

March 7, 2016

Hi Courtney,

Nice work . . . and a lot of work . . . on the amendments to the Parentage Act.

After my "First Reading," I'll offer some comments for your consideration:

1. Section 102 – Do we need a definition of "alleged mother" (to be parallel with the definition of "alleged father"?)
2. Section 105 – Do most states have a generic "Protection of Participants" law to which reference can be made? Or are such laws part of other specific statutes limited to those areas – such as statutes for divorce or orders of protection. If states do not have a suitable law to which to make reference, do you want to include some optional language to handle the issue?
3. Sections 201; 502 & 608 – I agree with your idea of consolidation of similar sections and subsections – saves words and makes the act easier to read and follow.
4. Section 204(c), Alt. A – The phrase about a presumption being "not necessarily rebutted" is a rather odd one for a statute (and seems imprecise).
5. Sections 301 - 304; 306 - 313 – I have not thought this through from all possible angles, but do we need (as is currently drafted) sections and articles regarding acknowledgment and denial of "paternity" – as opposed to acknowledgment and denial of "parentage"? (It seems to me several of the sections could be reworked to focus on "parentage.")
6. Article 4 – Similar to comment to # 5 – To the extent registries are used to seek notification, I assume it mostly would be by men . . . But registries also could be used by women who agree that their partner will carry the child (and, e.g., the partner carrying the child takes off to places unknown during the pregnancy).
7. Section 502(b); 503(a)(2); 503(b)(2), (4) (9) – Should some of the factors for deciding whether to order genetic testing be phrased in terms of the "parent's" – rather than the "father's" -- conduct . E.g., length of time of assuming role of parent.
8. Section 505 – I am not sure if the Style Committee will like the verb "challenge" instead of "rebut" . . . But we'll see. ("Contest" is another possible verb.)
9. Section 507 – I lean toward keeping the section about additional genetic testing. Some labs are sloppy or don't use appropriate data bases. I'd let parties obtain a second test if they want one (and are willing to pay for it).

10. Section 606 – I agree that the wording of 606 – including the use of the word "Limitation" in the title of the section -- is awkward (and somewhat confusing).
11. Section 607(b) – Regarding the basis for challenging the parent-child relationship pertaining the parties not engaging in sexual intercourse during the probable time of conception – that standard does not work very well if the couple is of the same sex.
12. Section 611 – Why is the list of actions that can be taken before birth being dropped (service of process, discovery, genetic testing)?
13. Section 637(c) – Should the reference to providing for support of the child be to "one or both spouses" (rather than "by one spouse")?
14. Section 705 – A hypothetical regarding limitation on a spouse's dispute of parentage: Assume a single woman is pregnant via assisted reproduction. After the pregnancy occurs, she enters into a relationship and marries. The new partner is quite willing to be a stepparent, but does not wish to be a "full" parent. Is that new spouse going to be precluded from challenging parentage unless the new spouse commences an action within two years?
15. Articles 7 & 8 – To what degree have we had input from the practitioners involved in assisted reproduction and surrogacy? I imagine they may have some strong views on the topic and could cause problems if they felt they were not adequately heard.
16. Section 801. From my view, giving surrogate carriers legal representation is a good thing, but not always a necessary thing – including, for example, for a woman who has been a surrogate before . . . or who is intelligent / mature / knows what's going on. I (probably) would be comfortable with a provision that just makes representation available (at no cost to the carrier), but does not require representation.
17. Section 802(c) (1) – I assume the reference should be to the carrier's spouse – not husband.
18. Section 802(c), (d) – Should these subsections be consolidated? (Both deal with what is required for enforcement of a surrogacy agreement.)
19. Section 806 – The reference to the UCCJEA does not seem appropriate since the UCCJEA does not apply until a child is born.
20. Section 811(a) & 812(a) – It seems somewhat inconsistent to use the verb "may" regarding commencing a validation proceeding, but then say the agreement is not enforceable if the agreement is not judicially validated.
21. Section 812 – Reasonable arguments can be made that judicial validation should not be required (in all cases) in order for an agreement to be valid. Do you know if this

provision was part of the reason the surrogacy provisions of the current Parentage Act were not widely adopted?

Again . . . Good work!

I look forward to seeing you in Seattle.

Jeff

Copy: Parentage Act Drafting Committee