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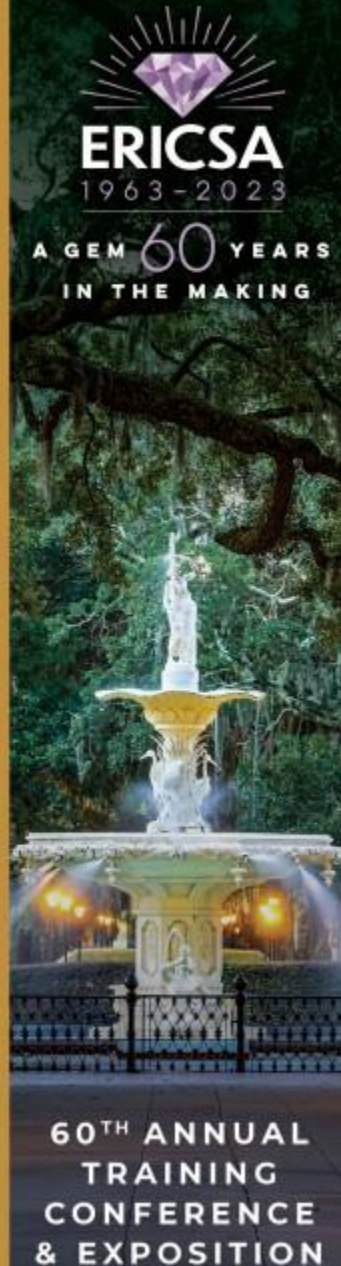
MONDAY, MAY 22 - FRIDAY, MAY 26, 2023

The Uniform Parentage Act: Modern Law for Modern Families

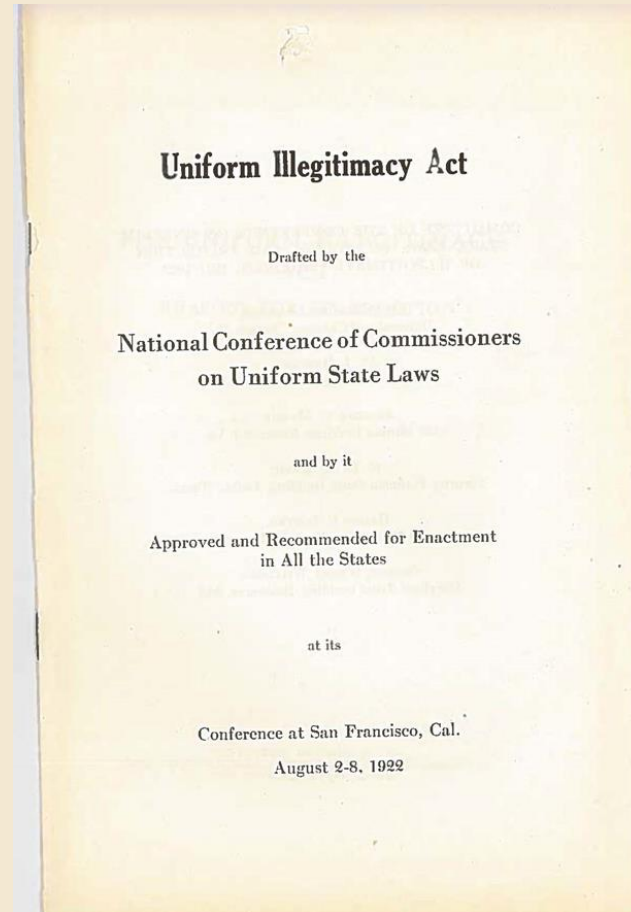
Diane Potts, Esq.
May 23, 2023



This presentation will provide a broad overview of the current Uniform Parentage Act, which was ratified by the Uniform Law Commission in 2017.



The law has evolved enormously in 101 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



UPA 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.



UPA – 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**, Maine and Delaware treat *de facto* parents as legal parents in their UPAs.



UPA – *De Facto* Parentage

- 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**.



UPA – 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.



UPA –

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
 - A number of states have cases recognizing more than two parents



UPA – 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	
	<i>If the child's birth certificate was already filed and you wish to change the child's last name, complete the following section:</i>			
	Last name on original birth certificate		New last name	



UPA – 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



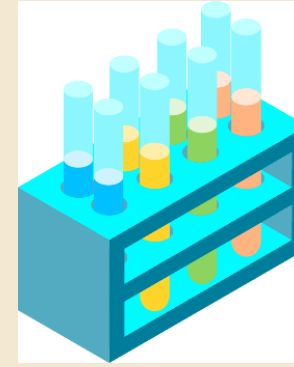
UPA – Voluntary Acknowledgments of Parentage

- 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



UPA – 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



UPA – 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



UPA – Assisted Reproduction

- **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.



UPA 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



Questions?



Thank you for your time!

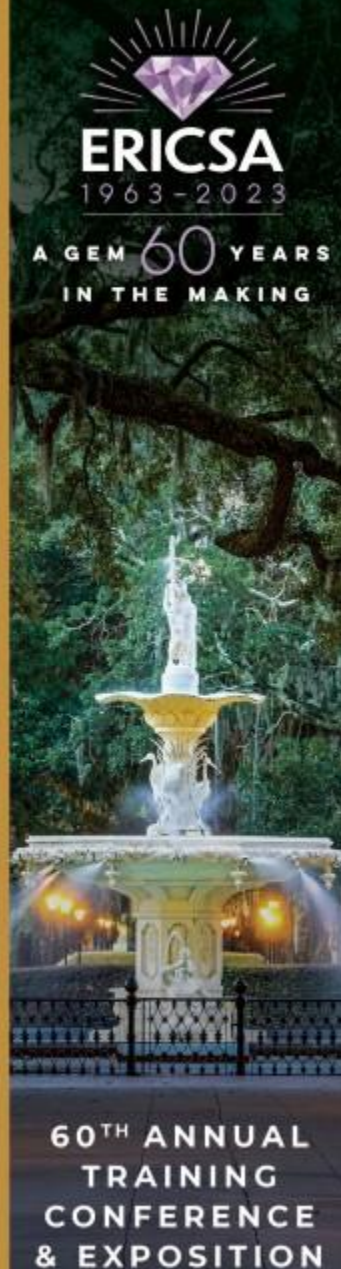
The NY Child-Parent Security Act: Article 5-C of the Family Court Act

Theodora Andreopoulos, Esq.
May 23, 2023



This presentation will provide a broad overview of the Child-Parent Security Act which was enacted into law in New York on April 3, 2020, and became effective on February 15, 2021.

This presentation will also discuss a New York case that applied specific provisions of the Child-Parent Security Act.



The Purpose of the Child-Parent Security Act

- The purpose of this law is to legally establish a child's relationship to their parents where the child is conceived through assisted reproduction, except for children both to a person acting as surrogate who contributed the egg used in conception.
Family Court Act (FCA) §580-101
- The Child-Parent Security Act does not apply to the birth of a child conceived through sexual intercourse.



Definitions

- **Assisted Reproduction:** “A method of causing pregnancy other than sexual intercourse and includes but is not limited to:
 - 1. intrauterine or vaginal insemination;
 - 2. donation of gametes;
 - 3. donation of embryos;
 - 4. In vitro fertilization and transfer of embryos; and
 - 5. intracytoplasmic sperm injection.”

FCA §581-102(a)



Definitions

- **Donor:** "...an individual **who does not intend to be a parent** who produces gametes and provides them to another person, other than the individual's spouse, for use in assisted reproduction." (emphasis added)
(can be an anonymous or known donor)
- **Gamete:** "...a cell containing a haploid complement of DNA that has the potential to form an embryo when combined with another gamete. Sperm and eggs shall be considered gametes."

FCA §581-102



Definitions

- **Embryo:** “a cell or group of cells containing a diploid complement of chromosomes or group of such cells, not a gamete or gametes, that has the potential to develop into a live born human being if transferred into the body of a person under conditions in which gestation may be reasonably expected to occur.”
- **Embryo Transfer:** “...all medical and laboratory procedures that are necessary to effectuate the transfer of an embryo into the uterine cavity.”

FCA §581-102



Definitions

- **Surrogacy Agreement:** “an agreement between at least one intended parent and a person acting as surrogate intended to result in a live birth where the child will be the legal child of the intended parents.”
- **Person acting as surrogate:** “...an adult person, **not an intended parent**, who enters into a surrogacy agreement to bear a child who will be the legal child of the intended parent or parents so long as the person acting as surrogate has not provided the egg used to conceive the resulting child.” (emphasis added)

FCA §581-102



Judgment of Parentage

- A judgment of parentage may be issued prior to birth but shall not become effective until the birth of the child.
- A petition for a judgment of parentage or non-parentage of a child conceived through assisted reproduction may be initiated by a child, parent, a participant, a person with a claim to parentage, social services official or other governmental agency authorized by other law or a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated or a minor in order to legally establish the child-parent relationship of either a child born through assisted reproduction or a child born pursuant to a surrogacy agreement.

FCA §581-201



Judgment of Parentage of a Child Conceived through Assisted Reproduction

- A proceeding for a judgment of parentage with respect to a child conceived through assisted reproduction may be commenced
 - (1) if the intended parent or child resides in NY state, in the county where the intended parent resides **any time after pregnancy is achieved** or in the county where the child was born or resides; or
 - (2) If the intended parent and child do not reside in NY state up to 90 days **after the birth of the child** in the county where the child was born. (emphasis added)

FCA §581-202



Petition for Parentage of a Child Conceived through Assisted Reproduction

- Petition must be verified.
- The verified petition must state the following in order for the court to adjudicate the intended parent to be the parent of the child:
 - A statement that the intended parent has been a resident of the state for at least 6 months or if an intended parent is not a New York state resident, that the child will be or was born in the state within 90 days of filing;
 - A statement from the gestating intended parent that the gestating intended parent became pregnant as a result of assisted reproduction; and
 - In cases where there is a non-gestating intended parent, a statement from the gestating intended parent and non-gestating intended parent that the non-gestating intended parent consented to assisted reproduction; and
 - Proof of any donor's donative intent.

FCA §581-202



Proving Donor's Donative Intent

- The following shall be deemed sufficient proof of an **anonymous** donor's donative intent:

- Either a statement or documentation from the gamete or embryo storage facility or health care practitioner stating or demonstrating that such gametes or embryos were anonymously donated or had previously been released; or

- Clear and convincing evidence that the gamete or embryo donor intended to donate gametes or embryos anonymously or intended to release such gametes or embryos to a gamete or embryo storage facility or health care practitioner.

FCA §581-202



Proving Donor's Donative Intent

- The following shall be deemed sufficient proof of a **known** donor's donative intent:
 - Either a record from the gamete or embryo donor acknowledging the donation and confirming that the donor has no parental or proprietary interest in the gametes or embryo; or
 - Clear and convincing evidence that the gamete or embryo donor agreed, prior to conception, with the gestating parent that the donor has no parental or proprietary interest in the gametes or embryos.

FCA §581-202



Known Donor's Intent

In the case of a donation from a known donor...

- The record shall be signed by the gestating intended parent and the gamete or embryo donor.
- The record may be but is not required to be signed:
 - Before a notary public or
 - Before two witnesses who are not the intended parents, or
 - Before a health care practitioner; or
 - **Clear and convincing evidence** that the gamete or embryo donor agreed, prior to conception, with the gestating parent that the donor has no parental or proprietary interest in the gametes or embryos.
 - **If there is an absence of evidence as described above:**
 - Notice shall be given to the donor at least 20 days prior to the date set for the proceeding to determine the existence of donative intent by delivery of a copy of the petition and notice pursuant to the rules of proper service.

FCA §581-202(d)(2)



Child of Assisted Reproduction

- Parentage of child of assisted reproduction
 - "An individual who provides gametes for, or who consents to, assisted reproduction with the intent to be a parent of the child with the consent of the gestating parent...is a parent of the resulting child for all legal purposes."
FCA §581-303(a)
 - "If the intended parent who gives birth to a child by means of assisted reproduction is a spouse, the consent of both spouses to the assisted reproduction is presumed;"
FCA §581-304(a)
 - If the intended parent who gives birth to a child by means of assisted reproduction is not a spouse, consent must be in a record in such a manner as to indicate the mutual agreement of the intended parents to conceive and parent a child together. FCA §581-304(b)
 - If there is an absence of a record of consent, the court may find such consent by clear and convincing evidence. FCA §581-304(c)



Case law re: Determination of Parentage for a Child Born Through Assisted Reproduction: Proof of Consent

In the *Matter of A.B. v. M.S.*, the biological mother (A.B.) and her partner (M.S.) signed an “Intrauterine Insemination Consent Form” before the conception of the child.

After the child was conceived but before the child was born, the parties separated. Subsequently, M.S. filed a petition to establish parentage of the child who was due to be born on a future date, pursuant to FCA §581-202.

A.B., through her attorney, objected to the petition and was advised of her right to a hearing. The Support Magistrate clearly informed A.B. that if she chose not to request a hearing, that he intended to enter an order and judgment of parentage based on M.S.’s petition and the attached “Intrauterine Insemination Consent Form” executed by both parties. A.B. consulted with her attorney and subsequently waived her right to a hearing.

Matter of A.B. v. M.S., 77 Misc. 3d.1138, 181 N.Y.S.3d 423 (Fam. Ct. Ulster Cty. 2022)



Case law continued...

The Support Magistrate entered an “Order and Judgment of Parentage” holding that upon the child’s birth, A.B. and M.S. would be the legal parents of the child who was expected to be born and upon the child’s birth they would assume responsibility for the child’s maintenance and support.

A.B. objected.

The Family Court in Ulster County denied A.B.’s objection and stated that this case was exactly the same type of situation the statute was designed to address: a same-sex couple made a decision to have a child together, although only one of the parents would be biologically related to the child. The same-sex, non-gestating parent now has the same protections as those that would be afforded to a non-gestating party who would be biologically related to the child, provided that the intent to act as co-parents was clearly manifested at the time of conception.

The Family Court held that, in this case, the requisite intent and consent was found in the “Intrauterine Insemination Consent Form” and A.B. waived her right to prove otherwise. The Family Court affirmed the Support Magistrate’s determination of parentage.



Embryo Disposition Agreement

- “An embryo disposition agreement between intended parents with joint dispositional control of an embryo shall be binding under the following circumstances:
- (1) it is in writing;
- (2) each intended parent had the advice of independent legal counsel prior to its execution...
- (3) where the intended parents are married, transfer of legal rights and dispositional control occurs only upon divorce.”

FCA §581-306



Death of Intended Parent

- If an individual who consented in a record to be a parent by assisted reproduction dies before the transfer of eggs, sperm or embryos, the intended parent is not a legal parent of the resulting child unless the intended parent consented in a signed record to be the legal parent if the assisted reproduction occurred after their death.

FCA §581-307



Surrogacy Agreement

- A person acting as surrogate, the spouse of the person acting as surrogate, if applicable, and the intended parent or parents may enter into a surrogacy agreement which will be enforceable provided the surrogacy agreement meets the requirements of the relevant legislation. FCA §581-401
- A surrogacy agreement may provide for payment of compensation under part five of this article. FCA §581-401
- The surrogate and if applicable the surrogate's spouse are not intended parents. FCA §581-406



Surrogacy Agreement

- Eligibility to enter into a Surrogacy Agreement...
 - Must be at least 21 years of age;
 - Must be a US citizen or a lawful permanent resident and, where at least one intended parent is not a resident of NY state for six months, was a resident of New York state for at least six months;
 - Has not provided the egg used to conceive the resulting child;
 - Has completed a medical evaluation with a health care practitioner relating to the anticipated pregnancy;
 - Has given informed consent after being informed of the medical risks;
 - Has been represented by independent legal counsel of their own choosing;
 - Will obtain comprehensive health insurance policy;
 - The intended parents have agreed to procure and pay for a life insurance policy for the person acting as surrogate;
 - Meets all other requirements deemed appropriate by the Commissioner of Health regarding the health of surrogate.
- FCA §581-402



Requirements of Surrogacy Agreement

- A surrogacy agreement shall be deemed enforceable if it meets the following requirements:
 - It shall be in a signed record verified or executed before two non-party witnesses by each intended parent and the person acting as surrogate and the spouse of the person acting as surrogate, if any;
 - Shall be executed prior to the person acting as surrogate taking any medication or the commencement of medical procedures in the furtherance of the embryo transfer provided the surrogate has provided informed consent for medical treatment/procedures;
 - Shall be executed by a person acting as surrogate meeting the eligibility requirements in section FCA §581-402(a);
 - Parties shall have been represented throughout the contractual process with independent legal counsel of their own choosing.
 - Funds for payment of compensation and reasonable anticipated additional expenses must have been placed in escrow with an independent escrow agent;
 - Must include information how the intended parents will cover the medical expenses of person acting as surrogate, including information regarding health insurance coverage;
 - Must include specific information delineated in FCA §581-403(h) and (i)
- FCA §581-403



Surrogate's Bill of Rights

- There is a Surrogate's Bill of Rights that is prescribed by law, specifically FCA §581-601.
- The rights are as follows and are not exclusive and may be in addition to any other rights provided by law, regulation, or a surrogacy agreement:
 - The right to make all health and welfare decisions regarding themselves and their pregnancy;
 - The right to be represented by independent legal counsel of their own choosing;
 - The right to have a comprehensive health insurance policy;
 - The right to have a health insurance policy that covers behavioral health care and psychological counseling.



Surrogacy Agreement- Effect of Subsequent Spousal Relationship

- If the person acting as surrogate marries after the execution of a surrogacy agreement, the subsequent spousal relationship does not affect the validity of the agreement, the consent of the spouse shall not be required, and the spouse shall not be the presumed parent of any resulting child.
- The subsequent separation or divorce of the intended parents does not affect the rights, duties and responsibilities of the intended parents as outlined in the surrogacy agreement.

FCA §581-404



Termination of Surrogacy Agreement

- If the surrogacy agreement is terminated after execution but before the person acting as surrogate becomes pregnant by means of assisted reproduction, any party to the agreement may terminate the agreement by giving notice of termination in a record to all other parties.
- Upon proper termination, the intended parent or parents remain responsible for all expenses that are reimbursable under the agreement and which have been incurred by the person acting as surrogate through the date of termination.

FCA §581-405



The Determination of Parentage following a Surrogacy Agreement

- A proceeding for the judgment of parentage of a child conceived pursuant to a surrogacy agreement, may be commenced after the execution of the agreement and before the conception of the child.
- Petition must be verified and must include the following information:
 - (1) A statement that the person acting as surrogate or at least one of the intended parents has been a resident of the state for at least six months at the time the surrogacy agreement was executed; and
 - (2) A certification from the attorney representing the intended parent or parents and the attorney representing the person acting as surrogate that the requirements of a valid surrogacy agreement have been met; and
 - (3) A statement from all parties to the surrogacy agreement that they knowingly and voluntarily entered into the surrogacy agreement and that the parties are jointly requesting the judgment of parentage.

FCA §581-203



Parentage of a Child Conceived pursuant to a Surrogacy Agreement by Operation of Law

- Upon the birth of a child conceived by assisted reproduction and pursuant to a valid surrogacy agreement, each intended parent is, by operation of law, a parent of the child and neither the person acting as a surrogate nor the person's spouse, if any, is a parent of the child.
 - FCA §581-406



The Child-Parent Security Act prescribes the court procedures through which legal parentage can be established for a child conceived through assisted reproduction or as a result of a surrogacy agreement.



Questions?



Thank you for your time!

Parentage Scenarios



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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
- Under New York law:
 - Does Larry have standing to file and what procedure is contemplated?
 - Would the procedure be any different if Joe and Jane were married at the time Ken was born and did not sign an acknowledgment?
- What about under UPA 2017?



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
- Under UPA 2017:
 - Is Carol a legal parent to Dylan?
 - Is Barry a legal parent to Dylan ?
 - What should a court consider?
- Under New York law:
 - Is Carol a legal parent to Dylan?
 - 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
- Gina and Ian break up when Fitz is 6 years old



Scenario 3



- Under UPA 2017:
 - 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?
- Under New York law:
 - 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!