

# SENATE BILL REPORT

## SB 5461

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As of February 15, 2017

**Title:** An act relating to authorizing the disestablishment of paternity if genetic testing shows by clear and convincing evidence that a man is not the genetic father of a child.

**Brief Description:** Authorizing the disestablishment of paternity responsibilities of a nonparent if genetic testing shows by clear and convincing evidence that a man is not the genetic father of a child.

**Sponsors:** Senators Rolfes, Pearson, Zeiger, Angel, Kuderer and Mullet.

**Brief History:**

**Committee Activity:** Law & Justice: 2/09/17.

**Brief Summary of Bill**

- Allows a petition to challenge paternity if genetic testing shows by clear and convincing evidence that the putative father is not the genetic father.
- Relieves the petitioner from future child support obligations where an order determines the petitioner is not the genetic father.
- Presumes genetic testing is in the best interest of the child.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Tim Ford (786-7423)

**Background:** Washington's Uniform Parentage Act (UPA) provides for how a legal parent-child relationship may be established or challenged, and how a determination of parentage may be used by courts in other proceedings including child support.

Parentage between a person and a child may be established under UPA based on the following:

- an un rebutted presumption;
- acknowledgement of paternity;
- adoption;
- a valid surrogate contract;

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*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.*

- consent to assisted reproduction; or
- an adjudication.

A person is a presumed parent if the child was born in or shortly after the context of marriage. A person is an acknowledged parent if the person signs an acknowledgement 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.

Under UPA, the procedure for challenging parentage varies depending on whether the child has a presumed, acknowledged, or adjudicated parent. Generally, a challenge must be brought within four years after the child's birth or within four years after an acknowledgment or adjudication of parentage.

In a proceeding to challenge parentage, genetic testing may be ordered or alternately denied by the court where it is not in the best interest of the child. In most cases, genetic testing by an expert is admissible in court. A man excluded as the father by genetic testing must be adjudicated not to be the father of the child, except when the man adopted the child or the man consented to assisted reproduction with the intent to be a parent.

**Summary of Bill:** A party to a determination of parentage may file a petition in court to rescind an acknowledgment of paternity, challenge a presumption of paternity, or contest an adjudication of paternity if genetic testing shows by clear and convincing evidence that the man is not the genetic father of the child. If the court enters an order finding the alleged father is not the genetic father, he is discharged of all the rights and duties of a parent as of the date of the order. The court's order must direct the State Registrar of Vital Statistics to remove his name from the birth certificate. The right to challenge paternity does not apply if:

- the man is the child's adoptive father;
- the child was conceived by assisted reproduction and the man consented with intent to be the parent; or
- genetic testing was used as the basis to determine a prior adjudication of paternity, unless sufficient evidence of material mistake of fact or fraud can be shown.

An order determining the alleged father is not the genetic father must relieve him from future obligations of paternity and child support. The court must extinguish all or any part of existing child support owed in arrears upon such terms as are just. There is no right of reimbursement for amounts paid under any prior order of child support, but an alleged father who is not the genetic father maintains the right to bring a civil action seeking damages. There is no right to recover child support from the state. The state is not required to refund or repay child support previously collected.

In a petition to challenge paternity, the court may suspend a petitioner's financial obligation to pay child support for good cause shown. Good cause is a rebuttable presumption where genetic testing shows that the petitioner is not the genetic father.

A court may no longer deny a motion for genetic testing on the basis that testing is inequitable and not in the best interest of the child. A court may not deny testing if the petitioner and presumed father did not know he was not the genetic father. Genetic testing is presumed, subject to rebuttal, to be in the best interest of the child.

Genetic testing satisfied in accordance with law excludes the alleged father as the genetic father, regardless of whether the alleged father cohabited or engaged in sexual intercourse with the person who has a parent-child relationship with the child during the probable time of conception, held out the child as his own, or provided financial support for the child.

**Filing Deadlines.** For a child born on or after the effective date of this act:

- a petition must be filed within two years after knowledge of facts indicating the alleged father is not the genetic father.

For a child born before the effective date of this act:

- a petition must be filed within two years of the effective date of this act regardless of when the petitioner became aware that he is not the genetic father.

**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 bill is passed.

**Staff Summary of Public Testimony:** PRO: There's a fundamental unfairness inherent in the way the legal system is set up regarding fathers. Relationships are really complicated and no relationship is the same. Families are really complicated and no family are the same. Under the current legal system, there are rare but numerous instances where the presumed father is not being treated fairly. There are circumstances where the child would not be harmed by the legal disestablishment of parentage because there was no relationship to start with. Lets look to see if there is a way to resolve it so that everyone is being treated fairly.

CON: Washington places a high premium on the needs and interests of children. Our entire court structure centers around children's needs. It will harm children in the state. It will authorize substantial lawsuits against mothers. It will fundamentally upset how parentage is managed in our state. The UPA has a strong interest in putting children first. Families are complicated and messy. A child doesn't care about genetics.

Sexual assault victims will be harmed. Rape related pregnancy is approximately 32,000 women annually. Rape victims could face liability if they do not tell their partner that they were raped and the child was conceived. There are many reasons why a victim does not want to tell that they were raped. What if she was threatened if she told. She could be afraid of being blamed. There are many reasons.

**Persons Testifying:** PRO: Senator Christine Rolfes, Prime Sponsor.

CON: Lisa M. Stone, Legal Voice; Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs.

**Persons Signed In To Testify But Not Testifying:** No one.