

<b>LFC Requester:</b>	<b>Connor Jorgensen</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*  
**Original**        **Amendment**      
**Correction**        **Substitute**   

**Date**  
**Prepared:** 3/12/2015  
**Bill No:** HB 387s

**Sponsor:** Rep. Conrad James  
No Parental Rights for Certain Crimes

**Agency Code:** Attorney General's Office S'  
**Person Writing**  
**fsdfs** Analysis: James Torres

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		


(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

**Synopsis:**

The House Floor Substitute makes the following amendments and modifications to HB 387:

1. Section 1 (A)(3) is added, defining “petitioner” as a woman who became pregnant as a result of criminal sexual penetration. The definition of “victim” is stricken. “Petitioner” replaces “victim” throughout the entirety of the bill;
2. All references to “motion” are stricken and replaced with “petition.”
3. Section 1 (A)(4) is amended, requiring that a “respondent” is not married to the petitioner;
4. Section 1 (B) is amended, adding the language, “clear and convincing evidence”, to the determination of criminal sexual penetration. Language is also added clarifying that a court need not make a finding that a respondent was convicted of criminal sexual penetration;
5. Importantly, Section 1 (C) is amended, allowing a court to terminate or permanently suspend parental rights of a respondent when “necessary to protect the physical, mental **or** emotional welfare of the petitioner.” The original bill required a finding of all three. Language is also added requiring that such a finding is in the “best interest of the child”;

6. Section 1 (E) is amended, removing the requirement that only a victim may file a petition;
7. Section 1 (F)(4) is amended to clarify that the address of the respondent is only required if known;
8. Section 1 (G) is amended to require that service in all instances must adhere to the Rules of Civil Procedure for the District Courts;
9. Section 1 (I) of the original bill is stricken, removing language requiring the appointment of counsel;
10. Whereas Section 2 (D) of the original bill required both a conviction of criminal sexual penetration and a showing that the parent's rights had been terminated or permanently suspended pursuant proposed Section 1 of this bill for the application of Section 32A-5-19, Sections 2(C)-(D) are amended to require only a showing that the adoptee was conceived as a result of Sections 30-9-11 or 30-10-3, **or** that the biological parent had lost parental rights pursuant to Section 1 of this act.

### **FISCAL IMPLICATIONS**

N/A

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

### **SIGNIFICANT ISSUES**

With respect to amendments proposed to Section 32A-5-19, amendments to Subsections (C) and (D) resolve the ambiguity noted in the original legislative analysis. It is now clear that *either* a conviction of criminal sexual penetration **or** termination/permanent suspension under proposed Section 1 of this bill will trigger Section 32A-5-19. The resolution of this ambiguity was critical in guaranteeing that a showing of conception resulting of criminal sexual penetration or incest would remain sufficient to remove the custody rights of a biological father during adoption proceedings.

With respect to proposed Section 1, the House Floor Substitute wisely removes the requirement that *only* a victim who became pregnant as a result of criminal sexual penetration is afforded standing to bring a claim under this section. This bill now takes into account the possibility of a victim having no contact with the child, adding much needed protections to the child and that child's custodians.

Further, by amending proposed Subsection (C) to require a showing that removal of the biological father's rights are necessary to protect the physical, mental, **or** emotional welfare of the victim, this Substitute lowers what was an untenably high burden in the original bill. Significantly, this section now also takes into account the welfare of the child.

The House Floor Substitute resolves virtually every significant issue noted in the

Attorney General's original legislative analysis.

**PERFORMANCE IMPLICATIONS**

N/A

**ADMINISTRATIVE IMPLICATIONS**

N/A

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

**TECHNICAL ISSUES**

Addressed above

**OTHER SUBSTANTIVE ISSUES**

N/A

**ALTERNATIVES**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

**AMENDMENTS**

N/A