

Effective 9/1/2025

81-5-607 Limitation -- Child having presumed father.

(1)

- (a) Parentage of a child conceived or born during a marriage with a presumed father, as described in Subsection 81-5-204(1)(a), (b), or (c) may be raised by the presumed father, the birth mother, or a child support services agency at any time before filing an action for divorce or in the pleadings at the time of the divorce of the parents.
- (b)
 - (i) If the issue is raised prior to the adjudication, genetic testing may be ordered by the tribunal in accordance with Section 81-5-608.
 - (ii) Failure of the birth mother of the child to appear for testing may result in an order allowing a motherless calculation of parentage.
 - (iii) Failure of the birth mother to make the child available may not result in a determination that the presumed father is not the father, but shall allow for appropriate proceedings to compel the cooperation of the birth mother.
 - (iv) If the question of parentage has been raised in the pleadings in a divorce and the tribunal addresses the issue and enters an order, the parties are estopped from raising the issue again, and the order of the tribunal may not be challenged on the basis of material mistake of fact.
- (c) If the presumed father seeks to rebut the presumption of parentage, then denial of a motion seeking an order for genetic testing or a decision to disregard genetic test results shall be based on a preponderance of the evidence.
- (d) If the birth mother seeks to rebut the presumption of parentage, the birth mother has the burden to show by a preponderance of the evidence that it would be in the best interests of the child to disestablish the parent-child relationship.
- (e)
 - (i) If a child support services agency seeks to rebut the presumption of parentage and the presumed father opposes the rebuttal, the agency's request shall be denied.
 - (ii) Otherwise, the denial of the agency's motion seeking an order for genetic testing or a decision to disregard genetic test results shall be based on a preponderance of the evidence, taking into account the best interests of the child.

(2) For the presumption outside of marriage described in Subsection 81-5-204(1)(d), the presumption may be rebutted at any time if the tribunal determines that the presumed father and the birth mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception.

(3) The presumption may be rebutted by:

- (a) genetic test results that exclude the presumed father;
- (b) genetic test results that rebuttably identify another man as the father in accordance with Section 81-5-505;
- (c) evidence that the presumed father and the birth mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; or
- (d) an adjudication under this part.

(4) There is no presumption to rebut if the presumed father was properly served and there has been a final adjudication of the issue.

Renumbered and Amended by Chapter 426, 2025 General Session