



March 21, 2018

The Honorable Dick Sears, Jr.  
Chair, Senate Committee on the Judiciary  
Vermont Senate  
115 State Street  
Montpelier, VT 05641

Re: H. 562 – An act relating to parentage proceedings  
Vermont Parentage Act

Dear Chair Sears, Vice Chair Denning, and Members of the Committee on the Judiciary:

Thank you for the opportunity to submit testimony in support of H. 562 – An act relating to parentage proceedings (“the Vermont Parentage Act”).

I am Polly Crozier, the Senior Staff Attorney at GLBTQ Legal Advocates & Defenders (“GLAD”). As some or all of you may know, GLAD is a New England-based legal organization dedicated to ending discrimination on the basis of sexual orientation, gender identity and expression, and HIV status. GLAD has a particular interest in the protection and recognition of LGBTQ families, particularly ensuring that the lives of children are stable and secure. In Vermont, GLAD has been involved in many family law cases before the Vermont Supreme Court including *Baker v. State*, 170 Vt. 194, 744 A.2d 864 (1999), with Langrock attorneys Susan Murray and Beth Robinson, *Miller-Jenkins v. Miller-Jenkins*, 180 Vt. 441, 912 A.2d 951 (2006) and, most recently, *Sinnott v. Peck*, 2017 Vt. 115, 2017 Vt. LEXIS 133 (2017). In other New England states, GLAD has successfully litigated cases to protect children born into same-sex relationships, including in Massachusetts (*Partanen v. Gallagher*, 475 Mass. 632, 59 N.E.3d 1133 (Mass. 2016); *Hunter v. Rose*, 463 Mass. 488, 975 N.E.2d 857 (Mass. 2012)), New Hampshire (*In re Guardianship of Madelyn B.*, 166 N.H. 453, 98 A.3d 494 (N.H. 2014) and Rhode Island (*In Re Parentage of a Minor Child*, No. 2015-0877-1 (R.I. Fam. Ct. Oct. 26, 2016), <https://www.glad.org/wp-content/uploads/2017/01/in-re-parentage-minor->

decision-10-26-16.pdf). Additionally, GLAD has successfully worked in coalition on legislation promoting the protection of children regardless of the circumstances of their birth, including children born through assisted reproduction, to non-marital parents, and to LGBTQ parents. GLAD Civil Rights Project Director Mary L. Bonauto served on the Working Group of the Family Law Advisory Commission that drafted the statute that became the Maine Parentage Act. 19-A M.R.S. §1831 et seq. I currently serve on the Uniform Parentage Act Enactment Committee, and I have been involved in collaborative efforts to update Massachusetts law to protect children born from assisted reproduction. Prior to GLAD, I was a family law practitioner in Massachusetts, litigating complex parentage matters and helping to secure families created through assisted reproduction. In sum, GLAD is deeply engaged in and committed to protecting and securing the parentage of children, particularly of LGBTQ families.

Vermont was an early leader on the recognition and protection of LGBTQ families. Vermont is rightly celebrated for leading the country in allowing second-parent adoption statewide by same-sex parents. See *In re B.L.V.B.*, 160 Vt. 368, 628 A.2d 1271 (1993); 15A V.S.A. § 1-102. The same is true for Vermont's leadership on relationship recognition, both judicially and legislatively, with the pioneering development of civil unions that also laid the groundwork for nationwide marriage equality. See *Baker v. State*, 170 Vt. 194, 744 A.2d 864 (1999). In *Miller-Jenkins*, Vermont recognized and protected the rights of a child born into a civil union to maintain her parent-child relationship with her non-biological parent. See 180 Vt. at 465.

Even with these developments, the rapid clip of changes in society and family creation have outpaced Vermont law.<sup>1</sup> As a result, there exist substantial holes in protections for children, particularly children of LGBTQ families. For example, and as evidenced by the recent case *Sinnott v. Peck*, 2017 Vt. 115, 2017 Vt. LEXIS 133 (2017), current Vermont law leaves unprotected certain children born into non-marital families. So for example, even

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<sup>1</sup> According to a 2017 Gallup poll, Vermont's LGBTQ population is 5.3%, the highest of any state in the United States. <http://news.gallup.com/poll/203513/vermont-leads-states-lgbt-identification.aspx>

though the Vermont Supreme Court allowed Ms. Sinnott to proceed with a parentage action to secure her relationship with the child jointly brought into the family through adoption, she is not able to secure her relationship with the child adopted previously by her former partner and who she had also cared for as a parent. In *Sinnott* and in many other cases through the years, Vermont courts have called for comprehensive legislation to provide clarity for the courts and families on who can be a parent and who can access the courts to resolve disputes regarding the care and custody of children.

The Vermont Legislature is responding to the needs of families and the call from the court. By establishing a Parentage Study Committee, the Legislature established a comprehensive, transparent and inclusive process to study and recommend updates to Vermont's parentage laws.<sup>2</sup> The Parentage Study Committee was comprised of a broad cross-section of key constituencies that brought various lenses and expertise to deal with families as they are now and to update the law. This collaborative and thoughtful process has laid the groundwork for crucial legislation that addresses the needs of Vermonters for clarity, accessibility and stability in their family relationships.

Substantively, the proposed Vermont Parentage Act has a clear structure that is laid out in 8 Chapters that address the following topics, broadly stated:

1. General provisions, which includes scope, jurisdiction and other procedural issues
2. Establishment of Parentage, which provides an overview of how a person can establish parentage either through birth, adoption, acknowledgment, presumption, de facto parentage, or consent to assisted reproduction or to a gestational carrier agreement
3. Voluntary Acknowledgement of Parentage, which is parentage by acknowledgment
4. Presumption of Parentage, which includes a marital presumption of parentage
5. De Facto Parentage
6. Genetic Parentage
7. Parentage by Assisted Reproduction
8. Parentage by Gestational Carrier Agreement

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<sup>2</sup> Act 31, An Act Relating to Modernizing Vermont's Parentage Laws.

Through these chapters, the VPA provides a clear and comprehensive framework for determining legal parentage that is accessible and consistent. The proposed VPA also addresses the realities of Vermonters today, particularly the increased use of assisted reproduction and gestational surrogacy to create families, and ensures equality for all children and families by not discriminating on the basis of marital status or gender. The Vermont Parentage Act would clarify who can be established as a parent in Vermont and how to establish that legal parentage. The proposed statutory scheme does not disturb the established law regarding parental rights and responsibilities; rather, Vermont courts maintain the discretion to assess the best interests of children and parental rights and responsibilities.

I write to highlight certain provisions of H. 562 that particularly serve to increase the stability, security and well-being of children born to LGBTQ families.

- Chapter 2, entitled “Establishment of Parentage,” clearly lays out categories of parents and who has access to courts to establish parentage. Section 202 affirmatively pronounces as the public policy of Vermont that “[e]very child has the same rights under law as any other child without regard to the marital status or gender of the parents or the circumstances of the child’s birth.” Further, this chapter (§206) provides that, in certain limited instances, and as determined by the court, children can have more than two parents.
- Chapter 3, entitled “Voluntary Acknowledgment of Parentage,” ensures that parents who are LGBTQ and who conceive through assisted reproduction have equal access to the administrative route to parentage that has long been available and used by different-sex non-marital couples. VAPs require filling out a form and establish parentage of children by agreement and outside the court system, and allowing equal access to this method of establishing parentage will provide greater stability for children and reduce litigation in the courts.
- Chapter 4, entitled “Presumption of Parentage,” clarifies who qualifies as a presumed parent. Section 401 ensures protection of and recognition for the children of non-marital couples who have jointly planned for and parented those children, bringing non-marital children on par with children of married couples.

- Chapter 5, entitled “De Facto Parentage,” ensures that a child can maintain a relationship with a person who has functioned as their parent. These provisions balance the needs of children and adults, by providing safeguards for existing legal parents by imposing heightened standing and proof requirements for the de facto parent to meet, but also allowing courts to protect children from the termination of an important adult relationship when those hurdles are met.
- Chapter 7, entitled “Parentage by Assisted Reproduction,” clarifies how to establish parentage with the use of assisted reproduction, which is conception without sexual intercourse. This means of conception is used mostly by *non*-LGBTQ people and also many LGBTQ people. Vermont is one of the few states without any statutory guidance on parentage by assisted reproduction, and it is critically important to spell out parentage for these children.
- Chapter 8, entitled “Parentage by Gestational Carrier Agreement,” provides for a process and protections for people establishing parentage through a gestational carrier agreement, which is a means of family creation used by many LGBTQ people. Clear statutory guidance for gestational carrier agreements protects all parties involved and creates consistency throughout Vermont courts.

GLAD enthusiastically supports the proposed Vermont Parentage Act and believes that this legislation will promote clarity, efficiency and fairness in Vermont courts and security for Vermont children and families. Thank you for the opportunity to provide testimony, and please do not hesitate to contact me with questions or for additional information.

Respectfully submitted,



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