

# HOUSE BILL REPORT

## ESHB 1300

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### As Amended by the Senate

**Title:** An act relating to fraud in assisted reproduction.

**Brief Description:** Concerning fraud in assisted reproduction.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Orwall, Mosbrucker, Graham, Jacobsen, Lekanoff, Macri and Reed).

### Brief History:

#### Committee Activity:

Community Safety, Justice, & Reentry: 1/24/23, 2/2/23 [DP];  
Appropriations: 2/20/23, 2/23/23 [DPS].

#### Floor Activity:

Passed House: 2/9/24, 97-0.  
Senate Amended.  
Passed Senate: 2/27/24, 49-0.

### Brief Summary of Engrossed Substitute Bill

- Expands the definition of Assault in the third degree to include when a person implants his or her gametes or reproductive material into a patient without the patient's written consent.
- Expands the list of unprofessional conduct that applies to licensed health care professionals under the Uniform Disciplinary Act to include when a licensee implants his or her gametes or reproductive material into a patient without the patient's written consent.
- Requires the Department of Health to convene a work group on fraud in assisted reproduction and submit a related report to the Governor and the Legislature by October 1, 2025.

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### HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** Do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse, Graham and Ramos.

**Staff:** Corey Patton (786-7388).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 1 member: Representative Chandler.

**Staff:** Lily Smith (786-7175).

### **Background:**

#### Assisted Reproduction.

Assisted reproduction is a method of causing pregnancy other than sexual intercourse. Forms of assisted reproduction include intrauterine or intracervical insemination, donation of gametes, donation of embryos, in-vitro fertilization and transfer of embryos, and intracytoplasmic sperm injection. A donor is an individual who provides gametes intended for use in assisted reproduction. Gametes are sperm, eggs, or any part of a sperm or egg.

#### Classification of Crimes.

Crimes are classified as misdemeanors, gross misdemeanors, or class A, B, or C felonies. While there are exceptions, the classification of a crime generally determines the maximum term of confinement and fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

Classification	Maximum Confinement	Maximum Fine
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

For most felony offenses, the Sentencing Reform Act determines a specific sentence range

within the statutory maximum according to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the person's criminal history. The seriousness level of an offense ranges from level I on the low end to level XVI on the high end. An offender score may vary from zero to nine plus points depending on certain factors.

Assault in the Third Degree.

A person commits assault if he or she attempts to inflict bodily injury on another person with unlawful force, unlawfully touches another person with criminal intent, or puts another person in apprehension of harm. An assault may be classified as Assault in the first, second, third, or fourth degree, depending on the specific circumstances.

A person commits Assault in the third degree if he or she, under circumstances not amounting to Assault in the first or second degree, assaults a specific category of person or commits the assault with certain intent or criminal negligence accompanied by other specific factors. For example, Assault in the third degree includes assaults against firefighters and law enforcement officers performing their official duties. Assault in the third degree is a class C felony ranked at seriousness level III.

Uniform Disciplinary Act.

The Uniform Disciplinary Act (UDA) provides a standardized set of procedures for enforcing laws concerning licensure and misconduct of licensed health care professionals. The UDA also provides a list of acts that constitute unprofessional conduct. An applicable disciplining authority may initiate a disciplinary action against a licensee after receiving a complaint or if the disciplining authority has reason to believe that the licensee engaged in unprofessional conduct.

**Summary of Engrossed Substitute Bill:**

Assault in the Third Degree.

The definition of Assault in the third degree is expanded to include when a person implants his or her gametes or reproductive material into a patient without the patient's written consent.

Uniform Disciplinary Act.

The list of acts that constitute unprofessional conduct under the Uniform Disciplinary Act is expanded to include when a licensee implants his or her gametes or reproductive material into a patient without the patient's written consent.

Fraud in Assisted Reproduction—Work Group.

By August 1, 2024, the Department of Health (DOH) must convene a work group to evaluate and make recommendations to the Governor and the Legislature related to addressing fraud in assisted reproduction. The work group must, at minimum, consist of

stakeholders representing:

- the Washington Association of Prosecuting Attorneys;
- victims of crimes related to fraud in assisted reproduction;
- a statewide association representing physicians;
- a national organization focused on the advancement of the science and practice of reproductive medicine;
- health care providers;
- fertility clinics;
- gamete banks; and
- any other entities that the DOH determines should participate in the work group.

Once convened, the work group must continue to meet at least once every two months to evaluate and make recommendations related to the following subjects:

- conduct that may constitute fraud in assisted reproduction;
- whether particular forms of fraud in assisted reproduction should be subject to increased regulation and enforcement, including consideration of whether to: (1) expand related professional disciplinary actions; (2) expand related criminal penalties; (3) provide additional civil causes of action or remedies to donors and patients who are harmed; (4) extend related statutes of limitations; and (5) make any other relevant changes to support effective regulation and enforcement;
- whether certain information about the identity and background of donors should be protected or shared, and with whom that information should be protected from or shared with;
- whether to allow or prohibit anonymous donations;
- whether there should be any limits on how frequently the same person may provide donations of reproductive material;
- current regulations on assisted reproduction services offered by health care providers, fertility clinics, and gamete banks in Washington, including existing enforcement mechanisms;
- approaches other jurisdictions have undertaken to address fraud in assisted reproduction, including any legislative efforts to address fraud in assisted reproduction in those jurisdictions;
- resources for victims of fraud in assisted reproduction; and
- any other relevant factors or considerations.

The DOH must issue a final report to the Governor and the Legislature by October 1, 2025. The work group expires January 1, 2026.

#### **EFFECT OF SENATE AMENDMENT(S):**

The amended bill: (1) eliminates the intent section; (2) eliminates the provision requiring the Department of Health to convene a work group on fraud in assisted reproduction; (3) expands the conduct that constitutes Assault in the third degree to include when a licensed health care provider implants or causes another to implant the provider's own gametes or

reproductive material into a patient during an assisted reproduction procedure, rather than when a person implants his or her gametes or reproductive material into a patient without written consent; and (4) expands the conduct that constitutes unprofessional conduct under the Uniform Disciplinary Act to include when a licensee implants their own gametes or reproductive material into a patient, regardless of whether there is written consent.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Community Safety, Justice, & Reentry):**

(In support) A person's identity is largely tied to where that person comes from, and it can be life shattering when that person's sense of identity changes due to fraud in assisted reproduction. Gaps in the legal system need to be filled to ensure physicians are held accountable. As compared to last year's version of the bill, this year's version adds an important provision for disciplinary actions under the Uniform Disciplinary Act. This year's version also creates a work group to look at different examples of fraud in assisted reproduction and consider rules to address such fraud.

(Opposed) None.

**Staff Summary of Public Testimony (Appropriations):**

(In support) Fertility clinics lack sufficient oversight and are not held accountable when patients and children suffer. When donor identity is unknown and a clinic does not cooperate, it is impossible to obtain critical genetic information. There should be an obligation to inform patients and relatives when critical health information is discovered. When fraud occurs in artificial insemination services, it often involves the doctor's own sperm, and there are doctors who have done this in this state. People are entitled to accurate information when they create a human being. Reproductive health is health care, and there need to be consequences for fraud.

(Opposed) None.

**Persons Testifying (Community Safety, Justice, & Reentry):** Representative Tina Orwall, prime sponsor.

**Persons Testifying (Appropriations):** Stephanie Weichsel; Kara Rubinstein Deyerin; and Leslie Weichsel, The Right to Know.

**Persons Signed In To Testify But Not Testifying (Community Safety, Justice, & Reentry):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.