

# Legal Assistance Resource Center

## ❖ of Connecticut, Inc. ❖

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### S.B. 703 -- Court Operations

Judiciary Committee public hearing -- March 19, 2008

Testimony of Raphael L. Podolsky

**Recommended Committee action: AMENDMENT OF THE BILL**

We do not have a position on the bill as a whole, but there are several portions of the bill that we ask the Committee to change or to continue reviewing.

- Evidence of paternity (l. 931-934): **The brackets in l. 931 and l. 934 should be removed and the existing language retained.** The paternity statute has long required that the rebuttable presumption of paternity from a DNA test with a 99%+ probability does not come into play unless there is also evidence that sexual intercourse occurred between the mother and the putative father during the time period when the child was conceived. This bill removes that provision. It should be restored for two reasons: (1) The probability of paternity is statistically based on the assumption of an opportunity for intercourse. If that opportunity is not established, a 99% probability is meaningless. (2) The principal circumstance in which an erroneous paternity finding can occur, notwithstanding a 99%+ probability, is when the actual father is a blood relative of the defendant and therefore shares key elements of DNA. This provision minimizes the risk of such an error.
- Reopening of judgment based on request for genetic test (l. 1184-1187): **The last sentence of Section 34(b) should be deleted.** Section 34(a) prohibits challenging a paternity determination or acknowledge except by a motion to open the judgment, and Section 34(b) bars the court from opening a judgment "solely on the basis of a party's request to obtain a genetic test." This is overly harsh, especially because it applies not only to judicial judgments (in which a court may at least have canvassed the defendant) but also to acknowledgements of paternity, which are sometimes taken under pressured circumstances which may in reality be less than voluntary. The section appears to apply even to requests for a genetic test made a few days after an acknowledgement is filed. This is an area where judicial discretion is proper, and it should not be limited in the flat manner that this section proposes. **We also think that Section 34 as a whole should be reviewed with care to determine whether it is unreasonably restrictive.**
- Refund of state payments to person found not to be the father (l. 1039-1046 and l. 1244-1247): **"May" should be changed to "shall" in l. 1244 so as to retain existing law.** While Section 34 strictly limits a putative father's ability to open a paternity judgment, it lowers the state's duty to refund money he previously paid the state as the alleged father if he is subsequently found not to be the father. Existing law, which is repealed at l. 1044, provides that any such payments "shall" be refunded, while the new language at l. 1244 says that the court "may" order a refund. The existing mandatory refund should be retained.