

REVISOR'S NOTE: This section is new language derived without substantive change from the second, third, and fourth sentences of former Article 16, § 66F(d).

In subsection (b) of this section, the phrase "for the jury" is substituted for the former phrase "to be submitted for determination by the jury", for brevity.

The first sentence of former Article 16, § 66F(d), which related to empanelling of the jury, is deleted as unnecessarily repetitive of the Maryland Rules and Title 8, Subtitle 2 of the Courts Article.

Defined term: "Including" § 1-101

5-1028. BURDEN OF PROOF; PRESUMPTIONS; TESTIMONY.

(A) BURDEN OF PROOF.

AT THE TRIAL, THE BURDEN IS ON THE COMPLAINANT TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT THE ALLEGED FATHER IS THE FATHER OF THE CHILD.

(B) COMPETENCY TO TESTIFY.

BOTH THE MOTHER AND THE ALLEGED FATHER ARE COMPETENT TO TESTIFY AT THE TRIAL.

(C) PRESUMPTION.

(1) THERE IS A REBUTTABLE PRESUMPTION THAT THE CHILD IS THE LEGITIMATE CHILD OF THE MAN TO WHOM ITS MOTHER WAS MARRIED AT THE TIME OF CONCEPTION.

(2) THE PRESUMPTION SET FORTH IN THIS SUBSECTION MAY BE REBUTTED BY THE TESTIMONY OF A PERSON OTHER THAN THE MOTHER OR HER HUSBAND THAT THE MOTHER LIVED SEPARATE AND APART FROM HER HUSBAND AT THE TIME OF CONCEPTION.

(3) IF IT IS SHOWN THAT THE MOTHER AND HUSBAND LIVED SEPARATE AND APART AT THE TIME OF CONCEPTION, IT IS NOT NECESSARY TO ESTABLISH NONACCESS OF THE HUSBAND TO REBUT THE PRESUMPTION SET FORTH IN THIS SUBSECTION.

(4) IF THE COURT DETERMINES THAT THE MOTHER AND HER HUSBAND LIVED SEPARATE AND APART AT THE TIME OF CONCEPTION, BOTH THE MOTHER AND HER HUSBAND ARE COMPETENT TO TESTIFY AS TO THE NONACCESS OF THE HUSBAND AT THE TIME OF CONCEPTION.

(D) COMPELLING ALLEGED FATHER TO GIVE EVIDENCE.

THE ALLEGED FATHER MAY NOT BE COMPELLED TO GIVE EVIDENCE AT THE TRIAL.