

HOUSE BILL REPORT

SSB 5333

As Reported by House Committee On: Civil Rights & Judiciary

Title: An act relating to making changes related to the uniform parentage act for access to court records, entry of protective orders by the court, use of mandatory forms, criteria for notice of a proceeding to adjudicate parentage, compliance with regulations of the food and drug administration, enacting a repealed section of chapter 26.26 RCW, clarifying the crimes included in sexual assault for purposes of preclusion of parentage, and correcting citations and terminology.

Brief Description: Making changes related to the uniform parentage act for access to court records, entry of protective orders by the court, use of mandatory forms, criteria for notice of a proceeding to adjudicate parentage, compliance with regulations of the food and drug administration, enacting a repealed section of chapter 26.26 RCW, clarifying the crimes included in sexual assault for purposes of preclusion of parentage, and correcting citations and terminology.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen and Rivers).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/6/19, 3/22/19 [DP].

Brief Summary of Substitute Bill

- Amends the Uniform Parentage Act (UPA) to address access to court records, mandatory use of court forms, and required notice of parentage proceedings.
- Adds provisions allowing a court in a parentage proceeding to issue protective orders and acknowledged parents to commence proceedings to establish parenting plans, residential provisions, or child support obligations with respect to a child.
- Revises requirements governing the transfer and maintenance of information when a gamete bank or fertility clinic transfers gametes to another gamete bank or fertility clinic.
- Addresses the criminal convictions that may be used to prove a sexual assault in a proceeding to preclude parentage.

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.

- Amends numerous statutes to correct citations to the UPA and to revise terminology in conformance with the UPA.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Jenkins, Chair; Thai, Vice Chair; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Valdez and Walen.

Minority Report: Do not pass. Signed by 2 members: Representatives Shea and Ybarra.

Staff: Edie Adams (786-7180).

Background:

In 2018 a revised Uniform Parentage Act (UPA) was enacted based on the Uniform Law Commission's 2017 revisions to the UPA. The revised UPA is codified in a new chapter, chapter 26.26A RCW. Provisions of the former UPA that were not repealed by the 2018 legislation were re-codified in a new chapter, chapter 26.26B RCW. The UPA provides standards and procedures for establishing and challenging the legal parent-child relationship. Issues addressed under the UPA include: the parent-child relationship, including presumed parentage and acknowledgement of parentage; procedures for adjudicating parentage; genetic testing; assisted reproduction and surrogacy; and access to donor information.

Access to Court Records.

Under the revised UPA, a final order in a proceeding to adjudicate parentage is available for public inspection. Other papers and records are available for public inspection only with the consent of the parties or by court order. Prior to adoption of the revised UPA, records entered prior to the entry of a final order determining parentage were accessible only to the parties or on order of the court for good cause, whereas records entered after the entry of a final order determining parentage were publicly accessible, except as required by applicable court rules.

Court Forms.

Mandatory use of approved court forms is required in a number of family law and other proceedings, and was required under the former UPA. As a result of the 2018 legislation, the provision governing mandatory use of court forms was re-codified and does not specifically apply to proceedings brought under the revised UPA.

Notice of Proceedings to Adjudicate Parentage.

The petitioner in a proceeding to adjudicate parentage must provide notice of the proceeding to certain individuals, and these individuals have the right to intervene in the proceeding. Individuals entitled to notice are: the woman who gave birth to the child; an individual who is a parent of the child; a presumed, acknowledged, or adjudicated parent of the child; and an individual whose parentage of the child is to be adjudicated.

Protective Orders and Proceedings to Establish Parenting Plans and Child Support.

The 2018 legislation revising the UPA repealed a statutory provision that authorized a court in a parentage proceeding to issue temporary restraining orders to prohibit a person from engaging in certain behavior or to issue a domestic violence protection order or anti-harassment protection order.

In addition, the 2018 legislation repealed a provision that allowed an acknowledged parent to commence a judicial proceeding to: establish residential provisions or a parenting plan regarding the minor child under the standards provided in the dissolution laws; or to establish a child support obligation or health care coverage requirement with respect to the child under standards provided in the child support laws.

Information About a Donor.

The revised UPA establishes more specific standards regarding the requirement for a gamete bank or fertility clinic to collect and maintain records of a donor's identifying information and medical history. Upon request, a gamete bank or fertility clinic must make a good faith effort to provide a child conceived by assisted reproduction access to non-identifying medical history of the donor and identifying information of the donor unless the donor signed a declaration stating that the donor does not agree to disclosure of identifying information.

The revised UPA requires a gamete bank or fertility clinic that sends gametes to another gamete bank or fertility clinic to forward any identifying information and medical history of the donor to the receiving gamete bank or fertility clinic. The receiving gamete bank or fertility clinic must retain the information about the donor and the sending gamete bank or fertility clinic. This requirement is in conflict with Federal Drug Administration (FDA) regulations governing donation of human cells and tissues. Under FDA regulations, certain records must accompany donations, including a distinct identification code that relates donations to the donor and to records pertaining to the donation, and does not include the individual's name, social security number, or medical record number. Records accompanying a donation must not contain the donor's name or other personal information that might identify the donor.

Preclusion of Parentage in Sexual Assault Cases.

A person's parental rights may be precluded through a court proceeding under the revised UPA if the person seeking parental rights or presumed to be a legal parent 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. If the court finds that the allegation is proved, 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; or (2) enter an order consistent with the relief requested by the child's parent or legal guardian if it is in the best interest of the child.

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 of the child's parent under the crimes of Rape 1, Rape 2, or Rape 3, 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.

Summary of Bill:

The Uniform Parentage Act (UPA) is amended to address a number of issues, including: access to court records; use of mandatory forms; required notice of proceedings; entry of protective orders; establishment of child support orders and parenting plans; transmittal of donor information; and proceedings to preclude parentage in cases of sexual assault.

Access to Court Records.

The provision restricting disclosure of papers and records in parentage proceedings except upon consent of the parties or by court order is eliminated. Records entered after the entry of a final order determining parentage in a proceeding to adjudicate parentage are publicly accessible, except as provided by court rules.

Use of Mandatory Forms.

Effective January 1, 2020, parties in proceedings under the UPA must file all pleadings on forms approved by the Administrative Office of the Courts (AOC). The AOC must develop and approve standard court forms and format rules for use in all proceedings under the UPA.

Notice of Proceedings to Adjudicate Parentage.

The required notice of a proceeding to adjudicate parentage must be provided by service of the summons and complaint on all parties entitled to receive notice.

Protective Orders and Proceedings to Establish Parenting Plans and Support Obligations.

Statutory provisions repealed by the 2018 legislation addressing issuance of protective orders and the establishment of parenting plans and child support obligations are enacted.

A party in a parentage proceeding may request the court to issue an order to restrain or enjoin a party from engaging in certain behavior or may request entry of a domestic violence protection order or anti-harassment protection order. Standards for the issuance and enforcement of protective orders and injunctions are provided. In addition, rules addressing a support debt owed to the state by a party for public assistance are established consistent with the repealed statutory provision.

After the period for rescission of an acknowledgement of parentage has passed, an acknowledged parent may commence a judicial proceeding to: establish residential provisions or a parenting plan regarding the minor child under the standards provided in the dissolution laws; or establish a child support obligation or health care coverage requirement with respect to the child under standards provided in the child support laws.

Information About a Donor.

Provisions requiring the identifying information and medical history of a donor to accompany the transfer of gametes of a donor from one gamete bank or fertility clinic to another are eliminated. A gamete bank or fertility clinic that receives gametes of a donor collected by another gamete bank or fertility clinic must collect and maintain the name,

address, telephone number, and electronic mail (email) address of the gamete bank or fertility clinic from which it received the gametes.

Upon request of an 18-year-old child conceived by assisted reproduction, a gamete bank or fertility clinic that received the gametes used in the assisted reproduction from another gamete bank or fertility clinic must disclose the name, address, telephone number, and email address of the gamete bank or fertility clinic from which it received the gametes.

Preclusion of Parentage in Sexual Assault Cases.

Criminal convictions that may be used to prove an allegation that a person committed a sexual assault that resulted in the parent becoming pregnant and subsequently giving birth to the child are expanded to include crimes of sexual assault that are comparable to rape, including all degrees of child rape.

Terminology and Citation Changes.

Numerous citations to the former UPA are revised to reflect appropriate citations under the revised UPA. Terminology is revised to be consistent with the revised UPA, including: paternity is replaced with parentage; acknowledged father or father is replaced with acknowledged parent or parent; and alleged father is replaced with alleged genetic parent.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill makes some small tweaks to address issues that have been discovered since adoption of the Uniform Parentage Act last year. The provision giving children of assisted reproduction access to donor information originated in the work done by the House of Representatives (House) in the 2010 Legislative Session. The House was working on revisions to the Parentage Act and at the same time looking at adoptees' rights to information about their birth parents. A proposed amendment to give kids born of assisted reproduction information about their genetic heritage became part of the 2011 Parentage Act. Washington was the first state to do this, and it created a stir in the assisted reproduction community.

When the Uniform Law Commission started on a rewrite of the Uniform Parentage Act, one of their charges was to include a section addressing access to donor information based on this Washington law. However, the provision needs to be amended to comply with federal regulations. There is full support for the idea of having open identity and release of information to children born of assisted reproduction. However, due to Federal Drug Administration regulations, the donor's identifying information cannot be included with the

transfer of the donor's gametes to another fertility clinic or gamete bank because these transmissions have to be anonymous.

The bill provides public access to documents that should be public. It corrects a change made last year that prevents public disclosure of documents filed after a determination of parentage has been made. Once parentage is determined, the documents filed in the case are generally custody documents and support documents, and these documents should be public.

(Opposed) None.

Persons Testifying: Senator Pedersen, prime sponsor; Alison Sonntag, Washington State Association of County Clerks; and Angelo Allard, Seattle Sperm Bank.

Persons Signed In To Testify But Not Testifying: None.