the rescission of paternity:

1) the Department enters a final administrative determination of paternity; or

2) the paternity of a child is established by voluntary acknowledgment under Section 12 of the Vital Records Act; or

3) the alleged father or the child's mother rescinds a voluntary acknowledgment of paternity under Section 12 of the Vital Records Act.

j) Judicial Process. The Department shall refer IV-D cases for judicial action to establish a child's paternity and a responsible relative's support obligation pursuant to the Illinois Parentage Act of 2015, the Revised Uniform Reciprocal Enforcement of Support Act [750 ILCS 20] or the Uniform Interstate Family Support Act [750 ILCS 22], as appropriate, in matters:

1) involving contested paternity, except when the case is appropriate for referral to a Department hearing officer;

2) when the child was not conceived in Illinois and the alleged father resides in a state other than Illinois;

3) when the court has acquired jurisdiction previously; or

4) when the results of genetic testing show that the alleged father is not excluded and the combined paternity index is less than 1000 to 1 and there is a 99.9% probability of paternity, except when the case is appropriate for referral to a Department hearing officer under subsection (c).

(Source: Amended at 44 Ill. Reg. 6277, effective April 13, 2020)