

SENATE BILL REPORT

SB 6374

As of February 11, 2014

Title: An act relating to parent and child relationship termination.

Brief Description: Addressing parent and child relationship termination.

Sponsors: Senators Roach and Padden.

Brief History:

Committee Activity: Human Services & Corrections: 2/06/14.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Joan Miller (786-7784)

Background: Termination of the Parent and Child Relationship. Under certain circumstances, the court may order the filing of a petition for the termination of parental rights. The court may exercise this discretion if it finds that aggravated circumstances exist, including a conviction of the parent for rape or incest when the child was conceived as a result of the offense.

Any party, including the supervising agency, may also file a petition for the termination of parental rights. The petition may allege that the parent has been convicted of certain crimes, including murder, manslaughter, or homicide by abuse against another child of the parent, or assault in the first or second degree against the surviving child or another child of the parent.

Parenting Plans. Parenting plans are mandatory in dissolution cases in which there are minor children, and are optional in child custody cases. The parenting plan must not establish mutual decision-making and must limit residential time or visitation if the parent is found to have engaged in certain conduct, including an assault or sexual assault that causes grievous bodily harm or the fear of such harm. Criteria that require mandatory residential time or visitation restrictions in a parenting plan also apply to child custody orders. If the court finds that limitations on residential time will not protect the child from harm or abuse, then the court must restrain the parent from all contact with the child.

Establishing Parentage. Parentage may be established under the Uniform Parentage Act (UPA) based on a presumption, acknowledgment, or adjudication. A person is a presumed parent if the child was born in the context of marriage or domestic partnership, or shortly

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thereafter, or if the person resided with the child and openly held the child out as the person's own for the first two years of the child's life. A person is an acknowledged parent if the person signs an acknowledgment 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. A judgment and order establishing parentage may include terms requiring provision of child support and payment of birth-related costs, and requiring amendment of the child's birth certificate. It must also make residential provisions for minor children. Temporary orders may be issued while the action is pending.

The procedures and timelines for challenging parentage vary depending on whether the parentage is presumed, acknowledged, or adjudicated. In general, a challenge must be brought within a maximum of four years of the child's birth or establishment of parentage. A signatory may rescind a paternity acknowledgement by filing an action within 60 days of acknowledgement, or by the next court hearing concerning the child, whichever is sooner, and may challenge the acknowledgement only for limited reasons past that point.

Adoption. If a parent proposes to relinquish a child for adoption, any other relinquishing parent, including an alleged father, is entitled to notice of the adoption proceeding. Both parents may consent to the adoption. A parent's consent to adoption may be dispensed with if the court finds that the proposed adoption is in the best interests of the child and the non-consenting parent has been found guilty of rape or incest against the other parent, which resulted in conception of the adoptee.

Summary of Bill: The court must order the filing of a petition seeking termination of the parent and child relationship upon conviction of the parent when a child was conceived as a result of rape or incest. A petition seeking termination of parental rights may allege that the parent has been convicted of rape or incest against the other parent, when the child was conceived as a result of the offense.

A parenting plan must not require mutual decision-making, and residential time or visitation must be limited if a parent has been found guilty of rape or incest against the other parent, when the child was conceived as a result of the offense. The court may also preclude or limit any provisions in a parenting plan if a parent has been found guilty of rape or incest against the other parent, when the child was conceived as a result of the offense.

A person convicted of rape or incest against the other parent may adjudicate his parentage only if he proves by clear, cogent, and convincing evidence that the child was not conceived as a result of the criminal offense.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: CON: Sexual assault victims in Washington need a law that supports their complex safety and parental needs. However, a law that is based on conviction only does not address the complexities of this issue. Victims who become pregnant as a result of rape should not be expected to suffer with the trauma of the rape and the fear of seeking help or justice for a crime committed against them because the reality of having to parent with their rapist is so untenable. But this is exactly the current reality for survivors in our state. They lack adequate choice, legal support, and protections. Only about 3 percent of rapes that go through the legal process result in a conviction. We hear from pregnant rape victims who share that these legal realities shape their decisions about whether to seek medical care or advocacy support. They worry about what will happen if their perpetrator finds out about the pregnancy and how that will affect their safety and the safety of the child. A lifetime of involvement with their perpetrator poses risks to survivors' safety, health, and quality of life. By allowing rapists parental rights, we allow the rapist to have further control over the victim. We hear repeatedly from survivors that rapists use parental rights to threaten or coerce their victim into not testifying or pressing charges altogether, which speaks to the challenge of a conviction-only model. We encourage you to seek a more comprehensive system for addressing this issue, similar to bills sponsored by Senator Kohl-Welles and Representative Goodman.

We appreciate the intent of this bill but strongly encourage consideration of a bill that provides remedies for women who are not able to obtain a conviction, which is the vast majority of rape victims. There is a growing movement in other states on this issue to provide a more comprehensive approach. Texas, for example, recently adopted a bill unanimously that was not limited to conviction. Illinois passed a bill that provided a way for a survivor to prove by clear, cogent, and convincing evidence that she was a victim of rape and that the rape caused her pregnancy. Eight other states have laws that provide some remedies without a conviction. The clear, cogent, and convincing standard addresses due process concerns as well. It is the same standard used to terminate parental rights in abuse and neglect cases. It is a hard standard to satisfy, and we believe it strikes the right balance. Additionally, the bill as written seems to require termination of parental rights for all convicted rapists, but there are situations when a survivor might not want termination to occur, including cases of statutory rape when there is not a large age difference between the perpetrator and the victim, or cases of marital rape. We would prefer to see a more victim-centered approach that gives victims some power to decide what they want to happen in these situations. Another concern is that if parental rights are terminated in this way, there would be no obligation for the rapist to pay child support. The victim would be left with no support after choosing to have a child that was the result of rape.

The Washington State Bar Association's (WSBA) Family Law section opposes this bill but for a narrower angle, which is the issue of statutory rape. There are cases of statutory rape in which the age differences between the victim and the perpetrator are small, and sometimes they do end up together and raise the child together. We are concerned that if these relationships do end at some point, parental rights could be terminated then. Our concern is when underage couples develop a relationship with the child, and then that relationship gets terminated.

Persons Testifying: CON: Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs; David Ward, Legal Voice; Rick Bartholomew, WSBA Family Law Section.