

FINAL BILL REPORT

2SHB 2346

PARTIAL VETO

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Synopsis as Enacted

Brief Description: Updating the uniform parentage act.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Darneille, Delvin and Dickerson; by request of Uniform Legislation Commission).

House Committee on Juvenile Justice & Family Law
House Committee on Appropriations
Senate Committee on Judiciary

Background:

The Uniform Parentage Act (UPA), developed by the National Conference of Commissioners on Uniform State Laws in 1973, creates procedures to identify parentage so that child support may be established.

Presumption of Paternity

To determine the existence of a father/child relationship, the UPA of 1973 creates a presumption of paternity. A man is presumed to be the father of a child if: (a) he and the child's mother are or were married and the child is born during the marriage or within a certain time after the marriage ends; (b) before the child's birth, he and the child's mother have attempted to marry each other and the child is born within a certain time after the termination of cohabitation; (c) after the child's birth, he and the child's mother have married, or attempted to marry, and either he acknowledged his paternity in writing or he consented to be named as the father on the birth certificate, or he is obligated to support the child under a written promise or court order; (d) he received the minor child into his home and openly treated the child as his own; (e) he signed a paternity affidavit or acknowledged paternity in writing; or (f) genetic testing shows a 98 percent or greater probability of paternity.

To establish paternity without a presumption or judicial process, a man may sign a paternity affidavit. Signing a paternity affidavit is equivalent to a legal finding of paternity if it is not rescinded or challenged within 60 days of filing it. After 60 days, the affidavit may be challenged only on the basis of fraud, duress, or material mistake of fact.

Disestablishing Paternity

Any interested party, including the state, the child, the mother, or the man alleged to be

the father, may bring an action at any time to establish paternity. However, a presumed father may bring an action to disestablish paternity only within a reasonable time after obtaining knowledge of relevant facts. Under case law, a presumed father may be precluded from disestablishing paternity for the purposes of legal rights and obligations if it is in the best interest of the child for the presumption of paternity to remain.

In any paternity action, the child must be made a party. If the child is a minor, the child must be represented by a guardian ad litem.

Blood or Genetic tests

The court may order the child, mother, or any alleged or presumed father to submit to blood or genetic tests. If a party requests additional blood or genetic tests, the requesting party must advance the full costs of the additional testing, unless the court finds the party is indigent and the initial lab recommends additional testing, or there is evidence that paternity is contrary to the initial test results.

Artificial Insemination

The UPA established procedures for parentage in cases of artificial insemination. When a woman is artificially inseminated with semen donated by a man not her husband, the husband is treated in law as the natural father if he consented to the procedure. The donor is not considered the father unless there is a written agreement stating otherwise.

Summary:

The UPA of 1973 is repealed and the UPA of 2000 is adopted. The new UPA is significantly the same as the 1973 act, but it expands on the procedures for establishing paternity by:

- defining specific terms and distinguishing between a presumed, acknowledged, and adjudicated father;
- establishing specific rules and processes for adjudicating paternity;
- establishing a process for voluntary acknowledgment of paternity; and
- updating procedures for establishing paternity of children born by assisted reproduction.

Establishing and Disestablishing Paternity

To determine the existence of a father/child relationship, the new UPA distinguishes between a presumed father, an acknowledged father, and an adjudicated father.

The new UPA still recognizes all the ways a man can be a presumed father in the context of marriage. However, the new UPA removes the presumption of paternity if a man receives the child into his home and openly treats the child as his own. The new UPA also creates new procedures for genetic testing to rebut the presumption of paternity.

Generally, if there is a presumed father, a challenge to paternity must be commenced not later than two years after the child's birth. However, a proceeding may be maintained at any time when: (1) the presumed father and mother neither cohabitated nor engaged in sexual intercourse with each other during the probable time of conception; and (2) the presumed father never openly treated the child as his own.

A court may deny genetic testing of the presumed father if the court determines, among other things, that it would be inequitable to disestablish paternity. In determining whether to deny genetic testing, the court must consider the best interest of the child and the following factors:

- the length of time between the proceeding to adjudicate parentage and the time that the presumed father received notice that he might not be the genetic father;
- the facts surrounding the presumed father's discovery of his possible nonpaternity;
- the nature of the father/child relationship;
- the age of the child;
- the harm to the child that may result if presumed paternity is successfully disproved;
- the relationship of the child to any alleged father;
- the extent to which the passage of time reduces the chances of establishing paternity of another man and a child support obligation for the child; and
- other factors that may affect the equities arising from the disruption of the father/child relationship or the chance of other harm to the child.

Acknowledged father

Much like a paternity affidavit, an acknowledgment of paternity under the new UPA is a nonjudicial method of establishing paternity. An unrescinded, unchallenged acknowledgment is equivalent to an adjudication of paternity. Under the new UPA, a man can be the acknowledged father if he and the mother sign an acknowledgment that the child is a result of their sexual intercourse. The new UPA also establishes additional information that must be stated in the acknowledgment.

An acknowledgment is void if it states that another man is the presumed father unless the presumed father files a denial of paternity in conjunction with the acknowledgment. A person who signed an acknowledgment or denial of paternity may rescind it by commencing a court proceeding within a certain time. After that, the person may challenge the acknowledgment only on the basis of fraud, duress, or material mistake of fact and only within two years after the acknowledgment is filed with the state registrar. The party seeking to rescind has the burden of proof.

If a child has an acknowledged or adjudicated father, a person, other than the child, may commence an action to adjudicate paternity no later than two years after the effective date of the acknowledgment or adjudication.

Under the new UPA, the child is no longer required to be made a party to the proceeding. If a child does not have a presumed, acknowledged, or adjudicated father, a

proceeding to adjudicate parentage may be commenced at any time during the child's life.

Genetic Testing

There is a legal presumption that a man is the genetic father if testing shows that the man has at least a 99 percent probability of paternity. The paternity of a child who has a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing. If an individual whose paternity is being determined declines to submit to genetic testing as ordered by the court, the court may, on that basis, adjudicate that person as the parent.

The court or agency may not order in-utero testing of a child before birth. Testing must be the type reasonably relied upon by experts in the field and performed in an accredited testing laboratory. The new UPA establishes other procedures regarding genetic testing. If a testing specimen of the alleged father is not available, the court for good cause and under just circumstances may order the man's relatives to submit specimens to be tested.

It is a gross misdemeanor if a person intentionally releases an identifiable specimen for any purpose other than that relevant to the paternity proceeding without a court order or the written permission of the person who furnished the specimen.

Assisted Reproduction (AR)

Procedures for determining parentage in situations of assisted reproduction are established. If a husband consents to AR by his wife, he is the father of the resulting child. If a marriage is dissolved before placement of eggs, sperm, or embryo, the former spouse is not the parent unless he consents in a record to be the parent if AR occurs after dissolution. The consent of the former spouse to AR may be revoked by that person in a record at any time before placement. Likewise, if a spouse dies before placement of eggs, sperm, or embryo, the deceased spouse is not a parent of the resulting child unless he consented in a record to be the parent if AR occurred after death.

In cases where a woman gives birth to a child from an egg donated by another woman, the woman giving birth is presumed to be the mother unless otherwise agreed in writing by the egg donor and birth mother. In addition, the woman who donated her egg may be considered a parent of the resulting child if agreed in writing by the egg donor and the birth mother. The agreement and affidavit must be filed with the registrar of vital statistics, where it must be kept confidential and in a sealed file. The Department of Health must, upon request, issue a birth certificate for a child born as a result of assisted reproduction indicating the legal parentage of such child as intended by any agreement filed with the registrar of vital statistics.

Votes on Final Passage:

House 65 32

Senate 49 0 (Senate amended)

House 66 28 (House concurred)

Effective: June 13, 2002

Partial Veto Summary: The Governor vetoed the section that delayed the effective date of the bill until July 1, 2002.