



Ralph D. Clark

Bill Analysis
Legislative Service Commission

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(As Introduced)

Reps. Pringle, Ford, Jones, Opfer, Sullivan, Allen, Verich, Flannery, DePiero, Thomas, Williams, Netzley, Young, Salerno, Terwilleger, Grendell, Lucas

BILL SUMMARY

- Prohibits a court from granting custody of, or visitation rights with respect to, a child to a parent who has been convicted of or pleaded guilty to committing a sex offense if the child was conceived as a result of the offense.
- Defines "sex offense" as certain offenses under the sex offense chapter of the Revised Code and certain other criminal offenses that could result in pregnancy.
- Prohibits a court from granting visitation rights with respect to a child to the relatives of the parent who committed the offense.
- Prohibits a court from giving the parent who committed the offense notice that the other parent intends to move.
- Requires a court to issue an order prohibiting the parent who committed the offense from having access to the child's school records or other records, student activities, and day-care center.
- Requires termination of existing orders granting custody of, or visitation rights with respect to, a child to the parent who committed the offense.
- Establishes a procedure to terminate the existing custody and visitation orders.
- Establishes a procedure for initiating a juvenile proceeding concerning a child born to an unmarried female if the female committed a sex offense and the child was conceived as a result.

- Provides that consent to adoption of a child is not required from the parent or putative father if the parent or putative father committed a sex offense and the child was conceived as a result.

CONTENT AND OPERATION

Custody and visitation orders

Current law

A court may grant custody of and visitation rights with a child to the child's parents in a variety of situations. A custody order designating one or both parents as the residential parent and legal custodian of the child may be granted pursuant to a divorce, dissolution of marriage, legal separation, or annulment proceeding. In the same proceedings, a court may grant visitation rights to a parent who is not designated the residential parent and legal custodian of the child. A court may grant custody of a child to the child's parent in a custody action between a parent and nonparent. A court may also issue a custody order designating the father as the residential parent and legal custodian of, or granting him visitation rights with, the child after a determination of paternity is made. Custody of a child may be granted to a parent in a juvenile proceeding as a temporary order and as final disposition of the proceeding.¹ Visitation rights may also be granted in a juvenile proceeding as a temporary order or pursuant to the child's case plan.² Temporary custody and visitation orders may be issued in proceedings to obtain a domestic violence protection order or to approve a domestic violence consent agreement.

¹ *The temporary order may be issued only with respect to an alleged or adjudicated abused, neglected, or dependent child and only prior to final disposition of the juvenile proceeding involving the child. Temporary or legal custody of a child adjudicated to be abused, neglected, dependent, unruly, delinquent, or a juvenile traffic offender may be granted to a parent of the child as a final dispositional order.*

² *A case plan must be established and maintained for any child to whom a public children services agency or private child placing agency is providing services and to whom any of the following apply: the agency filed a complaint alleging the child to be abused, neglected, or dependent; the agency has temporary or permanent custody of the child; the child is living at home under a protective supervision order; or the child is in a planned permanent living arrangement. The case plan must be included in the final dispositional order of the juvenile proceeding.*

The bill

Prohibition against granting new custody or visitation orders (secs. 3109.42, 3109.43, and 3109.44). The bill prohibits a court from granting a parent custody of, or visitation rights with respect to a child, if the child was conceived as the result of that parent's commission of a sex offense and the parent was convicted of committing the sex offense.³ The bill also prohibits the granting of visitation rights to the relatives of the convicted parent.

Even though the bill prohibits granting custody of a child to the convicted parent, it does permit the court to require that parent to pay support for the child. In addition, no court may give the convicted parent any notice of the relocation of the other parent as provided by existing law governing visitation orders.⁴ A court must also issue an order prohibiting the parent who committed the sex offense from having access to the child's school records or other records, to the child's student activities, and to a child day-care center in which the child is enrolled.

Termination of existing custody or visitation orders (secs. 3109.45, 3109.46, and 3109.47). If a visitation order was issued granting a parent visitation rights with a child or a custody order has been issued regarding a child to a parent of that child prior to the parent being convicted of committing a sex offense of which the child was conceived as a result, the court in which the parent is convicted must immediately notify the court that issued the visitation or custody order.⁵ With respect to a visitation order, on receiving the notice from the convicting court, the court that issued the visitation order must terminate it.

With respect to a custody order, if the court receiving the notice from the convicting court is a juvenile court, that court is to retain jurisdiction over the

³For purposes of the analysis, a "parent convicted for committing the sex offense" or "convicted parent" refers to a parent who has been convicted of or pleaded guilty to a sex offense as that term is defined under the bill.

The bill does not apply the prohibition against granting custody to dispositional orders issued for a child adjudicated to be unruly, delinquent, or a juvenile traffic offender, even though the bill applies the prohibition to other juvenile dispositional orders. An amendment is needed to correct this inconsistency.

⁴Relocation notice is only required if a visitation order is issued.

⁵The bill does not provide for termination of existing visitation rights granted to relatives of the convicted parent even though the bill prohibits the granting of those rights. An amendment is needed to correct this inconsistency.

custody order. If the court receiving the notice is not a juvenile court, the court must transfer jurisdiction over the custody order to the juvenile court of the county in which the child has a residence or legal settlement. On receipt of the notice from the convicting court in cases in which the custody order was issued by a juvenile court or after jurisdiction is transferred, the juvenile court with jurisdiction must terminate the custody order.

The termination order must be treated as a complaint filed under the Juvenile Code alleging the child subject of the custody order to be a dependent child.⁶ If a juvenile court issued the terminated custody order under a prior juvenile court proceeding in which the child was adjudicated an abused, neglected, dependent, unruly, or delinquent child or a juvenile traffic offender, the court must treat the termination order as a new complaint.

Custody of a child born to an unmarried woman

(sec. 3109.48)

Under current law, an unmarried female who gives birth to a child is the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order designating another person as the residential parent and legal custodian. The bill provides that if the unmarried female is convicted of committing a sex offense and the child was conceived as the result of the offense, the court in which she was convicted must notify the public children services agency of the county in which the child has a residence or legal settlement of the

⁶ A complaint initiates a juvenile proceeding that may lead to the issuance of a dispositional order granting custody of, or visitation rights with respect to, a child. A "dependent child" is a child: (1) who is homeless or destitute or without adequate parental care through no fault of the parents, guardian, or custodian, (2) who lacks adequate parental care by reason of the mental or physical condition of the parents, guardian, or custodian, (3) whose condition or environment warrants the state, in the interest of the child, in assuming the child's guardianship, or (4) the child is residing in a household in which a parent, guardian, custodian, or other member of the household has caused a sibling of the child or another child to be adjudicated abused, neglected, or dependent and the circumstances of that abuse, neglect, or dependency and the household conditions puts the child in danger of being abused or neglected by that parent, guardian, custodian, or other household member.

conviction. On receipt of the notice, the agency must file a sworn complaint under the juvenile code with respect to the child conceived as a result of the sex offense.⁷

When consent to adoption is not required

(sec. 3107.07)

Under current law, the parents of a child sought to be adopted must consent to the adoption. But that consent is not required in certain situations. One of those situations is when a minor child is conceived as the result of a rape and the father or putative father was convicted of or pleaded guilty to committing the rape.⁸ The bill would replace "rape" with "sex offense" as defined in the bill. The bill would also make the no-consent exception apply to any parent or putative father, instead of just the father or putative father.

Definition of "sex offense"

(sec. 3109.42)

The bill defines "sex offense" as any of the following: (1) any offense listed in the sex offenses chapter of the Revised Code (such as rape, sexual battery, gross sexual imposition, etc.) that results in pregnancy and the offenses of felonious assault, aggravated assault, and assault that result in pregnancy, (2) an offense under existing or former law of Ohio, any other state, or the United States that is substantially equivalent to an offense described in (1), and (3) a conspiracy or attempt to commit, or complicity in committing, any offense described in (1) and (2).

⁷ *The bill does not require the complaint to allege the child to be a dependent child as it does in cases involving termination of existing custody orders. An amendment is needed to correct this inconsistency.*

⁸ *A "putative father" means a man, including one under age 18, who may be a child's father and who: (1) is not married to the child's mother at time of conception or birth, (2) has not adopted the child, (3) has not been determined to be the child's father in a paternity proceeding (prior to the filing of an adoption petition), or (4) has not acknowledged paternity of the child.*

HISTORY

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