
Judiciary Committee

HB 2559

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 Goodman, Orwall, Roberts, Fitzgibbon, Jinkins and Springer.

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| <p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Creates a court process to restrict parental rights and establish support obligations in cases in which the child was conceived as the result of sexual assault. |
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Hearing Date: 1/30/14

Staff: Omeara Harrington (786-7136).

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, and requiring amendment of the child's birth certificate. It must also make residential provisions for minor children. Temporary orders may be issued while the action is pending.

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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.

Genetic Testing. 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, adjudicated, or acknowledged parent may be disproved only by admissible results of genetic testing.

Adoption. If a parent proposes to relinquish a child for adoption, any other relinquishing parent, including an alleged father, is entitled to notice of the adoption proceeding. Both parents may consent to the adoption, however the court may also terminate the parent-child relationship with a non-consenting parent or alleged father under certain circumstances, for instance, if the parent has been found guilty of rape or incest of the other parent that resulted in conception of the adoptee.

Restrictions on Residential Time and Decision-making Authority.

Parenting plans are mandatory in dissolution cases in which there are minor children, and are optional in child custody cases. The parenting plan must not establish mutual decision-making and must limit residential time or visitation 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. Criteria that require mandatory residential or visitation restrictions in a parenting plan also apply to child custody orders. If the court finds that limitations on residential time will not protect the child from harm or abuse, the court must restrain the parent from all contact with the child.

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 in 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:

A court process is established to adjudicate parental rights and obligations in cases in which the child was conceived as the result of sexual assault.

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. Unless otherwise agreed to by the parties, the hearing is closed to the public.

The burden of proving that the pregnancy resulted from sexual assault is placed on the parent alleging sexual assault. Sexual assault may be proved by evidence of conviction or, alternatively, clear, cogent, and convincing evidence that the person committed sexual assault. The court may order genetic testing to determine whether the alleged perpetrator is biologically related to the child. If the testing reveals that the alleged perpetrator and the child are not biologically related, the fact-finding hearing must be stricken.

Evidence regarding the prior sexual activity or the reputation of the alleged victim is inadmissible except in certain circumstances, and only upon the court's ruling that the evidence may be admitted. The guidelines for admissibility of sexual history evidence are similar to those prescribed for sexual assault protection order proceedings. In addition, no conclusions may be drawn from evidence that either the alleged perpetrator or alleged victim was voluntarily 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 outcome of the fact-finding hearing is that the pregnancy resulted from sexual assault, the court must enter a holding that the perpetrator is not the child's parent, if requested by the victim, or enter an order consistent with the relief requested by the child's legal parent or guardian, if the court determines the requested relief is in the best interest of the child. The order must also include a requirement for payment of child support, birth-related costs, or both, if sought by the victim, and amendment of the child's birth certificate, if warranted.

Absent the express written consent of the child's legal parent or guardian, a person found to have committed a sexual assault resulting in pregnancy 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.

A definition is added to the UPA to define "sexual assault" as any offense as listed under the chapter of the RCW describing sex offenses that would be capable of causing pregnancy. Sexual assault resulting in a pregnancy is added to the list of factors requiring mandatory restrictions to mutual decision-making in parenting plans and residential time in parenting plans and child custody orders, and to the list of circumstances under which the court may dispense with parental consent for adoption.

Appropriation: None.

Fiscal Note: Requested on January 23, 2014.

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