

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 887 Termination of Parental Rights
SPONSOR(S): Civil Justice Subcommittee; Kerner and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 964

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Williams	Bond
2) Healthy Families Subcommittee	10 Y, 0 N	McElroy	Schoolfield
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law allows for the termination of parental rights if one of the statutory grounds exists, if such termination is in the manifest best interests of the child, and if termination of parental rights is the least restrictive means of protecting the child from harm. Current law does not specifically include rape as grounds for termination of parental rights.

This bill amends current law to allow termination of parental rights if the court determines by clear and convincing evidence that the child was conceived as a result of the unlawful act of sexual battery.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexual Battery

Section 794.011(1)(h), F.S., defines sexual battery as “oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.” Several statutes use that definition as a part of the definition of a crime commonly referred to as “rape.” Sexual battery alone is not a criminal offense.

Of course, the act of unlawful sexual battery can lead to an unwanted pregnancy. A significant percentage of women involved in a rape choose to keep and raise the child.¹ An unintended result to some of those women has been unwanted and offensive contact from their rapist making claims for traditional rights of a father, such as a claim for visitation rights with the child.

Under most state’ laws, a man who fathers a child through rape has the same legal parental, custody and visitation rights in regard to that child as does any other biological father of a child.² Due to the absence of laws restricting or terminating such rights, these rights have the possibility to allow the rapist to harass the victim for years.³

Termination of Parental Rights in Florida

Florida courts have long recognized the “fundamental liberty interest of parents in determining the care and upbringing of their children free from the heavy hand of government paternalism.”⁴ This fundamental parental right is not absolute, but is limited only by the principle that the welfare or best interest of the child is paramount.⁵

Although a parent’s interest in maintaining parental ties is essential, a child’s entitlement to a safe environment is more so.⁶ Because the state has a compelling interest in protecting its children, it may permanently and involuntarily terminate parental rights. To terminate parental rights, the movant must establish with clear and convincing evidence:⁷

- The existence of statutory grounds;
- That the parent “poses a substantial risk of significant harm to the child;”⁸
- That termination is in the child’s best interest;⁹ and
- That termination is the least restrictive means of protecting the child.¹⁰

¹ Giving Birth to a “Rapist’s Child” The Georgetown Law Journal, Vol. 98:827 (2010). (<http://georgetownlawjournal.org/files/pdf/98-3/Prewitt.PDF>)(last visited March 5, 2013).

² *Id.*

³ Parental Rights of Rapists Duke Journal of Gender Law & Policy, Vol. 19:275 (2012).

⁴ *Padgett v. Dep’t of Health and Rehabilitative Servs.*, 577 So. 2d 565, 570 (Fla. 1991).

⁵ *Id.*

⁶ *Id.*

⁷ Section 39.809(1), F.S.

⁸ *Padgett* at 571.

⁹ In determining the best interests of the child, the court must consider and evaluate all relevant factors, including: availability of a permanent custody arrangement with a relative of the child; ability of the parent to provide for the child; capacity of the parent to care for the child; mental and physical health needs of the child; love, affection, and other emotional ties existing between the child and the parent, siblings, and other relatives; likelihood of an older child remaining in long-term foster care upon termination; child’s ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination; length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; depth of the relationship existing between the child and the present custodian; reasonable preferences and wishes of the child; and recommendations for the child provided by the child’s guardian ad litem or legal representative. Section 39.810, F.S.

¹⁰ *T.C. v. Dep’t of Children and Families*, 961 So. 2d 1060, 1061 (Fla. 4th DCA 2007).

The “least restrictive means” analysis is not defined by statute; however, Florida courts have found that the least restrictive means test “requires the court to utilize measures short of termination if such measures can permit a safe re-establishment of the parent-child bond.”¹¹

A proceeding to terminate parental rights may be initiated by the department, the guardian ad litem, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true.¹² The petition for termination must include allegations that one of the grounds for termination has been met; that the parents were informed of their right to counsel; that termination is in the best interest of the child; and that the parents are informed of the availability of private placement with an adoption entity.¹³

Pursuant to s. 39.806(1), F.S., the following are grounds for the termination of parental rights in Florida:

- (a) Voluntary surrender of the child by the parent or parents;
- (b) Abandonment;
- (c) Conduct that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, wellbeing, or physical, mental, or emotional health of the child, irrespective of the provision of services;
- (d) Incarceration (under certain circumstances);
- (e) Failure to comply with the case plan;
- (f) Egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child’s sibling;
- (g) Aggravated child abuse, sexual battery or sexual abuse, or chronic abuse;
- (h) Murder, voluntary manslaughter, or felony assault of the child or another child;
- (i) Parental rights to a sibling have been terminated involuntarily;
- (j) History of extensive, abusive, and chronic use of alcohol or a controlled substance which renders them incapable of caring for the child;
- (k) A test administered at birth that indicated that the child’s blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances;
- or
- (l) On three or more occasions the child or another child of the parent or parents has been placed in out-of-home care.

Reasonable efforts to preserve and reunify families are not required if a court determines that any of the events described in (1)(b)-(d) or (f)-(l), listed above, has occurred.¹⁴

Section 39.811(6), F.S., provides that the parental rights of one parent may be severed without severing the parental rights of the other parent only under certain, specified circumstances, one of which is if the parent whose rights are being terminated meets any of the grounds specified in s. 39.806(1)(d) and (f)-(l), F.S.

It does not appear that there is any Florida case law specifically regarding whether a court may terminate parental rights of the father of a child conceived and born as the result of an act of unlawful sexual battery.¹⁵

¹¹ *L.D. v. Dep’t of Children and Family Servs.*, 957 So. 2d 1203, 1207 (Fla. 3d DCA 2007) (citing *E.R. v. Dep’t of Children and Family Servs.*, 937 So. 2d 1196, 1199 (Fla. 3d DCA 2006)).

¹² Section 39.802(1), F.S.

¹³ Section 39.802(4), F.S.

¹⁴ Section 39.806(2), F.S.

¹⁵ See, *Dep’t of Revenue v. Miller*, 688 So. 2d 1024, 1025 (Fla. 5th DCA 1997) (holding that the rights of a child to support cannot be foreclosed because the biological father was a victim of sexual battery); *G.F.C. v. S.G.*, 686 So. 2d 1382, 1386 (Fla. 5th DCA 1997) (stating that a man must allege that a developed relationship exists between him and the child, rather than merely a biological link, in order for a man to institute an action for paternity. The court then said “[o]therwise, in an extreme example, a man could be permitted to assert a cause of action for paternity of a child conceived as a result of a sexual battery”).

Termination of parental rights will not only end issues regarding legal custody or visitation, but also terminates any right of the custodial parent to child support, terminates rights regarding inheritance by the child from the parent or by the parent from the child, and terminates any number of other legal rights and responsibilities created by the parent-child relationship.

Termination of Parental Rights in Other States

Currently, at least 16 states, including Alaska, Connecticut, Idaho, Kansas, Louisiana, Maine, Missouri, Montana, North Carolina, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Washington, and Wisconsin, provide for the termination of parental rights where a child is conceived as a result of rape, or unlawful sexual assault.¹⁶

Of the 16 states, nine allow for the termination of parental rights if the parent has been convicted of rape or sexual assault.¹⁷ Of these states, Maine and North Carolina require that a court terminate parental rights, while the other seven states give courts the discretion to terminate parental rights if the conceived child resulted from sexual assault or forcible rape and the parent has been convicted of such an offense.¹⁸ Seven states, including Alaska, Idaho, Kansas, Louisiana, Oklahoma, Pennsylvania,¹⁹ and Wisconsin do not require a conviction for judges to terminate the parental rights of a rapist.²⁰

Effect of the Bill

This bill amends s. 39.806, F.S., to create an additional reason a court may terminate parental rights. Specifically, the bill provides that grounds for termination of parental rights may be established if the court determines by clear and convincing evidence that the child was conceived as a result of the unlawful act of sexual battery, or pursuant to a similar law of another state, a U.S. territory or possession, or a Native American tribe where the offense occurred.

The bill provides a presumption that termination of parental rights is in the best interest of the child if the child was conceived as a result of the unlawful sexual battery and that a petition for termination of parental rights under s. 39.806(1)(m), F.S., may be filed at any time.

The bill makes conforming changes to s. 39.811(6), F.S., to allow the parental rights of one parent to be severed without severing the parental rights of the other parent.

The bill provides an effective date of July 1, 2013, and applies to all unlawful acts of sexual battery occurring before, on, or after that date.

B. SECTION DIRECTORY:

Section 1 amends s. 39.806, F.S., relating to grounds for termination of parental rights.

Section 2 amends s. 39.811, F.S., relating to powers of disposition; order of disposition.

¹⁶ See, AS s. 25.23.180(c)(3); Conn. Gen. Stat. ss. 17a-112(j)(3)(G) and 45a-717(g)(2)(G); Idaho Code Ann. s. 16-2005(2)(a); Kan. Stat. Ann. s 59-2136(h)(1)(F); La. Child Code Ann. art. 1015; Me. Rev. Stat. Ann. tit.19-A, s. 1658; Mo. Ann. Stat. s. 211.447.5(5); Mont. Code Ann. s. 41-3-609(1)(c); N.C. Gen. Stat. Ann. ss. 14-27.2(c) –14-27.3(c); Okla. Stat. Ann. tit.10A s. 1-4-904(B)(11); Or. Rev. Stat. s. 419B.502; Pa. Cons. Stat. Ann. s. 2511(a)(7); Tenn. Code Ann. ss. 36-1-113(c),(g)(10); Tex. Fam. Code. Ann. s. 161.007; Wash. Rev. Code Ann. s. 13.34.132; Wis. Stat. Ann. s. 48.415(9)(a).

¹⁷ See, Conn. Gen. Stat. Ann. s 45(A)-717(G)(2)(G); Me. Rev. Stat. Ann. Tit.19-A s 1658; Mo. Ann. Stat. s. 211.447.5(5); Mont. Code Ann. s. 41-3-609(1)(c); N.C. Gen. Stat. Ann. ss. 14-27.2(c) –14-27.3(c); Or. Rev. Stat. s. 419B.502; Tenn. Code Ann. ss. 36-1-113(c),(g)(10); Tex. Fam. Code. Ann. s. 161.007; and Wash. Rev. Code Ann. s. 13.34.132.

¹⁸ See, Me. Rev. Stat. Ann. tit.19-A s.1658; N.C. Gen. Stat. Ann. ss. 14-27.2(c) –14-27.3(c); N.C. Gen. Stat. Ann. s. 50-13.1(a).

¹⁹ Pennsylvania gives courts the discretion to terminate all parental rights “if the parent is the father of a child conceived as a result of rape or incest.” See, Pa. Cons. Stat. Ann. s. 2511(a)(7).

²⁰ See, AS s. 25.23.180(c)(3); Idaho Code Ann. s. 16-2005(2)(a); Kan. Stat. Ann. s 59-2136(h)(1)(F); La. Child Code Ann. art. 1015; Okla. Stat. Ann. tit.10A s. 1-4-904(B)(11); 23 Pa. Cons. Stat. Ann. s. 2511(a)(7); Wis. Stat. Ann. s. 48.415(9)(b).

Section 3 provides an effective date of July 1, 2013, and applies to all unlawful acts of sexual battery occurring before, on, or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment of the US Constitution. Because portions of the bill implicate the fundamental right to parent a child, it may be subject to constitutional scrutiny, particularly to the extent it may require courts to address issues related to prospective abuse.²¹ Although parents have a fundamental right to parent their children, the state has a compelling interest in protecting its children, and it may permanently and involuntarily terminate parental rights after showing by clear and convincing evidence that the parent poses a “substantial risk of significant harm to the child.”²²

The United States Court of Appeals for the Seventh Circuit ruled, in upholding the termination of parental rights of a rapist, held that “[t]he Constitution does not forbid the states to penalize [a]

²¹ The issue related to prospective abuse cases is whether future behavior adversely affecting the child can be “clearly and certainly predicted.” *T.M. v. Dep’t of Children and Families*, 971 So. 2d 274, 278 (Fla. 4th DCA 2008).

²² See, *Padgett v. Dep’t of Health and Rehabilitative Servs.*, 577 So. 2d 565, 571 (Fla. 1991).

father's illicit and harmful conduct by refusing to grant him parental rights that he can use to block an adoption or simply enjoy as the fruit of his crime."²³

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Sections 39.402(8)(h)5.d., F.S., (relating to placement in a shelter) and s. 39.521(1)(f)3.d., F.S., (relating to disposition hearings; powers of disposition) reference acts listed as grounds for expedited termination of parental rights in s. 39.806(1), F.S. It may be advisable to make conforming changes to these statutes.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Civil Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Changes references to sexual battery to unlawful sexual battery.
- Allows a petition for termination of parental rights of a rapist to be filed at any time.
- Makes conforming changes to allow the parental rights of one parent to be severed without severing the parental rights of the other parent.
- Provides an effective date of July 1, 2013, and allows for retroactive application.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee

²³ *Pena v. Mattox*, 84 F.3d 894, 900 (7th Cir. 1996).