



# Ohio Legislative Service Commission

## Bill Analysis

Dennis M. Papp

### **S.B. 171**

130th General Assembly  
(As Introduced)

**Sens.** Turner, Tavares

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## **BILL SUMMARY**

- Authorizes the parent of a minor who was conceived as the result of the commission of the offense of rape or sexual battery to file a complaint with a court to terminate specified parental rights with respect to that minor of a person who has been convicted of or pleaded guilty to the offense or who has been determined by a court to have committed the offense.
- Authorizes a parent of a minor child who conceives a child as the result of the commission of a felony offense of unlawful sexual conduct with a minor to file a complaint with a court to terminate specified parental rights with respect to the child born to the minor child of a person who has been convicted of or pleaded guilty to the offense or who has been determined by a court to have committed the offense.
- Authorizes a person who is the parent of a minor child who was conceived as a result of the commission of a misdemeanor offense of unlawful sexual conduct with a minor to file on or after the parent's 18th birthday a complaint with a court to terminate specified parental rights with respect to that minor child of a person who has been convicted of or pleaded guilty to the offense or who has been determined by a court to have committed the offense.
- Provides that if such a complaint is filed and the court determines that the defendant was convicted of, pleaded guilty to, or committed the rape, sexual battery, or unlawful sexual conduct with a minor named in the complaint, the court must order the termination of the defendant's parental rights that are named in the complaint and that exist at the time of, or may exist subsequent to, the court order, and that no court may grant to the defendant any parental rights that are so terminated.

- If a complaint is filed as described above, provides a procedure for a court's determination as to whether a person has committed the rape, sexual battery, or unlawful sexual conduct with a minor that resulted in the child's conception.
- Specifies that the parental rights that are subject to termination are the rights to custody, to parenting time and visitation, and to the necessity, authority, or right to consent to the minor's adoption.

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## **CONTENT AND OPERATION**

### **Court termination of specified parental rights with respect to a child, of person who committed sex offense resulting in conception of the child**

The bill provides mechanisms for the termination of specified parental rights with respect to a child of a person who has been convicted of or pleaded guilty to a specified sex offense or who has been determined by a court to have committed the offense, when the offense results in the conception of the child. The parental rights that are subject to termination under the mechanisms, the procedure for a court's determination as to whether a person has committed the offense, and the offenses that are within the scope of the bill are described below under headings reflecting those topics.

#### **Filing of complaint requesting termination of parental rights**

The bill provides that the parent of a "minor" (see "**Definitions**," below for terms in quotations) who was conceived as the result of the commission of rape or sexual battery may file a complaint with a "court" to terminate the specified parental rights with respect to that minor of a person who has been convicted of or pleaded guilty to the offense or who has been determined by a court to have committed the offense.<sup>1</sup>

It also provides that a parent of a minor child who conceives a child as the result of the commission of a felony offense of unlawful sexual conduct with a minor may file a complaint with a court to terminate the specified parental rights with respect to the child born to the minor child of a person who has been convicted of or pleaded guilty to the offense or who has been determined by a court to have committed the offense.<sup>2</sup>

It further provides that a person who is the parent of a minor child who was conceived as a result of the commission of a misdemeanor offense of unlawful sexual conduct with a minor may file on or after the parent's 18th birthday a complaint with a

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<sup>1</sup> R.C. 3109.044(B).

<sup>2</sup> R.C. 3109.044(C).



court to terminate the specified parental rights with respect to that minor child of a person who has been convicted of or pleaded guilty to the offense or who has been determined by a court to have committed the offense.<sup>3</sup>

### **Parental rights that are subject to termination**

The parental rights that are subject to termination under the bill's mechanisms described above are the rights to:<sup>4</sup>

(1) Custody;

(2) Parenting time and visitation;

(3) The necessity, authority, or right to consent to the minor's adoption (note that currently, as described below in a heading reflecting this topic, in specified circumstances, consent to adoption of a minor is not required of the father, or putative father, of the minor if the minor was conceived as the result of the commission of the offense of rape (or a similar offense in another state) by the father or putative father and the father or putative father is convicted of or pleads guilty to that offense).

### **Court determination of commission of the offense**

The bill provides that if a parent of a minor child files a complaint as described above that alleges that the minor child was conceived as the result of the defendant's commission of rape or sexual battery or the defendant's commission of a misdemeanor offense of unlawful sexual conduct with a minor, or if a parent of a minor child files a complaint as described above that alleges that the minor child of the parent's minor child was conceived as the result of the defendant's commission of a felony offense of unlawful sexual conduct with a minor, the court must determine if the defendant was convicted of or pleaded guilty to the rape, sexual battery, or unlawful sexual conduct with a minor that resulted in the child's conception.

If the defendant has not been convicted of or pleaded guilty to the rape, sexual battery, or unlawful sexual conduct with a minor that resulted in the child's conception, the court must hold a hearing to determine if the defendant committed the offense that resulted in the child's conception. The plaintiff has the burden to prove beyond a reasonable doubt that the defendant committed the offense.

The court, upon making a determination that the defendant was convicted of, pleaded guilty to, or committed the rape, sexual battery, or unlawful sexual conduct

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<sup>3</sup> R.C. 3109.044(D).

<sup>4</sup> R.C. 3107.07(M) and 3109.044(B) to (D).

with a minor that resulted in the conception of the minor named in the complaint, must order the termination of the defendant's parental rights that are named in the complaint and that exist at the time of, or may exist subsequent to, the court order. No court may grant to the defendant any parental rights that are terminated pursuant to this provision.<sup>5</sup>

## Definitions

As used in the bill:<sup>6</sup>

"**Court**" means a juvenile or other court that has jurisdiction in a case respecting the allocation of parental rights for a minor.

"**Minor**" means a person under 18 years of age.

## Offenses within the scope of the bill

### 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 apply: (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. A violation of any of the prohibitions is the offense of "rape," a first degree felony with a mandatory prison term.<sup>7</sup>

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<sup>5</sup> R.C. 3109.044(E).

<sup>6</sup> R.C. 3109.044(A).

<sup>7</sup> R.C. 2907.02, not in the bill.



## **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: the offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution; 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; the offender knows that the other person submits because the other person is unaware that the act is being committed; the offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse; or in specified circumstances in which the offender is in a position of authority over the other person, such as a teacher, coach, religious authority, or peace officer. A violation of the prohibition is the offense of "sexual battery."<sup>8</sup>

## **Unlawful sexual conduct with minor**

R.C. 2907.04, not in the bill, prohibits a person who is 18 or older from engaging in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is 13 or older but less than 16 years of age, or the offender is reckless in that regard. A violation of the prohibition is the offense of "unlawful sexual conduct with a minor."<sup>9</sup>

## **Background – consent to adoption of child in general and when consent not required under existing law**

### **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 (a person under 18) may be granted only if written consent to the adoption has been executed by all of the following: the minor's mother; the minor's father (in the circumstances described below); the minor's "putative father"; any person or agency having permanent custody of the minor or authorized by court order to consent; and 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 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

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<sup>8</sup> R.C. 2907.03, not in the bill.

<sup>9</sup> R.C. 2907.04, not in the bill.

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.<sup>10</sup>

### **When consent is not required**

Under existing law, unchanged by the bill, for any child born after January 1, 1997, consent to adoption 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 (or a similar offense in another state) by the father or putative father and the father or putative father is convicted of or pleads guilty to that offense. Consent also is not required for adoption of any such child in a number of other circumstances, such as when parental rights have been terminated, the parent has entered into a voluntary permanent custody surrender agreement, or a court has determined that the parent is withholding consent unreasonably.<sup>11</sup>

### **Definition of "putative father"**

As used in the provisions described above, "putative father" means a man, including one under age 18, who may be a child's father and to whom all of the following apply: (1) he is not married to the child's mother at the time of the child's conception or birth, (2) he has not adopted the child, (3) he has not been determined, prior to the date a petition to adopt the child is filed, to have a parent and child relationship with the child by a court proceeding or administrative agency proceeding under Ohio's Parentage Law, or a court proceeding or administrative agency proceeding in another state, and (4) he has not acknowledged paternity of the child pursuant to Ohio's Parentage Law.<sup>12</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	08-05-13

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<sup>10</sup> R.C. 3107.06, not in the bill.

<sup>11</sup> R.C. 3107.07.

<sup>12</sup> R.C. 3107.01, not in the bill.

