
Judiciary Committee

HB 1543

Title: An act relating to parental rights and responsibilities of sexual assault perpetrators and survivors.

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

Sponsors: Representatives Doglio, Jenkins, Goodman, Senn, Robinson, Stonier, Kagi, Cody, Macri, Bergquist, Slatter, McBride, Peterson, Hudgins, Stanford, Frame and Appleton.

Brief Summary of Bill

- Creates a court process under the Uniform Parentage Act to restrict parental rights and establish child support obligations in cases in which the child was conceived as the result of a sexual assault by a parent.
- Amends statutes governing parenting plan limitations and when a parent's consent to adoption of his or her child is not required to include cases in which the parent has committed a sexual assault and the child was conceived as the result of the sexual assault.

Hearing Date: 2/1/17

Staff: Edie Adams (786-7180).

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.

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.

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.

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.

Admissibility of Sexual History Evidence in Court Proceedings.

Evidence regarding the sexual history of an alleged victim is strictly limited in court proceedings. The rules of evidence restrict admissibility in civil cases, and there are specific statutes governing admissibility in criminal sex offense prosecutions and proceedings for sexual assault protection orders. In sexual assault protection order proceedings, sexual history evidence is inadmissible unless it concerns the past sexual conduct between the petitioner and respondent and is offered on the issue of consent, or when it is constitutionally required. The court may not

admit sexual history evidence unless it is satisfied upon an in camera hearing that the respondent's evidence is sufficiently specific to impeach the petitioner, it is relevant, and its probative value outweighs the danger of unfair prejudice.

Summary of Bill:

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" is defined in both the section governing this process and the definition section of the UPA. For purposes of the new process, "sexual assault" means nonconsensual sexual penetration that is capable of causing pregnancy.

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. While the hearing is pending, the court may not enter any temporary orders providing residential time or decision making to the alleged perpetrator. All affidavits and documents submitted for the fact-finding hearing must be filed under seal and may not be made public absent compelling circumstances found by a court, and the fact-finding hearing and other related proceedings must be closed to the public.

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, and if the proceeding is a petition filed by the alleged or presumed parent to adjudicate parentage, the court must dismiss the petition with prejudice.

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 of 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 in the period of 140 to 320 days after the sexual assault.

Evidence regarding the prior sexual activity or reputation of the alleged victim is inadmissible except in specifically listed circumstances and only upon an order of the court that specifies the evidence that may be admitted and the issues with respect to which the alleged victim may be examined or cross-examined. In determining whether a pregnancy resulted from a sexual assault, the court may not draw any inferences based on evidence the alleged perpetrator or alleged victim was involuntarily intoxicated, the alleged victim engaged in limited consensual sexual touching, or the alleged victim chose to give birth to and raise the child.

If the court finds by clear, cogent, and convincing evidence that 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, or 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 to mutual decision-making and residential time in parenting plans and child custody orders. The court shall 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.

Appropriation: None.

Fiscal Note: Requested on 1/26/17.

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