

SENATE BILL REPORT

SB 6452

As of February 3, 2016

Title: An act relating to authorizing the termination of all legal responsibilities of a nonparent if genetic testing shows by clear and convincing evidence that a man is not the genetic father of a child.

Brief Description: Authorizing the termination of all legal responsibilities of a nonparent if genetic testing shows by clear and convincing evidence that a man is not the genetic father of a child.

Sponsors: Senators Roach, Rolfes, Sheldon, Becker, Conway and Angel.

Brief History:

Committee Activity: Law & Justice: 2/02/16.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Melissa Burke-Cain (786-7755)

Background: Washington's Uniform Parentage Act (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:

- an un rebutted 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

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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.

Summary of Bill: A man may file a petition in court to rescind an acknowledgment of paternity, challenge a presumption of paternity, or contest an adjudication of paternity if genetic testing shows by clear and convincing evidence that the man is not the genetic father of the child. If the court enters an order of disestablishment of paternity, the man must, as of the date of the order, be discharged of all rights and duties of paternity and the court must order the registrar of vital statistics to remove his name from the birth certificate. Relief from the legal obligations of parentage vacates all previous orders of child support if the court finds by clear and convincing evidence that the moving party is not the biological father of the child upon a court order disestablishing paternity. A man is not liable for any unpaid child support or other obligations prior to the entry of a court order disestablishing paternity. As of the date of the disestablishment order, the man is not liable for any future child support or other financial or legal obligations. The petitioner of a vacated order may bring an action against the natural biological mother or father for restitution of previously-paid child support under the vacated orders. Prior to an order terminating the parent-child relationship, the petitioner may request visitation or access following termination upon a determination that denying visitation would harm the child's health or emotional well-being.

Any prior acknowledgement of paternity is a material mistake of fact, or fraud perpetuated by the child's natural mother pursuant to RCW 9A.60.030 where DNA testing shows the man is not the father. The right to challenge paternity does not apply if the man is the adoptive father or if the man consented to assisted reproduction with the intent to be a parent.

A petition must be filed within two years after knowledge of facts indicating the man is not the child's genetic father or, for children born before this act, within two years of the effective date of this act. A court may no longer deny a motion for genetic testing on the basis that testing is inequitable and not in the best interest of the child. Genetic testing is presumed to be in the best interest of the child. A court may not deny testing if the petitioner and presumed father did not know he was not the genetic father, regardless of whether the presumed father cohabited or engaged in sexual intercourse with the person who has a parent-child relationship with the child during the probable time of conception, held out the child as his own, or provided financial support for the child

Appropriation: None.

Fiscal Note: Requested on February 1, 2016.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: As a retired disabled veteran of the Afghanistan and Iraq conflicts, I am required by an order to pay child support for a child that is not my biological child. This is not just about child support. It is important for adoptive parents to have medical information about their child to help the child reach full potential. My child who is not my biological child had medical tests related to gulf war effects that were unnecessary, including a spinal tap. It seems like money takes precedence over helping a child reach full potential. It is in the child's best interests to know who their biological parent is through genetic testing; This bill is about combating paternity fraud. I am the biological father of a child born to a married woman, but I haven't been able to see my biological child. Current laws create fatherless children. This is a systemic problem because many are denied a chance to be with their children. I am asking to have rights as a father acknowledged. Families deserve better. How does a father step up to the plate if he is not allowed to know his children? If a parent is fraudulently made responsible for a child that isn't his, that is an injustice that needs to be corrected. We have a duty to correct the injustice. A child has a fundamental right to know who the child's parents are.

CON: The Uniform Parentage Act was updated in 2011. The UPA should be centered on the child, and the child's stability. A child's parentage can be challenged up to four years after birth, but this bill permits a paternity challenge at any point of the child's life, even after age 18. I oppose the provisions that deem a woman to have committed criminal fraud under this bill and allow the biological father to sue to recover past paid child support. As an attorney with 37 years of family law practice representing parties in paternity actions and serving as a guardian ad litem, I can say that this bill changes case law and statutes considerably. Families are complex and taking DNA as the only factor doesn't allow the court to consider the effect on the child of a genetic test determining parentage. Consider the effects of this bill on victims of sexual assault, women who have been raped and live in fear of violence in their intimate relationships. This bill may have unintended consequences for victims of sexual assault and domestic violence.

Persons Testifying: PRO: Brandon Jones; Naomi Evans; Carl Abernathy, Kyle Paskewitz, Family Court Reform USA.

CON: David Ward, Legal Voice; Chuck Szurzewski, WSBA family law section; Rebecca Johnson, WA coalition of sexual assault programs.

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