

# HOUSE BILL REPORT

## HB 1848

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to crimes concerning fraud in assisted reproduction.

**Brief Description:** Concerning crimes concerning fraud in assisted reproduction.

**Sponsors:** Representatives Orwall, Mosbrucker, Goodman and Graham.

**Brief History:**

**Committee Activity:**

Public Safety: 1/25/22, 2/1/22 [DP].

**Brief Summary of Bill**

- Creates the new crime of False Representation in Assisted Reproduction.
- Provides that a person commits the crime of Assault in the third degree if he or she implants his or her gametes or reproductive material into a patient without the patient's written consent.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 13 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Davis, Graham, Griffey, Hackney, Orwall, Ramos, Simmons, Thai and Young.

**Staff:** Corey Patton (786-7388).

**Background:**

Assisted Reproduction.

Assisted reproduction is a method of causing pregnancy other than sexual intercourse.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Forms of assisted reproduction include intrauterine or intracervical insemination, donation of gametes, donation of embryos, in-vitro fertilization and transfer of embryos, and intracytoplasmic sperm injection. A donor is an individual who provides gametes intended for use in assisted reproduction. Gametes are sperm, eggs, or any part of a sperm or egg.

A person who is at least 18 years old and who was conceived by assisted reproduction may request that the gamete bank or fertility clinic which collected the gametes used in the assisted reproduction make a good faith effort to provide the person with identifying information of the donor who provided the gametes, unless the donor signed and did not withdraw a declaration. A person who was conceived by assisted reproduction, or the parent or guardian of the person if the person is a minor, may request that the gamete bank or fertility clinic which collected the gametes used in the assisted reproduction make a good faith effort to provide access to nonidentifying medical history of the donor.

Classification of Crimes.

Crimes are classified as misdemeanors, gross misdemeanors, or class A, B, or C felonies. While there are exceptions, the classification of a crime generally determines the maximum term of confinement and fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

Classification	Maximum Confinement	Maximum Fine
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

For most felony offenses, the Sentencing Reform Act determines a specific sentence range within the statutory maximum according to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the person's criminal history. The seriousness level of an offense ranges from level I on the low end to level XVI on the high end. An offender score may vary from zero to nine plus points depending on certain factors.

Statute of Limitations.

A statute of limitations is a time limit for initiating prosecution after a crime is committed. Once a statute of limitations has expired, a prosecutor is barred from bringing charges against an alleged perpetrator. Statutes of limitations vary according to the crime. Generally, misdemeanors must be prosecuted within one year, gross misdemeanors must be prosecuted within two years, and felonies must be prosecuted within three years of the commission of the crime. However, the statute of limitations for certain specified offenses

may diverge from these general provisions.

Assault in the Third Degree.

A person commits assault if he or she attempts to inflict bodily injury on another person with unlawful force, unlawfully touches another person with criminal intent, or puts another person in apprehension of harm. The crime of assault is divided into four degrees, depending on the manner in which it is committed or the amount of harm caused to the victim.

A person commits Assault in the third degree if he or she, under circumstances not amounting to Assault in the first or second degree, assaults a specific category of person or commits the assault with certain intent or criminal negligence accompanied by other specific factors. For example, Assault in the third degree includes assaults against firefighters and law enforcement officers performing their official duties. Assault in the third degree is a class C felony ranked at seriousness level III. Assault in the third degree may not be prosecuted more than three years after its commission, subject to certain conditions.

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**Summary of Bill:**

New Crime—False Representation in Assisted Reproduction.

The new crime of False Representation in Assisted Reproduction is established as a class C felony ranked at seriousness level I. False Representation in Assisted Reproduction may not be prosecuted more than six years after its commission or discovery, whichever occurs later.

A person commits the crime of False Representation in Assisted Reproduction if the person knowingly provides false information to a patient related to any of the following:

- an assisted reproduction procedure or treatment;
- the human reproductive material used or provided for assisted reproduction;
- the identity of a donor of human reproductive material used or provided for assisted reproduction; or
- a donor's medical history.

A health care provider commits False Representation in Assisted Reproduction if the provider knowingly uses or provides human reproductive material for assisted reproduction other than the human reproductive material the health care provider agreed to be used or provided in writing.

A health care facility, gamete bank, or fertility clinic commits False Representation in Assisted Reproduction if it:

- provides a patient with human reproductive material other than the material that was agreed to in writing between the patient and the entity;

- disregards agreements between the donor and the gamete bank, fertility clinic, or health care facility; or
- fails to make good faith efforts to provide a child conceived by assisted reproduction with a donor's identifying information as required by statute.

Assault in the Third Degree.

The definition of Assault in the third degree is expanded. A person commits Assault in the third degree if he or she implants his or her gametes or reproductive material into a patient without the patient's written consent.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 7, relating to the seriousness level of False Representation in Assisted Reproduction, which takes effect July 1, 2022.

**Staff Summary of Public Testimony:**

(In support) Instances of fertility fraud are being discovered nationwide. According to the Associated Press, there are at least 20 known cases, some of which have impacted over 60 people. Fertility fraud encompasses more than just fraud by doctors. There have been cases where a donor lies about his or her personal or medical background to receive more money, a patient's reproductive material is donated without permission, or a clinic knowingly withholds or destroys medical records. Fertility fraud occurs with egg donors as well, not just sperm donors. People who experience fertility fraud often feel extremely violated and experience lifelong trauma. Discovering misattributed parentage later in life may cause an identity crisis or make it difficult to compile an accurate medical history. A number of Washington residents have experienced fertility fraud, but it is difficult to come forward to report these crimes because of the stigmas around infertility. When children are birthed through assisted reproduction, the process should be conducted with honesty and integrity. This bill makes a big statement that fertility fraud is unacceptable. Criminal charges are a pathway for justice and a conviction may lead to a doctor losing his or her license.

(Opposed) None.

**Persons Testifying:** Representative Tina Orwall, prime sponsor; Traci Portugal; and Kara Rubinstein Deyerin, Right To Know.

**Persons Signed In To Testify But Not Testifying:** None.