



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 629 (as passed by the Senate)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 1-4-16

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 based on clear and convincing evidence that the child was conceived through rape. It has been suggested that Michigan law be brought into conformity with the new Federal standard.

CONTENT

The bill would amend the juvenile code to allow a court to terminate a person's parental rights to a child if that child had been conceived as a result of the person's criminal sexual conduct (CSC).

The code requires the court to hold a hearing to determine if the parental rights to a child should be terminated, if the child remains in foster care under certain circumstances, or if the child remains in the custody of a guardian or limited guardian, upon petition of the prosecuting attorney, or petition of the child, guardian, custodian, agency, Children's Ombudsman, or concerned person. The court may terminate a person's parental rights to a child if it finds, by clear and convincing evidence, one or more of the grounds for termination listed in the code. The bill would include in those grounds that the parent had been convicted of, or found in a fact-finding hearing to have committed, criminal sexual conduct and that conduct resulted in the child being conceived.

As used in this provision, the code defines "concerned person" as a foster parent (meeting certain criteria) who has contacted the Department of Health and Human Services, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, and is satisfied that none of them intend to file a petition for parental rights termination. Under the bill, the term also would include a parent petitioning for termination of the other parent's parental rights because that other parent had committed CSC resulting in the child's conception.

MCL 712A.19b

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 the Judiciary Committee testimony of 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 would 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 juvenile code requires the court to hold a hearing to determine if parental rights to a child should be terminated in the case of certain children who remain in foster care after certain hearings, or upon the filing of a petition by any of various parties, including a "concerned person". The bill would authorize the court to terminate a parent's parental rights if it found by clear and convincing evidence that the parent had been convicted of, or had been found in a fact-finding hearing to have committed, criminal sexual conduct resulting in the child's conception. It also would authorize the mother of a child conceived through CSC to file a petition for termination of the rapist's parental rights. Together, these provisions would help ensure that rapists were not able to exercise parental rights, including custody and parenting time, to children they fathered through criminal 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.

Michigan's juvenile code already incorporates the clear and convincing evidence standard for termination of a person's parental rights to a child. By including in the grounds for termination that the person had committed criminal sexual conduct resulting in the child's conception, and allowing the other parent to bring a petition for termination under these circumstances, the bill brings this statute into conformity with the parameters necessary to qualify for additional Federal funding under the Rape Survivor Child Custody Act. (In addition, House Bill 4481 (H-1) would address the issue more broadly in the Child Custody Act.)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill could have an indeterminate fiscal impact on the State and local governments. 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, provides for increased formula grants for states that have in place a law that allows the mother of a child who was conceived through rape to seek court-ordered termination of the parental rights of her rapist with regard to that child, and that authorizes the court to grant termination 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 a 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.