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BILL ANALYSIS



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Senate Bill 858 (as enacted)
Sponsor: Senator Rick Jones
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACT 178 of 2016

Date Completed: 6-22-16

RATIONALE

Reportedly, more than 25,000 pregnancies in the United States each year are the result of rape, and about one-third of the victims of those assaults choose to raise the child. It also has been reported that rapists sometimes use the pregnancy to further abuse, harass, and manipulate their victims by, among other things, seeking custody or parenting time. To combat this problem, the Federal Rape Survivor Child Custody Act was enacted in 2015 to offer increased grant funding to states that authorize petitions to terminate a person's parental rights to a child based on clear and convincing evidence that the child was conceived through rape. It was suggested that Michigan law be brought into conformity with the new Federal standard.

CONTENT

The bill amends the Revocation of Paternity Act to do the following:

- **Require a court to take an action revoking paternity if a child's mother proves by clear and convincing evidence that her child was conceived as a result of nonconsensual sexual penetration.**
- **Provide that the revocation of paternity requirement does not apply if the biological parents later live together and establish mutual custody of the child.**
- **Excuse a mother who brings an action under the bill from a provision under which a person who files an action under the Act may be required provide financial assurance that the costs of the action will be covered if the person does not prevail.**
- **Include a mother who is a nonprevailing party in an action brought under the bill in a provision allowing the court to order a nonprevailing party to pay the prevailing party's costs.**

The bill will take effect on September 12, 2016.

Action to Show Conception by Nonconsensual Penetration

The Act allows various parties to bring an action to determine that a presumed father is not the father of a child or an action to set aside an acknowledgment of parentage or order of filiation.

(A presumed father is a man presumed to be a child's father by virtue of his marriage to the child's mother at the time of conception or birth. Under the Acknowledgement of Parenting Act, a man who has affirmatively held himself out to be a child's father may execute an acknowledgment of parentage; the man then is an acknowledged father. "Order of filiation" means a judicial order establishing an affiliated father, and "affiliated father" means a man who has been determined in a court to be a child's father.)

Under the bill, if an action is brought by a mother who, after a fact-finding hearing, proves by clear and convincing evidence that her child was conceived as a result of nonconsensual sexual penetration, the court must do one of the following:

- Revoke an acknowledgment of parentage for an acknowledged father.
- Determine that a genetic father is not the child's father.
- Set aside an order of filiation for an affiliated father.
- Make a determination of paternity regarding an alleged father and enter an order of revocation of paternity for the alleged father.

(An alleged father is a man who by his actions could have fathered a child. "Genetic father" means a man whose paternity has been determined solely through genetic testing under the Paternity Act, the Summary Support and Paternity Act, or the Genetic Parentage Act.)

The requirement that a court take an action described above does not apply if, after the date of the alleged nonconsensual sexual penetration, the biological parents cohabit and establish a mutual custodial environment for the child.

Costs of Action

The Revocation of Paternity Act authorizes a court, in its discretion, to order a person who files an action or motion under the Act to post an amount of money with the court, obtain a surety, or provide other assurances that in the court's determination will secure the costs of the action and attorney fees if the person does not prevail. That provision does not apply to an action brought by a mother under the bill.

The court, in its discretion, also may order a nonprevailing party to pay the reasonable attorney fees and costs of a prevailing party. The bill includes in this provision a mother who is a nonprevailing party in an action brought under the bill.

MCL 722.1443 & 722.1445

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Congressional findings in the Rape Survivor Child Custody Act suggest that men who father children through rape should not be allowed to be awarded visitation or custody with regard to those children, and that a rapist's pursuit of those rights can cause psychological trauma to the rape survivor and negatively affect her ability to raise a healthy child. According to Judiciary Committee testimony on a similar bill by an attorney and advocate for survivors and children of rape, rapists typically sue for custody when they learn that there is a child as a result of the sexual assault. Often, this occurs when the mother applies for public aid, which triggers a claim for support from the biological father. The rapist then can use the situation to manipulate his victim. For instance, he might use a potential custody or parenting time dispute as leverage to persuade the mother to drop any claims of criminal sexual conduct, or use parenting time as an opportunity to assault her again. Even if the rapist's actions do not go that far, just requiring a mother to negotiate or mediate with her assailant could traumatize her yet again. The bill will protect rape survivors and their children from being revictimized by the attacker.

Supporting Argument

A rapist should not be allowed to exercise parental rights to a child conceived as a result of sexual assault. The bill requires the court to take actions to ensure that a biological father cannot secure parental rights if it finds by clear and convincing evidence in a fact-finding hearing that the child had been conceived through nonconsensual sexual penetration. This will help to ensure that rapists are not able to exercise parental rights, including custody and parenting time, to children they father through forced sexual activity.

Supporting Argument

The Federal Act authorizes the U.S. Attorney General to increase the funding provided to a state under certain grant programs if the state has a law allowing the mother of a child conceived through rape to seek court-ordered termination of the rapist's parental rights and authorizing the court to grant termination based on clear and convincing evidence of rape. According to the Congressional findings listed in that Act, the most common standard for termination of parental rights among the U.S. states and territories and the District of Columbia is clear and convincing evidence; however, only 10 states had statutes allowing rape survivors to petition for termination of the rapist's parental rights based on clear and convincing evidence that the child was conceived through rape. The findings also cite U.S. Supreme Court approval of the clear and convincing evidence standard as satisfying due process for allegations to restrict or terminate parental rights.

The bill includes the clear and convincing evidence standard for various actions to prevent a rapist from gaining parental rights to a child. This will bring Michigan law into conformity with the parameters necessary to qualify for additional Federal funding under the Rape Survivor Child Custody Act.

Opposing Argument

The bill is unnecessary. In the Child Custody Act, Michigan Law already bars a custody award to a parent convicted of criminal sexual conduct resulting in the birth of a child. Public Act 96 of 2016 (House Bill 4481), which will take effect on August 1, 2016, recently amended that provision to bar a custody award in the case of a child conceived as the result of a violation of a substantially similar statute of another state or the Federal government or if the biological parent is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration that resulted in the birth of a child.

In addition, by excusing the legal parentage of a man who fathered a child by nonconsensual sexual penetration, the bill could allow an offender to escape any further obligation for child support or reimbursement of the State for public assistance granted to the child.

Response: The bill complements provisions of the Child Custody Act and fills gaps in the protections offered by Public Act 96. While Public Act 96 provides an important enhancement to the protections offered to sexual assault victims and their children in custody and parenting time cases, it only addresses rights of access to a child without providing for termination of parental rights. The Child Custody Act's focus on rights of access to children falls short of protecting victims and their children from having to deal with paternity issues. This could lead to uncertainties about other laws that govern parental rights and responsibilities. For instance, a perpetrator who was recognized as a child's legal father could be an heir if the child predeceased him and would have a right of interest in the adoption of the child. In addition, Public Act 96 does not allow a sexual assault victim to take the initiative to protect herself and her child from contact with the assault perpetrator. It specifies that a victim-parent may assert an affirmative defense in response to a proceeding brought by the offending parent. Senate Bill 858, on the other hand, requires the court to take certain actions regarding paternity if an action is brought by a mother who proves by clear and convincing evidence that her child was conceived as a result of nonconsensual sexual penetration.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on State and local government. The provisions of the bill could lead to an increase in hearings to terminate parental rights. An increase in hearings could increase incremental resource demands on circuit court systems.

In 2015, the Federal government enacted the Rape Survivor Child Custody Act which, among other things, provided increased formula grants for states that have in place a law that allows the mother of any child who was conceived through rape to seek court-ordered termination of the parental rights of her rapist with regard to that child, which the court is authorized to grant upon clear and convincing evidence of rape. The maximum allowed grant increase is 10% of the average of the total amount of funding provided to the state in the past three years under the STOP Violence

Against Women Formula Grant Program and the Sexual Assault Services Program. The increased funding is for a two-year period and can be reauthorized up to four times. For Michigan, the maximum increase would be approximately \$400,000 per year.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.