Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 207*

130th General Assembly
(As Reported by S. Criminal Justice)

Sens. Patton, Manning

BILL 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 or pleaded guilty to 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 an action described above 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 an action described above 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 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 in the preceding dot points:

  (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

* This analysis was prepared before the report of the Senate Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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; and

(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.

(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 or pleaded guilty to 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 property, personal property, or inheritance of the child or the child's lineal descendants as provided under the Statute of Descent and Distribution.

- Expands an existing provision that specifies sex offense-related circumstances in which consent to adoption is not required of the father or putative father of a minor born on or after January 1, 1997, so that consent 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 or pleads guilty to the commission 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 bill's provisions described in the preceding dot points.

- Provides that an unmarried female who has been convicted of rape or sexual battery and has been declared under the bill's provisions described above in the first dot point 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 a specified sex offense

The bill 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**," below). The mechanisms for the termination of those rights and possibilities are described below.

Court action brought by victim of rape or sexual battery

The bill provides that, except as otherwise described in this paragraph and subject to the provisions described in the next paragraph, 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 or pleaded guilty to the offense to be the parent of the child conceived as a result of rape or sexual battery committed by the other person. 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 who is married to the person who was convicted of, or pleaded guilty to, the rape or sexual battery.[1]

[1] R.C. 3109.501(A) and (C).

An action seeking a declaration under the provisions described above 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.[2]

When an action is filed under the provisions described above, 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 R.C. Chapter 3111., 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 or pleaded guilty to rape or sexual battery, or dismiss the action if the person was acquitted of the charge of rape or sexual battery.[4]

A person who brings an action under the provisions described above 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 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]

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[2] R.C. 3109.051(D).

[3] R.C. 3109.501(B).

[4] R.C. 3109.502.

[5] R.C. 3109.503(A).

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" (see "**Definitions**," below) with respect to that child and that was identified in accordance with the provisions described above 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 described below in "**Action or proceeding brought by parent of child who was not conceived as result of rape or sexual battery**" or 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 bill:

(1) No court may issue an order granting parental rights with respect to a child to a person who has been convicted of or pleaded guilty to 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

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[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.

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 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 bill'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 (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.

Ban on bringing paternity action

Existing law specifies manners of establishing a parent and child relationship between a child and a woman or man and specifies circumstances in which a man is presumed to be the natural father of a child.[13] As used in these provisions, "parent and child relationship" means the legal relationship that exists between a child and the child's natural or adoptive parents and upon which the Parentage Law (R.C. Chapter 3111.) and any other Revised Code provision confer or impose rights, privileges, duties, and obligations; it includes the mother and child relationship and the father and child relationship.[14]

One of the methods under existing law for determining the existence or nonexistence of the father and child relationship is a paternity action that may be

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[10] R.C. 3109.507(A).

[11] R.C. 3109.507(B).

[12] R.C. 3109.50.

[13] R.C. Chapter 3111., not in the bill except for R.C. 3111.04.

[14] R.C. 3111.01, not in the bill.

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.[15] Existing law establishes procedures that are followed with respect to such an action and addresses the possible outcomes and effects of such an action.[16]

The bill 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 preceding paragraph if the man was convicted of or pleaded guilty to 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.[17]

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.[18]

The bill 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 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.[19]

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[15] R.C. 3111.04.

[16] R.C. 3111.05 to 3111.19, not in the bill.

[17] R.C. 3111.04(A)(2).

[18] R.C. 2105.06.

[19] 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.[20]

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, 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.[21]

The bill expands this provision so that it specifies that consent 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,

[20] R.C. 3107.06, not in the bill.

[21] R.C. 3107.07.

putative father, or mother is convicted of or pleads guilty to the commission of that offense.[22]

Termination of right to be residential parent and legal custodian

Under existing 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. 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.[23]

The bill provides that, notwithstanding the general rule, an unmarried female who has been convicted of or pleaded guilty to "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.[24]

Notice to accused person of effects of bill's provisions

Under existing 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 his or her counsel to see and read the affidavit or complaint or a copy of it, inform the accused of his or her 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.[25]

The bill expands the information that a court or magistrate must give to an accused under the provision described above, if the charge is that the accused committed the offense of "rape" or "sexual battery" under Ohio law. Under the bill, in addition to the information that currently must be given, the judge or magistrate also

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[22] R.C. 3107.07(F).

[23] R.C. 3109.042.

[24] R.C. 3109.042(B).

[25] R.C. 2937.02.

must inform an accused so charged that a conviction of or plea of guilty to the offense may result in the following:[26]

(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 a specified sex offense**," 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 descendants as described above in "**Termination of possibility of inheritance from intestate child**."

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

[26] R.C. 2937.02(A)(5).

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	10-16-13
Reported, S. Criminal Justice	---

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