



Ohio Legislative Service Commission

Final Analysis

Aida S. Montano

Sub. S.B. 207

130th General Assembly
(As Passed by the General Assembly)

- Sens.** Patton, Manning, Turner, and Tavares, Bacon, Balderson, Beagle, Brown, Burke, Cafaro, Coley, Eklund, Gardner, Gentile, Hite, Hughes, Jones, Jordan, Kearney, Lehner, Obhof, Oelslager, Peterson, Sawyer, Schaffer, Schiavoni, Uecker, Widener
- Reps.** R. Adams, Anielski, Antonio, Baker, Barborak, Blessing, Boose, Boyce, Brenner, Brown, Buchy, Burkley, Butler, Carney, Celebrezze, Cera, Conditt, Damschroder, Derickson, Dovilla, Driehaus, Duffey, Fedor, Foley, Gerberry, Green, Grossman, Hackett, Hall, Heard, Henne, Hill, Huffman, Johnson, Kunze, Landis, Letson, Mallory, McClain, McGregor, O'Brien, Patmon, Patterson, Perales, Pillich, Retherford, Roegner, Rogers, Romanchuk, Ruhl, Schuring, Sears, Sheehy, Slaby, Smith, Sprague, Stinziano, Strahorn, Thompson, Williams, Young, Batchelder

Effective date: March 23, 2015

ACT SUMMARY

- Authorizes a person who is the victim of rape or sexual battery for which a child was conceived as a result to bring an action to declare the person who was convicted of the offense to be the parent of the child conceived as a result of rape or sexual battery committed by the other person.
- Requires that such an action must be filed in a court with jurisdiction over juvenile matters if the parents of the child are not married and in a court with jurisdiction over domestic relations matters, pursuant to a proceeding for divorce, dissolution, legal separation, or annulment, if the parents of the child are married.
- Requires a person who brings such action to notify the court in which the action is brought of any order previously issued by any court that grants the other person parental rights with respect to that child.
- Authorizes the court to issue an order declaring that the other person is the parent of a child conceived as a result of rape or sexual battery committed by the other person.
- Requires a court that issues such an order to notify any court that has issued an order granting the person parental rights with respect to that child and that was

identified by the person who brought the action, and requires the recipient court on receipt of the notice to terminate the order.

- Regarding the provisions described above:
 - (1) Prohibits a court from issuing an order granting parental rights with respect to a child to a person who has been convicted of rape or sexual battery and has been declared in an action or proceeding under those provisions regarding that child to be the parent of that child;
 - (2) Specifies that a relative of a person whose parental rights with that person's child have been terminated, denied, or limited under those provisions may be granted only those rights consented to by the other parent of the child;
 - (3) Specifies that, if a court issues an order declaring a person to be the parent of a child conceived as a result of rape or sexual battery committed by the person, no court may revoke or modify the order or the resulting denial, termination, or limitation of the person's parental rights and the person's relatives' rights, except upon motion of the victim of the rape or sexual battery requesting the revocation or modification made in the court that issued the order; and
 - (4) Specifies that the denial, termination, or limitation of parental rights under those provisions does not relieve the person of any debts owed to the other parent or the child prior to the denial, termination, or limitation.
- Bars a man alleged or alleging himself to be the child's father from filing a paternity action under the Parentage Law if the man was convicted of rape or sexual battery, the victim of the rape or sexual battery was the child's mother, and the child was conceived as a result of the rape or sexual battery.
- Specifies that the parent, or a relative of the parent, of a child who was conceived as the result of the parent's commission of rape or sexual battery may not inherit the real or personal property or inheritance of the child or the child's lineal descendants as provided under the Statute of Descent and Distribution.
- Expands former law by providing that consent to the adoption of a minor born on or after January 1, 1997, is not required of the father, putative father, or mother of the minor if the minor is conceived as a result of rape or sexual battery by the father, putative father, or mother and the father, putative father, or mother is convicted of that offense.
- Requires a court or magistrate to notify a person accused of rape or sexual battery of the possible consequences faced under the act's provisions.



- Provides that an unmarried female who has been convicted of rape or sexual battery and has been declared under the act's provisions to be the parent of a child born as a result of the rape or sexual battery may not be a residential parent and legal custodian of that child.

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CONTENT AND OPERATION

Court termination of specified parental rights with respect to a child conceived as a result of rape or sexual battery

The act provides mechanisms for the termination of specified parental rights with respect to a child who has been conceived as a result of an offense of "rape" or "sexual battery" (see "**Definitions**").

Court action brought by victim of rape or sexual battery

The act provides that, generally, a person who is the victim of rape or sexual battery for which a child was conceived as a result may bring an action to declare the person who was convicted of the offense to be the parent of the child conceived as a result of rape or sexual battery committed by the other person (hereafter, "action seeking a declaration"). A person to whom the following apply may seek such a declaration only pursuant to a proceeding for divorce, dissolution, legal separation, or annulment: (1) the person is the victim of a rape or sexual battery for which a child was conceived as a result, (2) the person is married to the person who was convicted of the rape or sexual battery.¹

An action seeking a declaration must be filed in a court with jurisdiction over juvenile matters if the parents of the child are not married and in a court with

¹ R.C. 3109.501(A) and (C).



jurisdiction over domestic relations matters, pursuant to a proceeding for divorce, dissolution, legal separation, or annulment, if the parents of the child are married.²

When an action seeking a declaration is filed, the court may issue an order declaring that the other person is the parent of a child conceived as a result of rape or sexual battery committed by the other person if all of the following are established by clear and convincing evidence: (1) the other person was convicted of or pleaded guilty to the rape or sexual battery, (2) the person bringing the action was the victim of the rape or sexual battery, (3) the child was conceived as a result of the rape or sexual battery, and (4) both persons are the parents of the child established pursuant to genetic testing conducted in different places or at different times or as provided in the Parentage Law, which sets forth the manners in which a parent and child relationship may be established (e.g., proof of a woman having given birth to the child, a man's acknowledgement of paternity, a judicial paternity action, or an administrative determination of paternity, etc.).³

The action must be continued until the court renders a judgment and all appeals have been exhausted in the criminal proceedings regarding the charge of rape or sexual battery that is the basis of the action. On the final disposition of the criminal proceedings, the court must either proceed with the action if the person was convicted of rape or sexual battery, or dismiss the action if the person was acquitted of that charge.⁴

A person who brings an action seeking a declaration that another person is the parent of a child conceived as a result of rape or sexual battery committed by the other person must notify the court in which the action is brought of any order previously issued by any court that grants the other person "parental rights" (see "**Definitions**") with respect to that child. The notice must include the name of the court that issued the order, the date of issuance of the order, the name and number of the case in which the order was issued, the parental rights granted under the order, and the name of the person to whom the parental rights were granted.⁵

A court that issues an order declaring a person to be the parent of a child conceived as a result of rape or sexual battery committed by the person must notify any court that has issued an order granting the person parental rights with respect to that

² R.C. 3109.501(D).

³ R.C. 3109.501(B).

⁴ R.C. 3109.502.

⁵ R.C. 3109.503(A).



child and that was identified by the person who brought the action. On receipt of the notice, a court that has issued an order granting parental rights regarding the person and child addressed in the notice must terminate the order.⁶

The action may be consolidated with any action or proceeding for parental rights regarding a child conceived as a result of rape or sexual battery.⁷

Effect of order

Under the act:

(1) No court may issue an order granting parental rights with respect to a child to a person who has been convicted of rape or sexual battery and has been declared, in an action or proceeding under the provisions described above in "**Court action brought by victim of rape or sexual battery**" regarding that child, to be the parent of a child conceived as a result of rape or sexual battery committed by the person.⁸

(2) A relative of a person whose parental rights with that person's child have been terminated, denied, or limited under the provisions described above in "**Court action brought by victim of rape or sexual battery**" or paragraph (1), above, may be granted only those rights consented to by the other parent of the child.⁹

(3) If a court issues an order under the provisions described above in "**Court action brought by victim of rape or sexual battery**" declaring a person to be the parent of a child conceived as a result of rape or sexual battery committed by the person, no court may revoke or modify the order or the resulting denial, termination, or limitation of the person's parental rights and the person's relatives' rights under those provisions and the provisions described above in paragraphs (1) or (2), except upon motion of the victim of the rape or sexual battery requesting the revocation or modification (the motion must be made in the court that issued the order).¹⁰

(4) The denial, termination, or limitation of parental rights under the provisions described above in "**Court action brought by victim of rape or sexual battery**" or

⁶ R.C. 3109.503(B) and 3109.504(B).

⁷ R.C. 3109.505.

⁸ R.C. 3109.504(A).

⁹ R.C. 3109.506.

¹⁰ R.C. 3109.507(A).



paragraphs (1), (2), or (3), above, does not relieve the person of any debts owed to the other parent or the child prior to the denial, termination, or limitation.¹¹

Definitions

As used in the act's provisions described above:¹²

"Parental rights" means parental rights and responsibilities, parenting time, or any other similar right established by the laws of Ohio with respect to a child. "Parental rights" does not include the parental duty of support for a child.

"Rape" means a violation of R.C. 2907.02 or similar law of another state.

"Sexual battery" means a violation of R.C. 2907.03 or similar law of another state.

Ban on bringing paternity action

The act specifies that a man alleged or alleging himself to be the child's father is not eligible to file a paternity action under the provision described in the following paragraph if the man was convicted of rape or sexual battery, the victim of the rape or sexual battery was the child's mother, and the child was conceived as a result of the rape or sexual battery.¹³

One of the methods generally available for determining the existence or nonexistence of the father and child relationship is a paternity action that may be brought by the child or the child's personal representative, the child's mother or her personal representative, a man alleged or alleging himself to be the child's father, the child support enforcement agency of the county in which the child resides if the child's mother, father, or alleged father is the recipient of public assistance or of services under Title IV-D of the federal Social Security Act, or the alleged father's personal representative.¹⁴

Termination of possibility of inheritance from intestate child

The act specifies that the parent, or a relative of the parent, of a child who was conceived as the result of the parent's committing "rape" or "sexual battery" under Ohio law may not inherit the real property, personal property, or inheritance of the child or

¹¹ R.C. 3109.507(B).

¹² R.C. 3109.50.

¹³ R.C. 3111.04(A)(2).

¹⁴ R.C. 3111.04(A).



the child's lineal descendants as provided under the Statute of Descent and Distribution. As used in this provision, "relative" includes a parent, grandparent, great-grandparent, stepparent, child, grandchild, aunt, uncle, cousin, sibling, and half sibling.¹⁵ The act modifies four of the priorities specified in the inheritance law, to subject them to this restriction.¹⁶

Continuing law sets forth a Statute of Descent and Distribution, which specifies an order of priority in which the personal property, real property, and inheritance of a person who dies intestate is to be distributed and descended to family members and relatives of the decedent. Generally, the children and surviving spouse of the decedent are given high priorities, and other family members and relatives are given lower priorities. A child's parents, or maternal and paternal relatives, if the parents are deceased, would be entitled to inherit if a child died. If no family member or relative in any of the specified categories survives the decedent, then the personal property, real property, and inheritance escheats to the state.¹⁷

Termination of need for consent to adoption

The act expands a provision of continuing law specifying circumstances in which a father is not required to consent to the adoption of a child. The act specifies that consent to the adoption is not required of the father, putative father, or mother of a minor born on or after January 1, 1997, if the minor is conceived as a result of "rape" or "sexual battery" under Ohio law or the law of another state committed by the father, putative father, or mother and the father, putative father, or mother is convicted of that offense.¹⁸

Continuing law specifies several circumstances in which consent to adoption of a minor born on or after January 1, 1997, is not required from a mother, father, putative father, legal guardian or custodian, or other specified person or entity that otherwise would need to give consent. Among those circumstances, consent is not required of the father, or putative father, of a minor if the minor is conceived as the result of the commission of the offense of "rape" under Ohio law or a similar law of another state by the father or putative father and the father or putative father is convicted of that offense.¹⁹

¹⁵ R.C. 2105.062.

¹⁶ R.C. 2105.06(F) to (I).

¹⁷ R.C. 2105.06.

¹⁸ R.C. 3107.07(F).

¹⁹ R.C. 3107.07.



Termination of right to be residential parent and legal custodian

The act provides that, notwithstanding the general rule described below, an unmarried female who has been convicted of "rape" or "sexual battery" and has been declared under the provisions described above in "**Court action brought by victim of rape or sexual battery**" to be the parent of a child born as a result of the rape or sexual battery may not be a residential parent and legal custodian of that child.²⁰

Under continuing law, an unmarried female who gives birth to a child generally 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. A court designating the residential parent and legal custodian of such a child must treat the mother and father as standing upon an equality when making the designation.²¹

Notice to accused person of effects of act's provisions

The act expands the information that a court or magistrate must give to an accused under the provision described below, if the charge is that the accused committed the offense of "rape" or "sexual battery" under Ohio law. Under the act, in addition to the information that continuing law requires to be given, the judge or magistrate also must inform an accused so charged that a conviction of or plea of guilty to the offense may result in the following:²²

(1) In accordance with the provisions described above in "**Court termination of specified parental rights with respect to a child conceived as a result of rape or sexual battery**," the termination, denial, or limitation, as applicable, of the accused's parental rights with respect to a child conceived as a result of the violation, and the rights of a relative of the accused with respect to a child conceived as a result of the violation.

(2) The granting of a petition to adopt a child conceived as a result of the violation without the accused's consent as described above in "**Termination of need for consent to adoption**."

(3) The termination of the accused's, and the accused's relative's, eligibility to inherit from a child conceived as a result of the violation or the child's lineal

²⁰ R.C. 3109.042(B).

²¹ R.C. 3109.042.

²² R.C. 2937.02(A)(5).



descendants as described above in "**Termination of possibility of inheritance from intestate child.**"

Under continuing law, when, after arrest, a person accused of an offense is taken before a court or magistrate, or when a person accused of an offense appears pursuant to terms of summons or notice, the affidavit or complaint being first filed, the court or magistrate, before proceeding further, must inform the accused of the nature of the charge and the identity of the complainant and permit the accused or counsel to see and read the affidavit or complaint or a copy of it, inform the accused of the right to have counsel and to a continuance in the proceedings to secure counsel, inform the accused of the effect of pleas of guilty, not guilty, and no contest, of the right to trial by jury, and the necessity of making written demand for a jury, and, if the charge is a felony, inform the accused of the nature and extent of possible punishment on conviction and of the right to preliminary hearing.²³

HISTORY

ACTION	DATE
Introduced	10-16-13
Reported, S. Criminal Justice	05-27-14
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²³ R.C. 2937.02.

