
Civil Rights & Judiciary Committee

HB 1808

Brief Description: Proceedings to preclude establishment of parentage when a parent alleges that a person committed a sexual assault that resulted in the parent becoming pregnant and subsequently giving birth to a child.

Sponsors: Representatives Doglio, Griffey, Couture, Volz, Duerr and Graham.

Brief Summary of Bill

- Extends the period during which a parent seeking preclusion of parentage in a sexual assault case must file a pleading from four years to 10 years after the child's birth.
- Requires a fact-finding hearing on the petition to preclude parentage to be conducted within 75 days of the filing of the petition unless exceptional circumstances require additional time.
- Requires appointment of counsel at public expense for indigent petitioners and defendants in proceedings to preclude parentage.
- Excludes from the definition of "parent" for the purposes of child welfare proceedings a person who has been precluded from establishing or maintaining parentage.
- Prohibits visitation between the alleged perpetrator of a sexual assault and the child during a dependency case unless the juvenile court makes specified determinations.

Hearing Date: 2/14/23

Staff: Yelena Baker (786-7301).

Background:

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.

Preclusion of Parentage in Sexual Assault Cases.

The Uniform Parentage Act (UPA) provides standards and procedures for establishing and challenging the legal parent-child relationship. Issues addressed under the UPA include: the parent-child relationship, including presumed parentage and acknowledgement of parentage; procedures for adjudicating parentage; and preclusion of parentage in certain cases.

A person's parental rights may be precluded through a court proceeding under the UPA if the person seeking parental rights or presumed to be a legal parent committed a sexual assault against the child's parent and the child was conceived as the result of the sexual assault. "Sexual assault" means nonconsensual sexual penetration that results in pregnancy.

A parent seeking preclusion of parentage must file a pleading no later than four years after the birth of the child, unless there is:

- a challenge to an acknowledgement or denial of parentage, which may be brought only under limited circumstances and no later than four years after the effective date of the acknowledgement or denial; or
- a proceeding to determine whether an alleged genetic parent who is not a child's presumed parent is a parent of the child, which may be commenced before the child becomes an adult, or after the child becomes an adult but only if the child initiates the proceeding.

The court must conduct a fact-finding hearing on the allegation that a person committed a sexual assault that resulted in the parent becoming pregnant and subsequently giving birth to a child. The court may not enter any temporary orders providing residential time or decision-making to the alleged perpetrator prior to the fact-finding hearing unless:

- the alleged perpetrator has a bonded and dependent relationship with the child that is parental in nature; and
- the court specifically finds that it would be in the best interest of the child to enter temporary orders providing residential time or decision-making to the alleged perpetrator.

Prior to the fact-finding hearing, the court may order genetic testing to determine whether the alleged perpetrator is biologically related to the child. The court must strike the fact-finding hearing if genetic testing reveals that the alleged perpetrator is not biologically related to the child.

An allegation that a person committed a sexual assault resulting in the parent giving birth to the child may be proved by:

- evidence that the person was convicted of or pleaded guilty to a sexual assault under the crimes of rape in the first, second, or third degree, including child rape of any degree, or a comparable crime of sexual assault against 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 a sexual assault against the child's parent and that the child was born 320 days after the sexual assault.

If the court finds that the allegation is proved, the court must enter an order that the person is not

a parent of the child and has no right to:

- residential time or decision-making responsibilities for the child;
- inheritance from the child; and
- notification of, or standing to object to, the adoption of the child.

The court must require that the child's birth record be amended, if requested by the parent and the court determines that the amendment is in the best interest of the child. The court must also require the person to pay to child support, birth-related costs, or both, unless the parent requests otherwise and the court determines that granting the request is in the best interests of the child.

After considering the financial resources of both parties, the court may order a party to pay reasonable attorneys' fees and costs to the other party for maintaining or defending a preclusion of parentage proceeding.

Juvenile Courts and Child Welfare (Dependency) Proceedings.

Anyone, including the Department of Children, Youth, and Families (DCYF), may file a petition in court alleging that a child should be a dependent of the state due to abuse, neglect, or because there is no parent, guardian, or custodian capable of adequately caring for the child.

A petition alleging dependency of a child must be verified and contain a statement of facts that constitute a dependency and the names and residence of the parents, if known. For the purposes of child welfare proceedings, "parent" means the biological or adoptive parents of a child, or an individual who has established a parent-child relationship under the UPA, unless the legal rights of that person have been terminated. Parents have the right to counsel in child welfare proceedings, and, if indigent, they have the right to have counsel appointed by the court.

Juvenile courts have exclusive jurisdiction over dependency matters, but may also hear and determine issues related to a guardianship of a minor as necessary to facilitate or implement a permanency plan of care for a child. Additionally, juvenile courts may hear and decide matters to establish or modify a permanent parenting plan in order to implement a permanent plan of care for the child and dismiss the dependency.

Shelter Care Hearing.

Under certain circumstances, the juvenile court may order that a child be taken into custody and placed in shelter care. The DCYF must make reasonable efforts to inform the parent of the fact that child has been taken into custody and of the parent's legal rights in dependency proceedings.

When a child is taken into custody, the court must hold a shelter care hearing within 72 hours. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the dependency case is pending. The paramount consideration for the court must be the health, welfare, and safety of the child.

After the shelter care hearing, the court must release the child to a parent unless the court finds there is reasonable cause to require removal of the child. If the court does not release a child to a

parent after a shelter care hearing, the court must place the child with a relative or other suitable person unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The court must also determine whether placement with the relative or other suitable person is in the child's best interests.

Dependency Fact-Finding Hearing.

If a court finds the need to maintain a child out of the home, the shelter care status remains until a dependency fact-finding hearing is held or the parties enter an agreed order of dependency. The fact finding must be held within 75 days after the filing of the petition unless exceptional reasons for a continuance are found.

If after a fact-finding hearing a court determines that a child is dependent, the court must make determinations regarding the child's placement, the provision of services by the DCYF, compliance of the parents, and whether progress has been made by the parents.

The court may order a disposition that maintains the child in the home and that includes a program designed to alleviate the immediate danger to the child, mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. If issuing an order for out-of-home placement, the court must give preference to placing the child with a relative or other suitable person.

Permanency Plan of Care.

Whenever a child is ordered to be removed from the home, the DCYF must develop a permanency plan within 60 days from the date that the DCYF assumes responsibility for the child. The permanency plan must identify primary outcome goals for the case and include a specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the DCYF will take to maintain parent-child ties. The planning process must include reasonable efforts to return the child to the parent's home.

Parent-Child Visitation During Child Welfare Proceedings.

If a child is placed outside the home of a parent following a shelter care hearing, the court shall order the petitioner (usually the DCYF) to provide regular visitation with the parent. The visitation plan must be individualized to the needs of the family with a goal of providing the maximum parent-child contact possible.

The first visit after a child is placed outside the home of a parent must take place within 72 hours of the child being delivered to the DCYF, unless the court finds that extraordinary circumstances require delay. If this first visit occurs in an in-person format, the visit must be supervised unless the DCYF determines that visit supervision is not necessary.

If the court previously ordered that visitation between a parent and a child be supervised or monitored, there is a presumption that such supervision will no longer be necessary following:

- a continued shelter care order (30 days after shelter care hearing);

- entry of the permanency plan (60 days from the time that the DCYF assumes responsibility of the child); and
- a review hearing (every six months).

The presumption may be overcome if the court determines that removing visit supervision or monitoring would create a risk to the child's safety based on evidence submitted by a party.

Visitation must occur in the least restrictive setting and be unsupervised unless the presence of threats or danger to the child requires the constant presence of an adult to ensure the safety of the child.

Visitation may not be limited as a sanction for a parent's failure to comply with recommended services during shelter care and may only be limited where necessary to ensure the health, safety, or welfare of the child.

Office of Civil Legal Aid.

The Office of Civil Legal Aid (OCLA) is an independent judicial branch agency established by the Legislature in 2005 to administer and oversee state funds appropriated by the Legislature for the provision of civil legal aid services to eligible low-income people in Washington.

The OCLA is prohibited from providing direct representation of clients. Instead, moneys appropriated by the Legislature for civil representation are to be used solely for the purposes of contracting with qualified legal aid programs for legal representation of indigent persons in certain matters as specified by statute, including domestic relations and family law matters.

Summary of Bill:

Preclusion of Parentage in Sexual Assault Cases.

The time period within which a parent seeking preclusion of parentage must file a pleading is extended from four years to 10 years after the birth of the child.

The fact-finding hearing on the allegation of a sexual assault that resulted in the parent becoming pregnant and subsequently giving birth to a child must be conducted within 75 days of the filing of the petition unless exceptional circumstances require additional time.

The court must appoint an attorney for an indigent petitioner and respondent in a proceeding to preclude parentage in sexual assault cases. "Indigent" means any person who is receiving:

- an annual income, after taxes, of 200 percent or less of the current federal established poverty level; or
- one of the specified types of public assistance, including: Temporary Assistance for Needy Families; aged, blind, or disabled assistance benefits; food stamps or food stamp benefits transferred electronically; refugee resettlement benefits; Medicaid; or supplemental security income.

The OCLA must enter into contracts with attorneys and agencies for the provision of legal services in preclusion proceedings, and must administer the moneys appropriated for these legal services to remain within appropriated amounts.

Juvenile Courts and Child Welfare (Dependency) Proceedings.

For the purposes of child welfare proceedings, the definition of "parent" is modified to exclude a person against whom a court has entered a final order precluding the person from establishing or maintaining parentage of a child based on the court's determination that the person committed a sexual assault resulting in the parent becoming pregnant and subsequently giving birth to the child.

The juvenile court hearing a dependency petition must grant any request for concurrent jurisdiction to allow a parent to file a petition to preclude parentage based on the allegation of a sexual assault that resulted in the parent becoming pregnant and subsequently giving birth to a child.

To minimize the trauma for the parent who filed a petition to preclude parentage, the juvenile court must require the alleged perpetrator to appear remotely in the dependency proceedings until the court holds a fact-finding hearing on the preclusion petition or the petition is dismissed.

Parent-Child Visitation During Child Welfare Proceedings.

The standard for allowing the alleged perpetrator of a sexual assault to visit with the child during a dependency case is modified to align with the standard for allowing residential time or decision-making to the alleged perpetrator prior to the fact-finding hearing in a preclusion of parentage proceeding.

Specifically, if a petition to preclude parentage based on the allegation of sexual assault has been filed and before a fact-finding hearing on that petition has occurred, the juvenile court may not provide the alleged perpetrator of the sexual assault visitation with the child unless the alleged perpetrator has a bonded and dependent relationship with the child that is parental in nature, and the court finds that it would be in the best interest of the child for such visitation to occur.

Appropriation: None.

Fiscal Note: Requested on February 11, 2023.

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