

ONE HUNDRED FIFTH LEGISLATURE - FIRST SESSION - 2017
COMMITTEE STATEMENT
LB188

Hearing Date: Friday February 24, 2017
Committee On: Judiciary
Introducer: Howard
One Liner: Change provisions relating to paternity of a child conceived as a result of sexual assault

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Baker, Ebke, Halloran, Hansen, Krist, Morfeld, Pansing Brooks
Nay:
Absent:
Present Not Voting: 1 Senator Chambers

Verbal Testimony:

Proponents:
Senator Sara Howard
Stephanie Huddle
Emma Eaton

Representing:
Introducer
Nebraska Coalition to End Sexual & Domestic Violence
self

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 188 would adjust provisions of Nebraska law with regard to children who are conceived as a result of the sexual assault of one parent by the other parent.

Sections 1, 2, and 3 of the bill make changes to provisions in statute dealing with juveniles subject to the jurisdiction of the juvenile court.

In instances where a juvenile is subject to the jurisdiction of the juvenile court and placement of the juvenile outside of the parents' home is contemplated, Nebraska law requires reasonable efforts to reunify the family. LB 188 would add to the factors to be considered in making reasonable efforts to reunify by adding a provisions that address situations in which the unlawful sexual assault by a parent resulted in the conception of the juvenile in question. The bill would provide that a biological parent of the juvenile who was convicted of having committed a sexual assault against the juvenile's other parent when the sexual assault resulted in the conception of the child shall not be considered "part of the family" when the court determines whether reasonable efforts have been made to reunify the family.

The bill would further provide a standard for termination of parental rights of a parent convicted of sexual assault resulting in conception of the child. In such a case, LB 188 would provide that a petition for termination of the parental rights of a parent whose unlawful sexual assault resulted in conception of the child shall be granted when termination is in the best interests of the child, and either the parent was convicted of or pled guilty or nolo contendere to sexual assault under Neb. Rev. Stat. 28-320 of the child's birth mother, or has been found beyond a reasonable doubt to have fathered the child as a result of such a sexual assault.

Section 4 adds new language that addresses unlawful sexual assault by a father of the child. Under LB 188, an action to establish paternity would be stayed pending adjudication of a criminal sexual assault action against the alleged father. If the father is found not guilty, the paternity action would continue. However, if found guilty, paternity would be considered established, and the parental rights of the father may be terminated.

Explanation of amendments:

The Amendment addresses issues regarding the effect a criminal proceeding might have on a civil proceeding to establish paternity by amending language to disassociate the two. The introduced version of LB 188 established paternity upon a criminal conviction. AM 527 removes this language so that a finding of guilt in a criminal proceeding has no substantive impact on a biological finding of paternity in a civil proceeding. The amendment further allows for the possibility that a paternity action "may" be stayed pending resolution of a criminal sexual assault case. The original language of the bill would have automatically stayed the paternity case for the duration of a criminal case for sexual assault.

AM 527 further amends language to maintain gender neutrality and allow for the termination of a biological parent's rights when they are guilty of sexual assault resulting in the conception of the child.

AM 527 also adds a reference to Neb. Rev. Stat. Sec. 28-319 to allow for a conviction for first degree sexual assault to also stand as a basis for termination of parental rights.

Finally, references to the Indian Child Welfare Act are included to ensure compliance with the requirements of that A

Laura Ebke, Chairperson