

HOUSE BILL REPORT

HB 2346

As Reported by House Committee On:
Juvenile Justice & Family Law

Title: An act relating to the uniform parentage act.

Brief Description: Updating the uniform parentage act.

Sponsors: Representatives Darneille, Delvin and Dickerson; by request of Uniform Legislation Commission.

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 1/23/02, 1/30/02 [DPS].

Brief Summary of Substitute Bill

- Repeals certain provisions of the Uniform Parentage Act of 1973 and replaces it with the Uniform Parent Act of 2000.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Dickerson, Chair; Darneille, Vice Chair; Delvin, Ranking Minority Member; Eickmeyer and Tokuda.

Minority Report: Do not pass. Signed by 1 member: Representative Carrell.

Staff: Trudes Hutcheson (786-7384).

Background:

The National Conference of Commissioners on Uniform State Laws develops and proposes laws in subject matters where it believes uniformity between states is desirable. In 1973 the commissioners approved the Uniform Parentage Act (UPA 1973), which at least 19 states, including Washington, have enacted. The UPA 1973 creates procedures to identify parentage so that child support may be established.

Presumption of Paternity

To determine the existence of a father/child relationship, which grants the man all the legal rights and obligations of a parent, the UPA 1973 creates a presumption of paternity. A man is presumed to be the father of a child if: (a) He and the child's mother are or were married, and the child is born during the marriage or within 300 days after the marriage ends; (b) before the child's birth, he and the child's mother have attempted to marry each other and the child is born within 300 days after the termination of cohabitation; (c) after the child's birth, he and the child's mother have married, or attempted to marry, and either he acknowledged his paternity in writing, or he consented to be named as the father on the birth certificate, or he is obligated to support the child under a written promise or court order; (d) he received the minor child into his home and openly treated the child as his own; (e) he signed a paternity affidavit or acknowledged paternity in writing; or (f) genetic testing shows a 98 percent or greater probability of paternity.

Under the Federal Personal Responsibility and Work Opportunity Act of 1996 (the Welfare Reform Act), states must adopt certain nonjudicial procedures to establish paternity in order to receive federal funds. In response, Washington established the use of paternity affidavits which are filed with the registrar of vital statistics. Signing a paternity affidavit is equivalent to a legal finding of paternity if it is not rescinded or challenged within 60 days of filing it. After 60 days, the affidavit may be challenged only on the basis of fraud, duress, or material mistake of fact.

Disestablishing Paternity

Any interested party, including the state, the child, the mother, or the man alleged to be the father, may bring an action at any time to establish paternity. However, a presumed father may bring an action to disestablish paternity only within a reasonable time after obtaining knowledge of relevant facts. The presumption of paternity may be rebutted only by clear, cogent, and convincing evidence. If it is in the best interests of the child not to disestablish paternity, a court may order that the presumed father remains the "legal father" for purposes of rights and obligations.

In any paternity action, the child must be made a party. If the child is a minor, the child must be represented by a guardian ad litem.

Blood or Genetic tests

The court may order the child, mother, or any alleged or presumed father to submit to blood or genetic tests. If a party requests additional blood or genetic tests, the party requesting must advance the full costs of the additional testing, unless the court finds the party is indigent and the initial lab recommends additional testing, or there is evidence that paternity is contrary to the initial test results.

Artificial Insemination

When a woman is artificially inseminated with semen donated by a man not her husband, the husband is treated in law as the natural father if he consented to the procedure. The

donor is not considered the father unless there is a written agreement stating otherwise.

Adoption

Before an adoption of a minor child may occur, the parental rights of that child's biological parents must be severed, either through a voluntary relinquishment and consent to adoption, or a court order terminating parental rights. A parent who has not consented to an adoption, must be given notice of any hearing to terminate his or her parental rights. The father or alleged father's parental rights may be terminated if he fails to respond or appear at the hearing after being notified.

Summary of Substitute Bill:

The UPA 1973 is repealed and replaced with UPA 2000 (UPA). The new UPA expands on the procedures for establishing paternity by:

- Defining specific terms and distinguishing between a presumed, acknowledged, and adjudicated father;
- establishing specific rules and processes for adjudicating paternity;
- establishing a process for voluntary acknowledgment of paternity;
- establishing a paternity registry for men who are not presumed, acknowledged, or adjudicated fathers; and
- updating procedures for establishing paternity of children born by assisted reproduction.

Establishing and Disestablishing Paternity

To determine the existence of a father/child relationship, the new UPA distinguishes between a presumed father, an acknowledged father, and an adjudicated father.

The new UPA still recognizes all the ways a man can be a presumed father in the context of marriage. However, the new UPA removes the presumption of paternity if a man receives the child into his home and openly treats the child as his own. The new UPA also removes the provision allowing a presumption to be rebutted only by clear and convincing evidence. Instead it creates new procedures for genetic testing to rebut the presumption.

Generally, if there is a presumed father, a challenge to paternity must be commenced not later than two years after the child's birth. However, a proceeding may be maintained at any time when: (a) The presumed father and mother neither cohabitated nor engaged in sexual intercourse with each other during the probable time of conception; and (b) the presumed father never openly treated the child as his own.

A court may deny genetic testing of the presumed father if the court determines, among other things, that it would be inequitable to disestablish paternity. In determining

whether to deny genetic testing, the court shall consider the best interest of the child and the following factors:

- The length of time between the proceeding to adjudicate parentage and the time that the presumed father received notice that he might not be the genetic father;
- the facts surrounding the presumed father's discovery of his possible nonpaternity;
- the nature of the father/child relationship;
- the age of the child;
- the harm to the child that may result if presumed paternity is successfully disproved;
- the relationship of the child to any alleged father;
- the extent to which the passage of time reduces the chances of establishing paternity of another man and a child support obligation for the child; and
- other factors that may affect the equities arising from the disruption of the father/child relationship or the chance of other harm to the child.

Acknowledged father

Much like a paternity affidavit, an acknowledgment of paternity under the new UPA is a nonjudicial method of establishing paternity. An unrescinded, unchallenged acknowledgment is equivalent to an adjudication of paternity. Under the new UPA, a man can be the acknowledged father if he and the mother sign an acknowledgment that the child is a result of their sexual intercourse. The new UPA also establishes additional information that must be stated in the acknowledgment.

An acknowledgment is void if it states that another man is the presumed father unless the presumed father files a denial of paternity in conjunction with the acknowledgment. A person who signed an acknowledgment or denial of paternity may rescind it by commencing a court proceeding within a certain time. After that, the person may challenge the acknowledgment only on the basis of fraud, duress, or material mistake of fact and only within two years after the acknowledgment is filed with the state registrar. The party seeking to rescind has the burden of proof.

If a child has an acknowledged or adjudicated father, an individual, other than the child, who did not sign the acknowledgment or who was not a party to the adjudication, must commence an action to adjudicate paternity no later than two years after the effective date of the acknowledgment or adjudication.

Under the new UPA, the child is no longer required to be made a party to the proceeding. If a child does not have a presumed, acknowledged, or adjudicated father, a proceeding to adjudicate parentage may be commenced at any time during the child's life.

Genetic Testing

There is a legal presumption that a man is the genetic father if testing shows that the man has at least a 99 percent probability of paternity and the ratio of likelihood of paternity is 100-to- 1.

The paternity of a child who has a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing. If an individual whose paternity is being determined declines to submit to genetic testing as ordered by the court, the court may, on that basis, adjudicate that person as the parent.

The court or agency may not order in-utero testing of a child before birth. Testing must be the type reasonably relied upon by experts in the field and performed in an accredited testing laboratory. The new UPA establishes other procedures regarding genetic testing. If a testing specimen of the alleged father is not available, the court for good cause and under just circumstances may order the man's relatives to submit specimens to be tested.

It is a gross misdemeanor if a person intentionally releases an identifiable specimen for any purpose other than that relevant to the paternity proceeding without a court order or the written permission of the person who furnished the specimen.

Paternity registrar for the purposes of adoption notices

The new UPA establishes a paternity registry with the state registrar of vital statistics. The registry addresses the rights of a man who is neither an acknowledged, presumed, or adjudicated father in the context of notice for certain proceedings.

A man who wants to be notified of an adoption proceeding or termination of parental rights for a child he may have fathered, must register either before the birth of the child or no later than 120 days after the birth. The registrar may charge a reasonable fee for registration or rescission. A man may rescind his registration anytime by sending to the registry a written rescission signed and witnessed or notarized. A presumed, acknowledged, or adjudicated father need not register.

Notice of an adoption proceeding or hearing to terminate parental rights must be given to the registrant. Before the child reaches the age of one, a party seeking to adopt the child or terminate parental rights must obtain a certificate of search from the paternity registry. The parental rights of a man may be terminated without notice if he did not timely register and the child has not attained one year of age at the time of the termination. However, once the child has reached one year of age, the registry has no effect, and notice must be given to a man who may be the child's father, whether or not he has registered.

Information on the registry is confidential and may be released only under certain circumstances. It is a gross misdemeanor for a person to intentionally release information from the registry to another person not authorized to receive such information.

Child of Assisted Reproduction (AR)

The new UPA is similar to the UPA 1973 regarding artificial insemination, but considers other forms of assisted reproduction as well. If a husband consents to AR by his wife, he

is the father of the resulting child. If a marriage is dissolved before placement of eggs, sperm, or embryo, the former spouse is not the parent unless he consents in a record to be the parent if AR occurs after dissolution. The consent of the former spouse to AR may be revoked by that person in a record at any time before placement. Likewise, if a spouse dies before placement of eggs, sperm, or embryo, the deceased spouse is not a parent of the resulting child unless he consented in a record to be the parent if AR occurred after death.

Substitute Bill Compared to Original Bill:

The substitute bill changes the time period (from 30 days to 120) in which a man must register with the paternity registry. The substitute also authorizes the state registrar to charge a reasonable fee for filing a registration or rescission of registration in the paternity registry. The effective date for the sections requiring the establishment of a paternity registry is changed from July 1, 2002 to January 1, 2003. The acknowledgment of paternity must prominently state that a signed acknowledgment is equivalent to an adjudication of paternity and gives the person all the rights and obligations of a parent if it is not challenged or rescinded.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect July 1, 2002, except for sections 401 through 423, relating to the paternity registry, which take effect January 1, 2003.

Testimony For: This uniform bill provides a cleaner process for when a presumed father finds out he is not the genetic father. The process for an acknowledged father creates finality. When there is a challenge to paternity, the bill provides improved procedures to help courts determine paternity. The procedures create predictability. Acknowledgments of paternity will help fathers establish their rights. The paternity registry will facilitate more infant adoptions. The bill modernizes the 1973 act.

Testimony Against: The existing law works well. Although it is good to update the laws, the rights of fathers are still not clear. Courts should not be allowed to deny a man the right to get genetic tests to determine if he is the father. The Legislature should study issues around parentage before making so many revisions to existing laws. The problem with existing law is that a man who acknowledges paternity is not allowed the same services as a man contesting paternity.

Testified: (In support) Representative Darneille, prime sponsor; Judge Marlin Applewick, Washington Uniform Law Commissioners; Gail Stone, Washington State Bar Association; and Bill Harrington, American Father's Alliance.

(Opposed) John Mills, Metro Development Council; and Lisa Scott, Taking Action against Bias in the System (TABS).