
Juvenile Justice & Family Law Committee

HB 2346

Brief Description: Updating the uniform parentage act.

Sponsors: Representatives Darneille, Delvin and Dickerson; by request of Uniform Legislation Commission.

Brief Summary of Bill
<ul style="list-style-type: none">Repeals certain provisions of the Uniform Parentage Act of 1973 and replaces it with the Uniform Parent Act of 2000.

Hearing Date: 1/23/02

Staff: Trudes Hutcheson (786-7384).

Background:

The National Conference of Commissioners on Uniform State Laws develops and proposes laws in subject matters where it believes uniformity between states is desirable. In 1973, the Commissioners approved the Uniform Parentage Act (UPA 1973), which approximately 19 states, including Washington, have enacted. The UPA creates procedures to identify parentage so that child support may be established.

I. Presumption of Paternity:

To determine the existence of a father/child relationship, which grants the man all the legal rights and obligations of a parent, the UPA 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 300 days 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 300 days 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) while the child is under 18, the man received the child into his home and openly treated the child as his own;
- (e) he acknowledged his paternity in a paternity affidavit or other writing; or
- (f) genetic testing shows a 98% or greater probability of paternity.

II. Paternity Affidavits

Under the Federal Personal Responsibility and Work Opportunity Act of 1996 (the welfare reform act), states must adopt certain nonjudicial procedures to establish paternity in order to receive federal funds. In response, Washington established the use of paternity affidavits.

When a child is born to an unmarried woman, doctors and hospital staff notify the mother and alleged father that they may sign a paternity affidavit to be filed with the registrar of vital statistics. Voluntarily acknowledging paternity is equivalent to a legal finding of paternity if the acknowledgment is not rescinded or challenged within 60 days of filing it. After the 60 days have passed, the acknowledgment may be challenged in court only on the basis of fraud, duress, or material mistake of fact.

III. 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 in order to declare the existence or nonexistence of the father/child relationship. However, a man who is presumed to be the father may bring an action for declaring the nonexistence of paternity only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. A presumption of paternity may be rebutted only by clear, cogent, and convincing evidence.

Washington courts have held that the best interests of the child govern the determination of all petitions to disestablish paternity. Therefore, the court may find that it is not in the best interest of a child to disestablish paternity, and the presumed father continues to be the "legal father" for purposes of rights and obligations.

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

IV. Blood or Genetic tests

The court may order the child, mother, any alleged or presumed father to submit to blood or genetic tests. Upon the request of a party, the court must order such tests. If a party requests additional blood or genetic tests, the party requesting 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.

V. Artificial Insemination

The UPA 1973 has provisions for establishing parentage in circumstances 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.

VI. Adoption

Before an adoption of a minor child may occur, the parental rights of that child's biological parents must be severed, either through a voluntary relinquishment and consent to adoption, or a court order terminating parental rights.

A parent who has not consented to an adoption, must be given notice of any hearing to terminate his or her parental rights. The father or alleged father's parent/child relationship may be terminated upon a showing by clear, cogent, and convincing evidence that termination is in the child's best interest; that the alleged father has failed to perform parental duties that amount to a substantial lack of regard for his parental obligations; and that withholding consent to adoption is not in the child's best interest. The father or alleged father's parent rights may be terminated if he fails to respond or appear at the hearing after being notified.

Summary of Bill:

The UPA 1973 is repealed and replaced with UPA 2000. The new UPA 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;
- establishing a paternity registry for men who are not presumed, acknowledged, or adjudicated fathers; and
- updating procedures for establishing paternity of children born by assisted reproduction.

I. Establishing and Disestablishing Paternity

To determine the existence of a father/child relationship, the new UPA 2000 distinguishes between:

- a presumed father (a presumed father is created in the context of marriage to the mother, similar to the UPA 1973);
- an acknowledged father (a man who voluntarily signed an acknowledgment);
- an adjudicated father (a man who is determined to be the father by a court); and
- an alleged father (a man who claims or is alleged to be the father but whose paternity has not yet been determined).

A. Presumed father

The new UPA still recognizes all the ways a man can be a presumed father when the man is married or was married to the mother. 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 removes the provision allowing a presumption to be rebutted only by clear and convincing evidence. Instead it creates new procedures involving genetic testing for rebutting the presumption.

If there is a presumed father, a person must commence a proceeding to adjudicate paternity not later than two years after the child's birth. However, a proceeding may be maintained at

any time when: (a) the presumed father and mother neither cohabitated nor engaged in sexual intercourse with each other during the probable time of conception; and (b) 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 that: (a) the conduct of the mother or the presumed father precludes that party from denying parentage; and (b) it would be inequitable to disprove the father/child relationship. In determining whether to deny genetic testing, the court shall 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.

B. 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 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 to rescind before the earlier of: (a) 60 days after filing the acknowledgment or denial; or (b) the date of the first hearing in a proceeding regarding the child in which the person seeking to rescind is a party.

After the period of rescission has passed, the person may challenge the acknowledgment or denial 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, an individual, other than the child, who did not sign the acknowledgment or who was not a party to the adjudication, must commence an action to adjudicate paternity no later than two years after the effective date of the acknowledgment or adjudication.

III. Adjudication Proceedings

Under the new UPA, a proceeding to determine parentage may be maintained by: (a) the

child; (b) the mother; (c) a man whose paternity is to be adjudicated; (d) the division of child support; (e) an authorized adoption agency or child-placement agency; (f) a representative authorized to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor; or (g) an intended parent under a surrogate parentage contract. However, 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.

IV. 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% probability of paternity and there is a combined paternity index of 100 to 1 (the ratio of likelihood that the man is the father versus the likelihood that he is not). A person may rebut the presumption created by genetic test only by other genetic testing that excludes the man as the genetic father or identifies another man as the father.

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. The court must find that a need for genetic testing outweighs the legitimate interests of the individual sought 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.

V. Paternity registrar for the purposes of adoption notices

The new UPA establishes a paternity registry with the state registrar of vital statistics. The registry addresses the rights of a man who is neither an acknowledged, presumed, or adjudicated father in the context of notice for certain proceedings.

A man who wants to be notified of an adoption proceeding or termination of parental rights for a child he may have fathered, must register either before the birth of the child or no later than 30 days after the birth. A man may rescind his registration anytime by sending to the registry a written rescission signed and witnessed or notarized. A man who has commenced a proceeding to adjudicate his paternity or a man who has a father/child relationship established (presumed, acknowledged, or adjudicated) need not register.

Notice of an adoption proceeding or hearing to terminate parental rights must be given to the

registrant. Before the child reaches the age of one, a party seeking to adopt the child or terminate parental rights to the child must obtain a certificate of search of the paternity registry. The parental rights of a man may be terminated without notice if he did not timely register, and termination of parental rights occurs when the child is less than one year old.

Once the child has reached one year of age, the registry has no effect and notice of an adoption proceeding or termination of parental rights must be given to a man who may be the child's father, whether or not he has registered.

Information on the registry is confidential and may be released only under certain circumstances. It is a gross misdemeanor for a person to intentionally release information from the registry to another person not authorized to receive such information.

VI. Child of Assisted Reproduction (AR)

The new UPA is similar to the 1973 UPA regarding artificial insemination, but considers other forms of assisted reproduction as well. Under the new UPA, an egg or sperm donor is not a parent of a child conceived by AR. If a husband consents to AR by his wife, he is the father of the resulting child. Failure of the husband to sign a consent to AR, before or after birth of the child, does not preclude a finding that the husband is the father if the wife and husband openly treat the child as their own.

The husband may not challenge paternity unless within 2 years after learning of the birth, he commences a paternity proceeding and the court finds that he did not consent to the AR. However, a proceeding to adjudicate his paternity may be maintained at any time when: (a) the husband did not consent to AR or provide sperm for the AR; (b) he and the mother have not cohabited since the probable time of the AR; and (c) he never treated the child as his own.

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.

Appropriation: None.

Fiscal Note: Requested on January 16, 2002.

Effective Date: The bill takes effect on July 1, 2002.