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Attorney Jessica L. Seman's Testimony on H.745

In 2018, the Vermont Legislature passed the Vermont Parentage Act ("VPA"): a significant piece of legislation that modernized how parentage is established for Vermont's children. To draft the VPA, lawmakers looked to both the Uniform Parentage Act ("UPA") (A uniform law drafted by the National Conference of Commissioners on Uniform State Law) and the Maine Parentage Act, which had recently been enacted by the Maine State Legislature. When Vermont enacted the VPA, it became one of the first states in the nation to adopt a law incorporating the UPA.

The VPA makes it clear that there are many ways to establish parentage, both outside of the court system and by filing an action with the Family Division of the Superior Court. The law is complex and, because of its "newness," Vermont—and other states who have adopted similar iterations of the UPA—have yet to develop a body of case law interpreting it. Nonetheless, the National Conference of Commissioners on Uniform State Law revised and updated the UPA in 2017 to work through some issues with prior iterations of the act.[1] And, since the 2017 revision of the UPA, several states have amended their respective parentage laws to incorporate those revisions.[2]

The Office of Child Support ("OCS") is the largest user of the Family Division. OCS staff analyze all our new cases and file actions under the guidance of the VPA. Since 2018, OCS has filed and/or intervened in thousands of parentage actions of varying complexity. OCS, in collaboration with counsel for GLBTQ Legal Advocates & Defenders ("GLAD"), supports amending the VPA to clarify terminology, streamline processes, and incorporate various revisions from the 2017 UPA, to ensure that our courts can uphold a primary purpose of the law, which is to adjudicate parentage in the best interest of the child.

Some key aspects of H. 745 that merit further discussion:

[1] The VPA is based on a prior version of the UPA (UPA 2002).
[2] For example: the State of Connecticut codified the Connecticut Parentage Act in 2022.

- As currently enacted, 15C V.S.A. § 402 allows only the birth parent's spouse or an alleged genetic parent to challenge a presumption of parentage[3] if the child is more than two years of age. It does not permit a birth parent to challenge a presumption of parentage if the child is more than two years of age except in cases involving significant family violence. This creates difficulties in cases where the birth parent is either married and estranged from their spouse or gives birth to a child within 300 days of their divorce and wants to file an action to establish parentage with the alleged genetic parent when the child is more than two years of age. The proposed amendment to § 402 accomplishes the following goals:
    - Incorporates language from the 2017 revisions to the UPA[4], which expands standing to challenge a presumption of parentage to a birth parent when a child is more than two years of age and there is no established parent-child relationship between the child and the presumed parent.
    - Provides Courts with guidance on how to resolve the adjudication of parentage in cases where a child has more than one presumed parent.
    - Provides guidance for adjudicating a presumed parent's parentage based on a variety of factors, including:
        - How to proceed in cases where the birth parent is the only other person with a claim to parentage of the child, versus cases where another person in addition to the birth parent asserts a claim to parentage (more than two potential parents).
        - How a presumption can be rebutted in cases where the presumed parent is identified as a genetic parent, cases where the presumed parent is not identified as a genetic parent, and cases where a child is born through assisted reproductive technology.
        - Explicitly authorizes the Courts to utilize a best interest of the child analysis when adjudicating presumptions of parentage.
    - Continues to allow a parent to challenge a presumption of parentage if that parent openly held out the child as the presumptive parent's child due to duress, coercion, or threat of harm.

[3] As mentioned above, under the VPA, there are several ways parentage can be legally established. One way that parentage is established is if there is an unrebutted presumption that an individual is a parent. The most common presumption of parentage is the presumption created when an individual is married to the birth parent (the presumption created by marriage). Another presumption is created when a child is born within 300 days of the legal termination of the marriage.

[4] Specifically, the amendment to § 402 is based on Connecticut's equivalent statute. See C.G.S.A. § 46b-489.