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MEMORANDUM

To: House Committee on Judiciary

From: Office of Revisor of Statutes

Date: March 9, 2020

Subject: Bill Brief on SB 404

Senate Bill 404 would create a process to terminate the parental rights of a person whose sexual assault of another has resulted in the conception of a child.

Section 1 defines terms used in the act. Sections 1 through 7 are all new sections of law.

Section 2 (a) allows a petitioner to bring an action to terminate the parental rights of a respondent where a child has been conceived as a result of an act of rape, aggravated indecent liberties or incest, even if a conviction has not occurred. Subsections (b) through (g) outline procedures related to filing of pleadings, contents of a petition, venue, jurisdiction, and service of process.

Section 3 makes court records of proceedings under this act confidential and exempt from disclosure under the open records act and allows a court to exclude any person from the proceedings if it is in the best interests of the child.

Section 4 specifies that a respondent under this act is entitled to be represented by an attorney in these proceedings and allows the court to appoint an attorney for the respondent as well as a guardian ad litem for the child.

Section 5 gives the court authority to enter a temporary order restraining a respondent from following, contacting, or communicating with the petitioner or the child during the action.

Section 6 provides that if the respondent is determined to be a parent of the child, the court may terminate the parent-child relationship if the court finds, by clear and convincing evidence, that: (1) The respondent committed an act of rape, aggravated indecent liberties or incest against the petitioner; (2) the child was conceived as a result of such act; and (3) that termination of parental rights is in the best interests of the child. This bill creates a rebuttable presumption that terminating the parental rights of a parent who committed such act of sexual assault is in the child's best interests.

Section 7 relates to the rights of parents and children under this act. Subsection (a) allows a child to retain the right of inheritance from a parent who has had their rights terminated under this act. Subsection (b) provides that a respondent who has parental rights terminated under this act shall not retain rights to legal custody, residency or parenting time, inheritance from the child, or standing in any potential adoption. Subsection (c) sets out that termination of parental rights under this act shall not relieve the respondent of an obligation to pay child support, unless waived by the petitioner and approved by the court. Before ordering child support, the court would need to determine if such an order is in the best interests of the child. Procedures for payment of child support are also set out.

Section 8 amends K.S.A. 23-3203 to add “evidence of an act of sexual assault” to the factors that a court can consider in determining legal custody, residency and parenting time of a child.

Section 9 amends K.S.A. 38-2269, the statute setting out the factors for a court to consider in termination of parental rights. Current law provides that a finding of unfitness may be made if there is a conviction of a felony in which sexual intercourse occurred where a child is conceived. This bill would change the conviction requirement to a court finding, by clear and convincing evidence, that a parent has committed an act of rape, aggravated indecent liberties, or incest, which has resulted in the conception of the child.

Section 10 amends K.S.A. 38-2271, the statute that allows a parent to be presumed unfit if certain conduct or conditions are proven. The conduct or condition must be proven by clear and convincing evidence to create the presumption of unfitness. Current law requires a conviction of rape that resulted in conception of the child, which this bill amends to a showing that a parent has committed an act of rape, aggravated indecent liberties, or incest, that resulted in the conception of a child as one type of conduct that would create a presumption of unfitness.

The Senate Committee on Judiciary amended the bill to fix an incorrect statutory reference to the crime of incest and, in section 10, to move reference to proceedings in other jurisdictions to apply to all crimes that, if committed and resulted in the conception of a child, would create a presumption that a parent is unfit.