

FINAL BILL REPORT

SHB 1543

C 234 L 17
Synopsis as Enacted

Brief Description: Concerning parental rights and responsibilities of sexual assault perpetrators and survivors.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Doglio, Jinkins, Goodman, Senn, Robinson, Stonier, Kagi, Cody, Macri, Bergquist, Slatter, McBride, Peterson, Hudgins, Stanford, Frame and Appleton).

House Committee on Judiciary
Senate Committee on Law & Justice

Background:

Establishing and Disestablishing 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 thereafter, or if the person resided with the child and openly held the child out as his or her 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, establishing residential provisions for the child, and requiring amendment of the child's birth certificate. 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.

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.

There are specific procedures for when genetic testing can be ordered in a parentage action and when a motion for genetic testing can be denied. With certain exceptions, genetic testing must be ordered when supported by a sworn statement of a party alleging or denying the requisite sexual contact between the parties for conception of a child. Parentage of a presumed, acknowledged, or adjudicated parent may be disproved only by admissible results of genetic testing.

Parenting Plan Limitations.

A parenting plan for a child must not establish mutual decision-making and must limit residential time with the child 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. Other criteria requiring limitations on residential time include if the parent has engaged in abuse of a child, has a history of domestic violence, or has been convicted of a number of sex offenses such as rape of a child, child molestation, or indecent liberties. In some cases, a parent may rebut a presumption that residential time should be limited by showing that contact with the child is appropriate and poses minimal risk, and the parent has successfully completed, or is making progress in, sex offender treatment.

Parental Consent to Adoption.

When a parent wishes to relinquish a child for adoption, any other parent, including an alleged father, is entitled to notice of the adoption proceeding. The consent of the child's parents and any alleged father are generally required unless the court finds grounds to terminate the parental rights of a non-consenting parent. A parent's or alleged father's consent is not required if the court finds the adoption is in the best interests of the child and the parent or alleged father has been convicted of rape or incest where either the adoptee was the victim or the other parent was the victim and the adoptee was conceived as a result of the rape or incest.

Summary:

Parentage Proceedings.

A court process is established under the Uniform Parentage Act (UPA) to adjudicate parental rights and obligations in cases in which the person seeking parental rights or presumed to be a legal parent is alleged to have committed a sexual assault against the child's parent and the child was conceived as the result of the sexual assault. "Sexual assault" means nonconsensual sexual penetration that results in pregnancy.

A pleading alleging that a child was born as the result of a sexual assault must be filed in a petition or in a response to a petition in proceedings filed no later than four years after the birth of the child with the following exceptions:

- In proceedings to adjudicate parentage of a child having no presumed or adjudicated second parent and no acknowledged father, the pleading may be filed at any time.
- For a period of two years after the effective date of the act, a court may waive the time bar in cases where the presumed, acknowledged, or adjudicated parent was found in a criminal case or separate civil case to have committed a sexual assault against the parent alleging that the child was born as a result of the sexual assault.

If an allegation of sexual assault resulting in pregnancy is raised in the context of a parentage action, the court must conduct a fact-finding hearing on the allegation. The party making the allegation must submit supporting affidavits 14 days prior to the fact-finding hearing and serve notice and copies of the affidavits on the other parties, who may submit opposing affidavits no later than 5 days prior to the hearing.

The court must determine on the record whether affidavits and documents submitted for the fact-finding hearing should be sealed. Any party may move to close the fact-finding hearing and related proceedings to the public. If no party files such a motion, the court must determine on its own initiative whether there is good cause for the proceedings to be closed to the public and whether closure of the proceedings is consistent with the state Constitution.

While the hearing is pending, the court may not enter any temporary orders providing residential time or decision-making authority to the alleged perpetrator, unless the alleged perpetrator is a presumed parent of the child and the court specifically finds that the child would suffer irreparable harm if a temporary order is not entered. Prior to the fact-finding hearing, the court may order genetic testing. If genetic testing indicates the alleged or presumptive parent is not biologically related to the child, the fact-finding hearing must be stricken.

The fact that an alleged or presumed parent committed a sexual assault resulting in the victim giving birth to the child may be proved by:

- evidence of a conviction of sexual assault, under the rape statutes, of the child's parent and that the child was born within 320 days after the sexual assault; or
- clear, cogent, and convincing evidence that the person committed sexual assault against the child's parent and that the child was born 320 days after the sexual assault.

If the court finds the person seeking parental rights or the presumed parent committed sexual assault of the child's parent, and that the child was born within 320 days, the court must either: (1) enter an order that the person seeking parental rights or presumed to be the parent is not a parent of the child, if requested by the child's legal parent or guardian; or (2) enter an order consistent with the relief requested by the child's parent or legal guardian if it is in the best interests of the child.

The order must include a requirement for payment of child support, birth-related costs, or both, if sought by the legal parent or guardian. If the legal parent or guardian declines an order for child support, support enforcement agencies may not file administrative or court proceedings to establish or collect child support from the person who was found by the court to have committed the sexual assault. The court's order may also require amendment of the child's birth certificate, if warranted, and provide an award of attorneys' fees.

Absent the express written consent of the child's legal parent or guardian, a person found to have committed a sexual assault of the child's parent where the child was born within 320 days has no parental rights. This precludes any residential time or decision-making responsibilities, right to inherit from the child, or right to notification of, and objection to, adoption of the child.

Limitations on Residential Time with a Child.

Sexual assault resulting in a pregnancy is added to the list of factors requiring mandatory restrictions on mutual decision-making and residential time in parenting plans and child custody orders. The court must not enter an order allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence to have committed sexual assault against the child's parent and the child was born within 320 days of the sexual assault. A parent who has been convicted of specified sex offenses cannot rebut the presumption that residential time must be limited unless the parent shows that the child was not conceived and subsequently born as a result of a sexual assault committed by the parent.

Parental Consent to Adoption.

Standards on when a parent's consent to adoption may be dispensed with are revised to apply in cases where the parent has been found by clear and convincing evidence to have committed a sexual assault and the adoptee was conceived as a result of the sexual assault. The parent's consent to adoption need not be dispensed with if the parent who is the victim indicates by affidavit or sworn testimony that consent to adoption by the parent who committed the sexual assault should occur.

Votes on Final Passage:

House	94	2	
Senate	49	0	(Senate amended)
House	96	0	(House concurred)

Effective: July 23, 2017