



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 257

130th General Assembly
(As Passed by the House)

Reps. Antonio and Schuring, Cera, Rogers, Driehaus, Becker, Smith, Stebelton, Strahorn, Maag, Barborak, Buchy, Phillips, Foley, R. Hagan, Sheehy, Brown, Brenner, Reece, Fedor, Ramos, Budish, Grossman, Celebrezze, Pillich, Stautberg, Winburn, R. Adams, Anielski, Ashford, Baker, Barnes, Beck, Bishoff, Blair, Blessing, Boyce, Burkley, Butler, Carney, Conditt, Curtin, Damschroder, Derickson, DeVitis, Dovilla, Duffey, Gerberry, Green, Hackett, C. Hagan, Hall, Hayes, Huffman, Johnson, Kunze, Landis, Lundy, McClain, McGregor, Milkovich, O'Brien, Patmon, Patterson, Perales, Redfern, Ruhl, Scherer, Sears, Slaby, Sprague, Young, Batchelder

BILL SUMMARY

- Authorizes the mother of a child alleging the child was conceived as a result of rape or sexual battery to bring an action to declare the father to be the parent of a child conceived as a result of rape or sexual battery.
- Requires a court to issue an order declaring that the father is the parent of a child conceived as a result of rape or sexual battery if the mother proves certain information by a preponderance of the evidence, requires a court that has issued such an order to notify any court that has issued an order granting parental rights to the father, and requires the recipient court on receipt of the notice to terminate the order.
- Regarding the provisions described in the preceding dot points:
 - (1) Prohibits a court from issuing an order granting parental rights to a child to a father declared, regarding that child, to be the parent of a child conceived as a result of rape or sexual battery.
 - (2) Specifies that a relative of a father whose parental rights with the father's child have been terminated, denied, or limited may be granted only those rights consented to by the mother of the child.

- Specifies that the father declared to be the parent of a child conceived as a result of rape or sexual battery, or a relative of the father, is prohibited from inheriting from the child or the child's lineal descendants under the law of descent and distribution.
- Provides that consent to adoption is not required from the father of a minor declared, with respect to the minor, to be the parent of a child conceived as a result of rape or sexual battery.
- Provides that a man alleged or alleging himself to be the child's father is ineligible to file an action to determine the existence or nonexistence of the father and child relationship if the man was convicted of or pleaded guilty to rape or sexual battery, the victim of that offense was the child's mother, and the child was conceived as a result of the offense.
- Authorizes a juvenile court to grant permanent custody of a child to a public children services agency or private child placing agency that files a motion for permanent custody if the court determines, by clear and convincing evidence, that it is in the child's best interest to grant such permanent custody and the child was conceived as a result of rape or sexual battery.

CONTENT AND OPERATION

Court termination of specified parental rights with respect to a child conceived as a result of a specified sex offense

The bill provides a mechanism 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**," below). The mechanism for the termination of those rights and possibilities is described below.

Court action brought by mother of a child conceived as a result of rape or sexual battery

The bill provides that the mother of a child alleging that the child was conceived as a result of rape and sexual battery may bring an action to declare the father to be the parent of a child conceived as a result of rape or sexual battery. A mother to whom the following apply may seek such a declaration pursuant to a proceeding for divorce, dissolution, legal separation, or annulment: (1) she is the victim of a rape or sexual battery for which a child was conceived as a result, (2) she is married to the father who was convicted of, or pleaded guilty to, the rape or sexual battery.¹

¹ R.C. 3109.501(A) and 3109.502.

When an action is filed under the provisions described above, the court must issue an order declaring that the father is the parent of a child conceived as a result of rape or sexual battery if the mother proves all of the following by a preponderance of the evidence: (1) the father was convicted of or pleaded guilty to the rape or sexual battery, (2) the mother was the victim of the rape or sexual battery, and (3) the child was conceived as a result of the rape or sexual battery.²

A court that issues an order declaring a father to be the parent of a child conceived as a result of rape or sexual battery must notify any court that has issued an order granting "parental rights" (see "**Definitions**," below) with respect to such child to the father. On receipt of the notice, a court that has issued an order granting parental rights regarding the father and child addressed in the notice must terminate the order.³

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.⁴

Effect of order

Under the bill:

(1) No court may issue an order granting parental rights with respect to a child to a father declared, regarding that child, to be the parent of a child conceived as a result of rape or sexual battery in an action or proceeding under the provisions described above in "**Court action brought by mother of a child conceived as a result of rape or sexual battery**."⁵

(2) A relative of a father whose parental rights with that father's child have been terminated, denied, or limited under the provisions described above in "**Court action brought by mother of a child conceived as a result of rape or sexual battery**," or paragraph (1), above, may be granted only those rights consented to by the mother of the child.⁶

² R.C. 3109.501(B).

³ R.C. 3109.503 and 3109.504(B).

⁴ R.C. 3109.505.

⁵ R.C. 3109.504(A).

⁶ R.C. 3109.506.



Definitions

As used in the bill's provisions described above:⁷

"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 (see "**Background – offenses of rape and sexual battery**," below) or similar law of another state.

"Sexual battery" means a violation of R.C. 2907.03 (see "**Background – offenses of rape and sexual battery**," below) or similar law of another state.

Termination of possibility of inheritance from intestate child

Existing 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.⁸

The bill specifies that the father declared under the bill's provisions described above to be the parent of a child conceived as the result of rape or sexual battery, or a relative of the father, may not inherit the real property, personal property, or inheritance of the child or 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. The bill modifies four of the priorities specified in existing law, to subject them to this restriction.⁹

⁷ R.C. 3109.50.

⁸ R.C. 2105.06.

⁹ R.C. 2105.062.



Termination of need for consent to adoption

Consent to adoption of child, in general

Under existing law, unchanged by the bill, for any child born on or after January 1, 1997, unless consent is not required as described below, a petition to adopt a minor may be granted only if written consent to the adoption has been executed by all of the following: (1) the minor's mother, (2) the minor's father (in the circumstances described in the next paragraph), (3) the minor's "putative father" (a defined term), (4) any person or agency having permanent custody of the minor or authorized by court order to consent, and (5) the minor, if more than 12 years of age, unless the court, finding that it is in the minor's best interest, determines that the minor's consent is not required.

The circumstances in which the father's consent is required, unchanged by the bill, are if: (1) the minor was conceived or born while the father was married to the mother, (2) the minor is his child by adoption, (3) prior to the date the petition was filed, it was determined by a court proceeding or administrative proceeding under Ohio's Parentage Law, or a court proceeding or administrative proceeding in another state, that he has a parent and child relationship with the minor, or (4) he acknowledged paternity of the child and that acknowledgment has become final pursuant to any of three specified provisions of Ohio's Juvenile Code or Parentage Law.¹⁰

When consent is not required – conviction of specified sex offense

Existing 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, unchanged by the bill, it specifies that 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 or pleads guilty to that offense.¹¹

The bill adds a new circumstance that specifies that consent is not required of the father of a minor born on or after January 1, 1997, if the father is declared, with respect to the minor, to be the parent of a child conceived as a result of rape or sexual battery under the bill's provisions described above.¹²

¹⁰ R.C. 3107.06, not in the bill.

¹¹ R.C. 3107.07.

¹² R.C. 3107.07(M).



Ineligibility to bring parentage action

The bill provides that a man alleged or alleging himself to be the child's father is not eligible to file an action under the current Parentage Law to determine the existence or nonexistence of the father and child relationship if the man was convicted of or pleaded guilty to rape or sexual battery, the victim of the rape or sexual battery was the mother of the child, and the child was conceived as a result of the rape or sexual battery. The definitions of "rape" and "sexual battery" set forth above in "**Definitions**" apply to this provision.¹³

Granting permanent custody of child conceived as a result of rape or sexual battery to public children services agency or private child placing agency filing a motion for permanent custody

The bill authorizes a juvenile court generally to grant permanent custody of a child to a public children services agency or private child placing agency that files a motion for permanent custody of the child if the court determines at the hearing on the motion, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody to the agency that filed the motion and that the child was conceived as a result of rape or sexual battery under Ohio law.¹⁴

Background – offenses of rape and sexual battery

Rape

R.C. 2907.02, not in the bill, prohibits a person from engaging in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force (it is not a defense to a charge under this prohibition that the offender and the victim were married or were cohabiting at the time of the commission of the offense). It also prohibits a person from engaging in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies: (1) for the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception, (2) the other person is less than 13 years of age, whether or not the offender knows the age of the other person, or (3) the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is

¹³ R.C. 3111.04(A)(2) and (E).

¹⁴ R.C. 2151.414(B)(1)(e).



substantially impaired because of a mental or physical condition or because of advanced age.

Sexual battery

R.C. 2907.03, not in the bill, prohibits a person from engaging in sexual conduct with another, not the spouse of the offender, when any of the following apply: (1) the offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution, (2) the offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired, (3) the offender knows that the other person submits because the other person is unaware that the act is being committed, (4) the offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse, (5) the offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person *in loco parentis* of the other person, (6) the other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person, (7) the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school, (8) the other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution, (9) the other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person, (10) the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes, (11) the other person is confined in a detention facility, and the offender is an employee of that detention facility, (12) the other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric, or (13) the other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.



HISTORY

ACTION	DATE
Introduced	09-04-13
Reported, H. Judiciary	12-05-13
Passed House (94-0)	01-15-14

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