

HOUSE BILL REPORT

SHB 1543

As Amended by the Senate

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: 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).

Brief History:

Committee Activity:

Judiciary: 2/1/17, 2/9/17 [DPS].

Floor Activity:

Passed House: 2/27/17, 94-2.

Senate Amended.

Passed Senate: 4/20/17, 49-0.

Brief Summary of Substitute 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.
- 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.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

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.

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.

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 Substitute 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" 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. 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 the fact-finding hearing and related proceedings should be closed to the public. Upon finding good cause for closing the proceeding, and if consistent with Article I, section 10 of the state Constitution, the court may: (a) restrict admission to only those persons whom the court finds to have a direct interest in the case or in the work of the court, including witnesses deemed necessary to the disposition of the case; and (b) restrict persons who are admitted from disclosing any information obtained at the hearing that would identify the parties involved or the child.

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, 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 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.

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 victim engaged in limited consensual sexual touching, or the alleged victim chose to give birth to and raise the child. Evidence of voluntary intoxication of the alleged victim and/or alleged perpetrator must not be a basis, in itself, to conclude that the alleged victim consented to sexual activity or that the alleged perpetrator did not commit a sexual assault.

If the court finds the person seeking parental rights or the presumed parent was convicted of rape of the other parent, or 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. If the court enters an order providing that no child support obligation may be established or collected, the court must forward a copy of the order to the Washington state support registry. 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 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 he or she does not want to dispense with the consent to adoption by the parent who committed the sexual assault.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment makes the following changes:

- limits the definition of "sexual assault" to nonconsensual sexual penetration that results in pregnancy (rather than is capable of causing pregnancy);
- provides that 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;
- removes the requirement that a fact-finding hearing be held within 60 days of the filing of the pleading;
- provides that a temporary order regarding residential time or decision-making for an alleged perpetrator who is a presumed parent may be entered if it would be in the best interests of the child (rather than if failure to enter the order would result in irreparable harm to the child);
- removes the requirement to dismiss a petition to adjudicate parentage with prejudice when the alleged perpetrator is the petitioner and genetic testing shows the alleged perpetrator is not biologically related to the child;
- removes provisions governing the admissibility of evidence in the fact-finding hearing relating to the prior sexual activity or reputation of the alleged victim and governing the weight of and inferences drawn from evidence relating to limited consensual sexual touching or voluntary intoxication;
- clarifies language providing that a parent who is a victim of a sexual assault that results in the birth of a child who is an adoptee may indicate by sworn affidavit that the consent to adoption of the alleged perpetrator should occur; and
- removes the intent language.

Appropriation: None.

Fiscal Note: Available.

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) There is a gap in the law that means rape victims can be forced to co-parent with their rapists. No rape survivor should ever be forced to co-parent a child with a rapist. When a woman becomes pregnant after a rape, it is a very difficult decision to make about whether to take the child to term. Many women do make this decision, and the law fails to protect the women who make that choice. A victim should not be subjected to re-traumatization if she chooses to keep the child. A victim should not have to worry about being blackmailed or put under constant pressure by the rapist. The worst thing to feel as a parent is that you are not able to protect your child, that you are required to give your child to your attacker. Children are so precious, and there are many children out there that need the protection of this bill.

The bill requires a high burden of proof—clear, cogent, and convincing evidence—but does not require a conviction. It is very important that the bill not require a conviction in order to receive the protections of the law. Only a very small percentage of rapes are prosecuted and result in a conviction. Requiring a conviction would leave the vast majority of rape survivors without any protection. The clear, cogent, and convincing evidence standard is the same standard used for terminating parental rights for abuse or neglect.

Congress unanimously passed legislation providing federal financial assistance to states that pass a law that creates a court process to eliminate parental rights of rapists. Congress has approved the use of the clear, cogent, and convincing standard in this process. A wide number of other states have been enacting laws on this issue with strong bipartisan support to show that rape survivors are taken seriously and that they will be protected and respected.

(Opposed) None.

Persons Testifying: Representative Doglio, prime sponsor; Andrea Piper Wentland, Washington Coalition of Sexual Assault Programs; Rachel Gropper; David Ward, Legal Voice; and Linda Malanchuk-Finnan, Washington State National Organization for Women.

Persons Signed In To Testify But Not Testifying: None.