

SENATE BILL REPORT

SHB 1543

As Reported by Senate Committee On:
Law & Justice, March 29, 2017

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

Committee Activity: Law & Justice: 3/22/17, 3/29/17 [DPA].

Brief Summary of Amended Bill

- Creates a civil court process for a fact-finding hearing using the clear and convincing evidence standard to restrict parental rights, including terminating parental rights, regarding a child who was conceived as the result of a sexual assault.
- Amends statutes governing parenting plan limitations and when a parent's consent to adoption of their 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.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Melissa Burke-Cain (786-7755)

Background: 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

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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 their 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.

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.

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 of Amended Bill: A court process is established 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. The court applies a clear and convincing evidence standard in the hearing and determines what evidence is admitted based on the civil rules of evidence. Sexual assault means nonconsensual sexual penetration that results in 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. The court must determine if the records submitted for the fact-finding hearing should be sealed. Any party may ask that the court hearings be closed to the public; or the judge may decide to close the hearing to the public on the judge's own initiative upon finding good cause for closing the proceeding

Before the fact-finding hearing, 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's best interests are served by the temporary order. 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 is cancelled.

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 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 require payment of child support, birth-related costs, or both, if requested 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.

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 without the express written consent of the child's legal parent or guardian; there is no right to residential time, to decision-making, or to inherit from the child. The person found to have committed the sexual assault has not right to notice or consent to the child's adoption, but this provision may be waived by the other parent through sworn testimony or a declaration. Sexual assault resulting in a pregnancy requires

mandatory restrictions to mutual decision-making and residential time in parenting plans and child custody orders.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Defines "sexual assault" for purposes of this act as nonconsensual sexual penetration that results in pregnancy.
- Requires that the pleading alleging a sexual assault by the presumed or alleged parent that resulted in the child's conception and birth must be filed no later than four years after the birth of the child.
- Allows the civil rules of evidence and the trial court to determine the fact-finding schedule and the admissible evidence in the fact-finding hearing.
- Provides that the court may not order temporary residential time or decision making before the fact-finding hearing unless the alleged sexual assault perpetrator is the child's presumed parent, and the court specifically finds entry of the temporary order is in the child's best interests.
- Provides that the sexual assault perpetrator is not required to consent to adoption, but the victim may waive the consent exemption in a declaration or sworn testimony.
- 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.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: If this bill passes, Washington State will receive additional federal grant funds under a 2015 federal law, the Rape Survivor Child Custody Act. Michigan just passed a similar law to this bill. Contrary to popular opinion, a stranger in an alley is not the typical rapist. The majority of rapists are known by the victims. There are reasons why a rapist would threaten the victim with court action for custody or residential time with a child who is conceived as a result of a sexual assault. For example, the rapist may use the threat of a custody battle to coerce the victim to drop criminal charges or have an abortion. The federal law providing states with enhanced grant funding requires a state to have a civil law path, based on a clear and convincing evidence standard, to deny custody or terminate parental rights of the perpetrator of the sexual assault that resulted in the birth of the child. There is out-of-date information and misinformation on the internet pertaining to state laws governing the parental rights of a sexual assault perpetrator when the assault results in a pregnancy and birth of a child. Many states still do not protect the rape victim from having to co-parent or share custody with the person who sexually assaulted them. A large number of sexual assaults are never prosecuted to conviction, so state laws requiring a rape conviction before a civil termination of parental rights leave many sexual assault victims forced into regular contact with the person who

assaulted them. Often, a sexual assault victim is too traumatized to report the assault so there is no conviction to rely upon to prove the assault happened. It is devastating to relive the trauma of an assault each time the survivor is drawn back to court on a parenting issue. Most survivors want to keep the person who assaulted them out of their lives and keep the perpetrator away from the child who was born as a result of assault.

Persons Testifying: PRO: Representative Beth Doglio, Prime Sponsor; Genevieve Marnon, Right to Life Michigan; David Ward, Legal Voice; Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs, Rachel Gropper, citizen.

Persons Signed In To Testify But Not Testifying: None.