

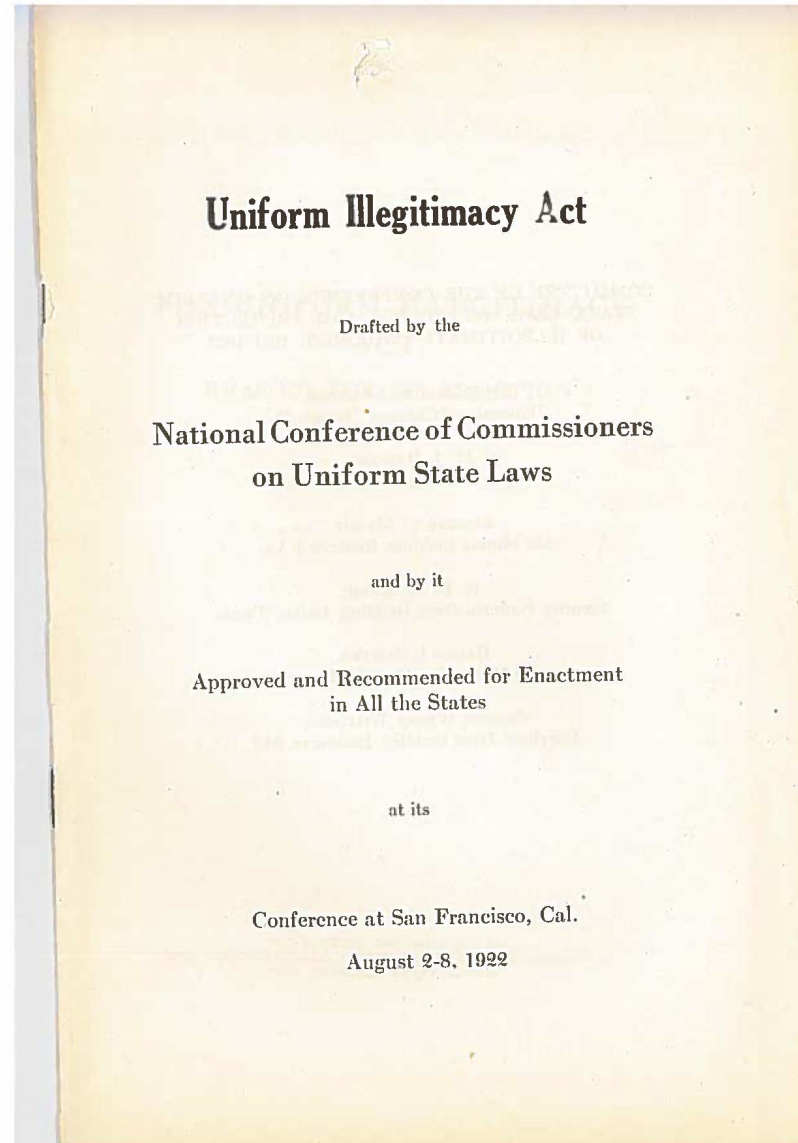
Helping Families and Children with the New and Innovative UPA!

Speakers:

Jamie Pedersen, Washington State Senator
Diane Potts, CSF/SLI Director of Child Support

Building Strong Families Through Innovation

The law has evolved enormously in 96 years.



The Uniform Parentage Act over time

- UPA (1973)

- Banned discrimination based on marital status of parents
- Recognized presumptions of parentage
- Silent on rights of nonmarital father

- UPA (2000/2002)

- Voluntary acknowledgement of paternity
- Paternity registry
- Genetic testing
- Rules for adjudicating parentage



Constitutional Mandates from SCOTUS

- ***Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)**

- Under the Equal Protection Clause, states may not “exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.”

- ***V.L. v. E.L.*, 136 S. Ct. 1017 (2016) (per curiam)**

- Reversing Alabama’s refusal to recognize same-sex adoption from another state

- ***Pavan v. Smith*, 137 S. Ct. 2075 (2017) (per curiam)**

- Reversing Arkansas court decision that refused to place both parents’ names on birth certificates of children born into same-sex marriage





Highlights of 2017 Revisions

- **Gender neutralization** throughout UPA
- Implementation of ***Obergefell*** in parentage presumptions – Section 204
- Reordering of **routes to parentage** in Article 6
- Addition of **de facto** parentage – Section 609
- New multi-factor assessment to resolve **competing parentage claims** – Section 613
- Optional recognition of **more than two parents**
- Revised framework for **genetic and gestational surrogacy** – Article 8
- New requirements for retention of **genetic information** in assisted reproduction – Article 9

Washington – First State to Enact UPA 2017!



Gov. Inslee signs Engrossed Substitute Senate Bill No. 6037, March 6, 2018. Relating to the uniform parentage act.
Primary Sponsor: Jamie Pedersen

Presumptions of Parentage

- The **marital presumptions** of parentage apply **equally** to the spouse of the woman who gives birth, regardless of the gender of the spouse.
- The **“holding out” presumption**, which typically is used for unmarried parents, applies gender neutrally.
 - A person who resides with the child for the first two years of the child’s life, including temporary absences, and openly holds the child out as his or her own child has a presumption of parentage.



Overcoming the Presumptions

- Clarifies that a lack of a genetic tie **does not necessarily** overcome a presumption of parentage and requires the court to consider the **best interests** of the child.
- Where the presumed parent is a genetic parent and there is no competing claim for parentage, parentage is established and cannot be overcome.

presumption

De facto Parentage – Background

- The vast **majority of states** already recognize some form of *de facto* parentage (often using different terms), by statute or in equity.
- **By caselaw**, many of these states recognize that a *de facto* parent is a **legal parent** or at least stands in legal parity with a parent.
- **By statute**, Washington, Maine, and Delaware treat *de facto* parents as legal parents in their UPAs.





De Facto Parentage Provisions

- Provides that a person claiming to be a *de facto* parent can **petition** to be recognized.
- **Heightened** pleading standards.
- Must prove by **clear and convincing evidence** a number of factors related to functioning as a parent and establishing a bond with the child with the support of a legal parent.
- Pleadings must be **verified**.
- A *de facto* parent is a **legal parent**.

Resolving Multiple Claims of Parentage

- As with the UPA of 2002, it is possible to have more than two possible parents. The UPA of 2002 did **not** provide a test for how to resolve these claims.
- UPA 2017 provides that competing claims should be resolved based on the **best interests of the child** and provides a number of **factors** for the court to consider.



Children with More Than Two Parents



- Contains an optional provision allowing courts to recognize that a child can have **more than two legal parents**.
- Applies where there are more than two people with a claim to parentage under the UPA and it would be **detrimental to the child** to recognize only two parents.
- **States** that recognize more than 2 parents:
 - California, Maine, and Washington have provisions in their UPAs explicitly recognizing that a child can have more than two parents
 - Louisiana recognizes two fathers in certain situations
 - Delaware likely allows recognition of more than two parents by statute, and a number of states have cases recognizing more than two parents

Voluntary Acknowledgments of Parentage

- Expands acknowledgment process beyond alleged genetic fathers to **intended** and **presumed parents**
 - Gender neutral
 - Intended parent defined as an individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction

LDSS-4418 (Rev. 1/14)

New York State Office of Temporary and Disability Assistance

New York State Department of Health

Pursuant to Section 4135-b of Public Health Law

Recorded District
Hospital Code (PFI Number)
Register Number

ACKNOWLEDGMENT OF PATERNITY

(Please type or print clearly in blue or black ink.)

Check where signed: ☒ Hospital ☐ Child Support Office ☐ Birth Registrar ☐ Other

CHILD	First name John	Middle name James	
	Last name Lewis	Sex ☒ Male ☐ Female	Date of birth (MM/DD/YYYY) 12 / 08 / 2013
	Facility of birth Albany Memorial Hospital	City of birth Albany	County of birth Albany
	If the child's birth certificate was already filed and you wish to change the child's last name, complete the following section:		
	Last name on original birth certificate	New last name	

Voluntary Acknowledgments of Parentage

- Clarifies that acknowledgments are **void** if:
 - Child has acknowledged or adjudicated parent
 - Child has presumed parent and that parent has not signed denial of parentage



- Takes effect upon **filing**



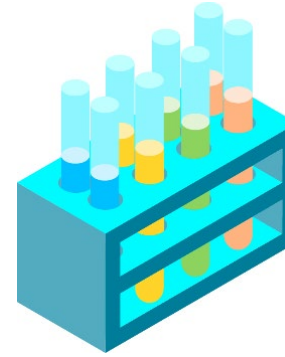
- Changes **rescission** process from judicial proceeding to filing signed record of rescission with state agency

Voluntary Acknowledgments of Parentage

- Challenges after rescission period
 - **2 year** limitation for both signatories and non-signatories
- Non-signatory governed by section 610
 - Court must find proceeding in **best interest of child**
- Signatory governed by section 310 and procedures in Article 6
 - **Challenge** must be based on fraud, duress, or material mistake of fact



Genetic Testing



- New definitions in Section 501
- **Limits use** of genetic testing
 - Cannot be used to challenge parentage for **intended parents**
 - Cannot be used to establish parentage of a **donor**
- Genetic testing may be used where **competing claims** of parentage or to **challenge** acknowledgment
- But genetic testing cannot be used where statute of limitations **bars** claim

Implementing the Rape Survivor Child Custody Act

- **Section 614:**

- Permits **victim** of sexual assault to block claim of parentage by perpetrator
- Child support obligation **continues** unless woman requests otherwise and court finds is in best interest of child

- **Exceptions:**

- If man has been adjudicated to be parent
- If man established bonded and dependent parental relationship with child



Assisted Reproduction and Surrogacy

- **Assisted Reproduction – Article 7**

- Applies **equally** to same-sex couples
- Recognizes parentage of individual who **consents to assisted reproduction** by woman with intent to be parent.
- *If not in writing*, must show **express pre-conception consent** by clear and convincing evidence – or – **holding out** for first 2 years of child's life.



Surrogacy Agreements – Article 8

- Surrogacy provisions of UPA (2002) were enacted by only **two** states
- More states today have statutory provisions permitting surrogacy, but most permit only gestational agreements.
- Separate rules for gestational and genetic surrogacy agreements
- Under UPA (2017), state may opt **not** to enact Article 8



Genetic Information about Donor – Article 9

- Clinics must **retain** donor's identifying information and medical history
- Clinics must obtain **declaration** from donor regarding donor's choice as to identity disclosure once child turns 18
- Donor may **not** withdraw declaration agreeing to identity disclosure
- Child may obtain **nonidentifying medical history** on request



Parentage Scenarios under UPA 2017



Scenario 1



- After Jane gives birth to her son Ken, Joe and Jane (who are not married) sign an acknowledgment for Ken at the hospital
- 1 year later, Jane's ex-boyfriend Larry files a petition to establish his parentage for Ken
- Does Larry have standing to file and what procedure is contemplated by UPA 2017?
- Would the procedure be any different if Joe and Jane were married at the time Ken was born and did not sign an acknowledgment?



Scenario 2

- Alison is in a relationship with Carol and they agree to have a child together
- Alison and Carol take out a Craigslist ad for sperm donation
- Barry contacts the couple and provides them with sperm
- Through an at-home procedure, Alison uses the sperm with Carol's assistance and conceives a child

Scenario 2

- Alison gives birth to Dylan
- Is Carol a legal parent to Dylan under UPA 2017?
- Is Barry a legal parent to Dylan?
- What should a court consider?



Scenario 3



- Gina gives birth to her son Fitz
- Although Gina knows that her ex-boyfriend Harry is Fitz's father, she does not tell him about the pregnancy or birth
- Shortly after Fitz's birth, Harry commits a crime and is sentenced to 15 years in prison



Scenario 3

- Gina meets Ian and moves in with him when Fitz is 1 year old
- Ian raises Fitz as his own son for the next 5 years



Scenario 3

- Gina and Ian break up when Fitz is 6 years old
- Can Ian seek to establish parentage for Fitz?
- Does Harry have any rights?
- What if Harry had signed an acknowledgment of paternity for Fitz right before he went to prison?



Questions?



Thank you for your time!