

SENATE BILL REPORT

ESSB 6037

As Passed Senate, February 7, 2018

Title: An act relating to the uniform parentage act.

Brief Description: Concerning the uniform parentage act.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Walsh, Takko, Fain, Rivers, Billig, Ranker, Cleveland, Kuderer, Van De Wege, Hobbs, Liias, Palumbo, Frockt, Hasegawa, Mullet, Hunt, Saldaña, Rolfs, Dhingra, Carlyle, Darneille, Chase, Conway, Nelson, Wellman, McCoy and Keiser; by request of Uniform Law Commission).

Brief History:

Committee Activity: Law & Justice: 1/16/18, 1/25/18 [DPS, DNP, w/oRec].

Floor Activity:

Passed Senate: 2/07/18, 27-21.

Brief Summary of Engrossed First Substitute Bill

- Revises the Uniform Parentage Act (UPA).
- Expands surrogacy rights, duties, and process.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6037 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille and Frockt.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Angel, Assistant Ranking Member.

Minority Report: That it be referred without recommendation.

Signed by Senator Wilson.

Staff: Tim Ford (786-7423)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Washington's UPA provides for how a legal parent child relationship may be established or challenged, and how a determination of parentage may be used by courts in other proceedings including child support.

Parentage between a person and a child may be established under UPA based on the following:

- an unrebutted presumption;
- acknowledgement of paternity;
- adoption;
- a valid surrogate contract;
- consent to assisted reproduction; or
- an adjudication.

A person is a presumed parent if the child was born in or shortly after the context of marriage. A person is an acknowledged parent if the person signs an acknowledgement of paternity that is later filed with the state registrar of Vital Statistics. A person is an adjudicated parent if the person's parentage was determined in a court proceeding.

Under UPA, the procedure for challenging parentage varies depending on whether the child has a presumed, acknowledged, or adjudicated parent. Generally, a challenge must be brought within four years after the child's birth or within four years after an acknowledgment or adjudication of parentage.

In a proceeding to challenge parentage, genetic testing may be ordered or alternately denied by the court where it is not in the best interest of the child. In most cases, genetic testing by an expert is admissible in court. A man excluded as the father by genetic testing must be adjudicated not to be the father of the child, except when the man adopted the child or the man consented to assisted reproduction with the intent to be a parent.

Surrogacy. Under the UPA, surrogacy parenting agreements may not include compensation. Compensation means payment of money, objects, services, or anything else having monetary value except expenses incurred as a result of pregnancy, actual medical expenses of the surrogate mother, and reasonable attorney fees for drafting the surrogate contract. Unemancipated minor females or females who are diagnosed with an intellectual disability, a mental illness, or developmental disability are excluded from contracting as a surrogate mother. If a child is born to a surrogate mother and there is a dispute between the parties concerning custody, the party having physical custody of the child may retain custody unless a court orders otherwise. A court shall determine custody based on factors used for establishing parenting plans in a dissolution proceeding. Any violation of surrogacy provisions is a gross misdemeanor.

Summary of Engrossed First Substitute Bill: Key Highlights of Surrogacy Changes.
Eligibility. A woman acting as a surrogate must be 21 years of age, previously have given birth to one child, complete a medical evaluation and a mental health consultation, and have independent legal representation throughout the surrogacy arrangement. A woman acting as a surrogate is limited to two surrogacy agreements that result in the birth of children. Each intended parent must be 21 years of age, complete a medical evaluation and mental health consultation, and have independent legal representation.

Surrogacy agreement requirements. At least one party must be a resident or one medical evaluation must occur in this state. Each intended parent and the woman acting as a surrogate must be a party to the agreement. The signature of each party must be attested by a notarial officer. The woman acting as a surrogate and the intended parents must have independent legal representation throughout the surrogacy arrangement. The intended parents must pay for the independent legal representation for the woman acting as a surrogate. The agreement must be executed prior to a medical procedure other than an initial evaluation.

Additional Requirements. The woman acting as a surrogate has no claim to parentage of a child conceived by assisted reproduction. The intended parents will be the exclusive parents of the child immediately upon the birth of the child regardless of the number of children born, gender, or mental or physical condition of each child. They assume responsibility for financial support of the child. The agreement must include information about the parties' rights to terminate the agreement.

Health and welfare. Surrogacy agreements must include information disclosing how intended parents will cover expenses of the surrogate and child including health care provisions. Surrogacy agreements must permit the surrogate to make all health and welfare decisions regarding the surrogate's pregnancy. Any provisions in the agreement to the contrary are void and unenforceable. The right of a woman to terminate her pregnancy is not diminished by this act.

Payment. Surrogacy agreements may provide for payment of consideration and reasonable expenses. An agreement may include reimbursement for specific expenses if the agreement is terminated.

Validity. Unless a surrogacy agreement expressly provides otherwise, a change of marital status by any party does not affect the validity of a surrogacy agreement.

Other Changes in Parentage Provisions. Revises the voluntary acknowledgement of paternity to become an acknowledgement of parentage allowing a non-judicial process for intended and presumed parents. Removes the requirement to join the child as a party for certain lawsuits commenced more than two years after the birth of the child.

Requires attestation by a notarial officer or witness for certain parentage documents such as a denial of parentage, rescission of acknowledgement of parentage, surrogacy agreements, or termination of surrogacy agreements.

Notice of proceedings for adjudication is required for certain individuals instead of mandatory joinder.

A court shall order genetic testing if a request for testing is supported by a sworn statement alleging a reasonable possibility that the individual is the child's genetic parent, or denying genetic parentage and stating facts establishing a reasonable possibility that the individual is not a genetic parent.

Competing Claims of Parentage. The court shall adjudicate competing claims of parentage in the best interest of the child based on:

- age of the child;
- length of time each individual assumed the role of parent;
- nature and relationship between the child and the individual;
- the harm to the child if the relationship between the child and each individual is not recognized;
- the basis for each individual's claim to parentage; and
- other equitable factors.

In addition to these factors, if an individual challenges parentage based on the results of genetic testing, the court shall consider:

- facts surrounding the discovery that the individual might not be a genetic parent; and
- the length of time that the individual was placed on notice that the individual might not be a genetic parent, and the commencement of the proceeding.

Rule Making Authority. The Department of Health may adopt rules to implement certain sections, and charge filing fees.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2019.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: The Uniform Parentage Act has been around since 1973. It has been influential in establishing the rights of children and their parents. Washington adopted it at that time and updated it in 2001. Most of the Washington State act has been made gender neutral. In reaction to a court decision in 2015, the Uniform Law Commission decided that the current version of the uniform parentage act was likely to be unconstitutional and began writing it so that it would apply equally to same sex couples. The voluntary acknowledgement of paternity is changed to an acknowledgement of parentage. This allows intended parents and presumed parents to establish legal parentage without having to go through a second parent adoption. This is critical, particularly for lesbian couples, because once you have an acknowledgement, your parentage is recognized throughout the entire country. The other main change of the bill sets up a regulated scheme that would permit the enforcement of surrogate agreements. Children will have access to medical information of the genetic donor when they turn 18-years of age.

Cancer can rob a woman of the ability to deliver a baby. Surrogacy can allow a couple to have a child that they may be medically unable to do themselves. Other states have better laws to allow surrogacy. This legal framework will allow Washington State couples to start families. Compensated surrogacy should be decriminalized. Women and their families are capable of making good decisions about surrogacy. However, the absence of a regulatory

framework means that women lack legal protection. This bill would ensure informed decision making is the norm, and women are protected.

CON: As a feminist, I believe all surrogacy should be prohibited. In Europe surrogacy is largely illegal. A parliamentary resolution says that surrogacy undermines the dignity of women by using their body as a commodity. It is the rich who can buy and the poor woman who have to sell their eggs or rent out their wombs. Commercial surrogacy is indistinguishable from the buying and selling of babies. Persons conceived through an anonymous sperm donation grow up without knowing their father. They will never know how many other biological siblings they have. The pain of not knowing a genetic father causes identity issues. Mothers and fathers are not interchangeable. Children are greatly harmed by surrogacy.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Mark Demaray, Attorney, American Academy Adoption Assisted Reproduction Attorneys; Jon Tammen, citizen; Jennifer Tammen, citizen; Melissa Flaherty, citizen; Maria Flores, citizen; Fajer Saeed Ebrahim, Legal Voice; Nancy Ritzenhaler; Raegan Rasnic; Jessica Martinson, citizen.

CON: Bill Wells, citizen; Esther Ripplinger, Human Life of Washington; Jennifer Lahl, citizen; Julianne Jaz, citizen; Maria Lancaster, citizen; David DeWolf, citizen; Sarah Bartel, Washington State Catholic Conference; Katy Faust, Them Before Us; Katy Doran, Coalition Against Reproductive Trafficking; Joseph Backholm, Family Policy Institute.

Persons Signed In To Testify But Not Testifying: No one.