

Highlights of the Uniform Parentage Act 2017

I. Introduction:

The purposes of all versions of the Uniform Parentage Act (UPA) are to provide uniform laws for the establishment of parentage and to provide the equal treatment to children of all family units, particularly as the conception of a family unit has become more complex in our society. The 2017 version of the UPA is an update from two prior versions of the UPA from 1973 and 2002.

Currently, 14 states have adopted the 1973 Act (Alabama, California, Colorado, Hawaii, Illinois, Kansas, Minnesota, Montana, New Jersey, North Dakota, Ohio, Rhode Island, Texas, and Washington), while the 2002 Act has been adopted by 11 states (Alabama, Delaware, Illinois, Maine, New Mexico, North Dakota, Oklahoma, Texas, Utah, Washington, Wyoming). Six states have enacted the 2017 UPA (California, Connecticut, Maine, Rhode Island, Vermont, and Washington), while three additional states have introduced legislation to adopt it (Hawaii, Massachusetts, and Pennsylvania).

<https://www.uniformlaws.org/committees/community-home?communitykey=c4f37d2d-4d20-4be0-8256-22dd73af068f>

To date, a total of 22 states have enacted at least one of the versions of the UPA (Alabama, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kansas, Maine, Minnesota, Montana, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, Texas, Utah, Vermont, Washington, and Wyoming) while Massachusetts and Pennsylvania are considering adoption of the 2017 UPA. (*Id.*)

ERICSA passed two resolutions in support of the UPA, in 2000 and in 2018. The most recent resolution, the 2018 resolution, endorsed the final version of the UPA 2017 and encouraged states to adopt it through legislative action.

<https://ericsa.org/wp-content/uploads/2014/11/ERICSA-PL-PROPOSED-RESOLUTION-UPA-2017-4-19-18-T-C-ACCEPTED.pdf>

II. Highlights of the 2017 UPA Updates:

The update to the UPA provides five key changes that are highlighted by the Uniform Law Commission: (1) modifies the language of the UPA for gender neutrality to ensure all family units are treated equally under the law, and provides for a uniform set of parentage laws that complies with recent United States Supreme

Court decisions, including *Obergefell v. Hodges*; (2) establishes a process for recognizing the rights of *de facto* parents; (3) provides detailed processes for establishing parentage in surrogacy matters; (4) expands the rights of families to obtain medical histories of donors in assisted reproduction; and (5) precludes a perpetrator of sexual assault from asserting parental rights to a child born of the assault. (*Id.*)

In addressing *de facto* parentage, the 2017 UPA sets forth seven requirements that must be proven by clear and convincing evidence for a determination of parentage under the Act: (1) the individual resided with the child as a regular member of the child's household for a significant period; (2) the individual engaged in consistent caretaking of the child; (3) the individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation; (4) the individual held out the child as the individual's child; (5) the individual established a bonded and dependent relationship with the child which is parental in nature; (6) another parent of the child fostered or supported the bonded and dependent relationship required under paragraph (5); and (7) continuing the relationship between the individual and the child is in the best interest of the child. (UPA, Section 609[d]). In order to establish parentage in this manner, only the individual claiming to be a *de facto* parent may bring the action, and this action may only be brought while the *de facto* parent and subject child are alive, and the subject child is under 18 years of age. (UPA, Sections 609[a] and [b]).

The 2017 UPA also contains provisions that allow families that have used assisted reproduction to access information on donors' medical histories. Under the newly drafted Article 9, states adopting the UPA would maintain a gamete bank with information on the identity and medical history of donors and provide for a declaration for disclosure to be signed by the donor. (UPA, Section 901). That declaration would either allow for disclosure of the identifying information of the donor to the child at the child's request upon reaching the age of 18, or alternatively decline to allow for such disclosure. This disclosure can be modified at any time by the donor. (UPA, Section 904). Insofar as it concerns information about the identity and medical history of the donor upon the request of the child who has reached eighteen (18) years of age, the state must make a good faith effort to furnish the information requested, including notifying a donor who opted not to disclose his or her identity of this request, and to otherwise provide non-identifying information concerning the donor's medical history. (UPA, Section 905).

The 2017 UPA also precludes a perpetrator of sexual assault from asserting parentage and parental rights of children born of the assault. Under Section 614 of the UPA, if a court determines that a man is precluded from asserting parentage,

either through proof submitted of a conviction for sexual assault against the woman and the child was born within 300 days, or alternatively by proof through clear and convincing evidence that the man sexually assaulted the woman and a child was born within 300 days of that assault, the court shall order that the man is not the father of the child, order any applicable changes to the child's birth record, and interestingly may still order the man to pay birth expenses and/or child support unless it is not in the best interests of the child (UPA, Section 614).

III. Pending Legislation Concerning the 2017 UPA:

The 2017 version of the UPA is currently being considered by legislatures in three states: Massachusetts, Pennsylvania, and Hawaii.

In Massachusetts, Bill H.1714 is awaiting a report from the committee on the Judiciary. After numerous extensions of time for a final report, both the state House and Senate last slated the date of July 22, 2022 for a report on whether the bill should be passed by the legislature. (The 192nd General Court of the Commonwealth of Massachusetts, <https://malegislature.gov/Bills/192/H1714>).

In Pennsylvania, under House Bill Number 115 and House General Assembly Bill Number 243, has been introduced to adopt the 2017 UPA. The current status of the bill is unclear, but the bill was last referred to the House's Judiciary committee in January 2021. (Pennsylvania General Assembly, Bill Information, <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=H&type=B&bn=115>).

In Hawaii, under Hawaii SB2747 the Senate chamber passed the 2017 UPA, but with an amendment that would establish a task force to make recommendations concerning the proposed changes between the existing 1973 version and the 2017 update. Those changes would take effect upon recommendations of the task force. The House chamber of the Hawaii legislature is reviewing the Senate version of the Bill in two committees: the Health, Human Services & Homelessness Committee, and the Judiciary & Hawaiian Affairs Committee. (TrackBill, <https://trackbill.com/bill/hawaii-senate-bill-2747-uniform-parentage-act-task-force-extension/2204236/>).