



The Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness

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June 12, 2024

Hon. Members of the Pennsylvania House of Representatives
Main Capitol Building
501 N 3rd St
Harrisburg, PA 17120

RE: Support for House Bill (“HB”) 350 (Implementing the Uniform Parentage Act)

Dear Honorable Members of the House of Representatives:

On behalf of the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness (the “Interbranch Commission”), we write to convey our support for HB 350. This legislation would codify the provisions of the Uniform Parentage Act (2017), implementing a uniform legal framework for determining parent-child relationships that reflects best practices and various societal and technological developments. The bill was introduced into the House Committee on Children and Youth on March 13, 2023, and was voted out of committee on June 5, 2024. We respectfully urge you to vote in favor of this legislation on the House floor and to take all appropriate measures to facilitate its passage.

A. Background

The Interbranch Commission was established in 2005 by the three branches of Pennsylvania government. The purpose of the Interbranch Commission is to promote equal application of the law. We fulfill that purpose by: (1) implementing the findings and recommendations of the Final Report published by the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System in 2003 (the “Final Report”);¹ (2) investigating new initiatives that may not have been addressed by the Supreme Court Committee; (3) suggesting ways to reduce bias in the legal profession and in all three branches of government; and (4) increasing public confidence in Pennsylvania government.

To promote equal application of the law in the context of parental rights, the Interbranch Commission conducted a survey of Pennsylvania’s judicial districts in 2014 to determine the extent to which they had implemented procedures specific to second-parent adoptions. Survey results indicated that some districts neglected to schedule hearings on petitions for these adoptions, thus preventing unmarried parents from securing parental rights for both partners. This problem disproportionately affected same-sex couples who, at that time, were not permitted to legally marry. Later that year, the Interbranch Commission submitted [comments](#) to the Supreme Court of Pennsylvania’s Orphans’ Court Procedural Rules Committee in support of standardized procedures for second-parent adoptions. Our comments

¹ See Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, available at <https://pa-interbranchcommission.com/wp-content/uploads/2022/01/FinalReport.pdf>.

were informed by the survey results and were designed to extend to LGBTQ+ couples the same parental rights afforded to other Pennsylvanians.

Most recently and pertinent to this issue, the Interbranch Commission joined the PA Chapter of the American Academy of Matrimonial Lawyers and the Academy of Adoption & Assisted Reproduction Attorneys (together, “amici”) in filing an *amicus* brief with the Supreme Court of Pennsylvania in the case of *Glover v. Junior*. The case involves married women who decided to pursue fertility treatment in the hopes of starting a family. By all signs, the couple intended to co-parent, and the non-biological partner participated extensively in each phase of the process and intended to adopt the child after birth. Once the couple began divorce proceedings, the biological parent sought to preclude the non-biological parent from adopting the child as originally planned.

In the brief, submitted in May 2024, amici urged the Court to adopt the doctrine of “intent-based parentage” in the context of a child conceived through assistive reproductive technology (“ART”). We collectively explained that the doctrine focuses on the actions and intentions of the individual seeking to establish parentage, rather than one’s marital status or genetic connection to the child. As the availability of ART expands, the doctrine ensures that families conceived through ART are placed on an equal footing with families who conceive unassisted. HB 350, which substantially incorporates this framework, would similarly promote equal access to parental rights.

B. Support for HB 350 (Printer’s No. 3255)

HB 350 would incorporate the provisions of the most recent iteration of the Uniform Parentage Act (“UPA”). The UPA was originally drafted in 1973 by the Uniform Law Commission (“ULC”) to provide states with a standardized methodology for establishing a child’s legal parentage. Among other benefits, a uniform methodology eliminates legal gaps and uncertainties faced by individuals undertaking the important decision of starting a family and family court judges called upon to rule in these cases.

Since 1973, the ULC has updated the UPA on several occasions to reflect developments in law, society, and technology. To modernize the UPA’s provisions in 2017, the ULC established a non-partisan drafting committee comprised of legislators, judges, family law practitioners, and family law professors from across the United States reflecting significant political diversity.² A large group of observers, including the American Academy of Matrimonial Lawyers, the American Bar Association, and the National Center for State Courts, also participated in the drafting process.³ The result was a carefully crafted piece of legislation designed to offer clarity and provide key updates in five major areas of parentage law. We address these five topics in turn.

² Jamie D. Pedersen, *The New Uniform Parentage Act of 2017*, A.B.A. (Apr. 2018) [hereinafter *The New Uniform Parentage Act of 2017*], https://www.americanbar.org/groups/family_law/publications/family-advocate/2018/spring/4spring2018-pedersen/.

³ *Id.*

1. Inclusion of Gender-Neutral Terms

UPA (2017), as incorporated by HB 350, ensures the equal treatment of children born to same-sex couples. Whereas the 1973 and 2002 versions of UPA contained gender-*specific* terms that excluded the growing number of families formed by same-sex partners, UPA (2017) includes gender-*neutral* terms that permit the equal application of the Act’s provisions to all couples.

This welcome change is important for three reasons. First, it lends stability to the lives of children of LGBTQ+ families, which exist in communities across the Commonwealth. At present, at least 5.8% of Pennsylvanians identify as LGBTQ+,⁴ and 27% of those individuals have children.⁵ National data also indicates that LGBTQ+ individuals plan to welcome children into their families with the aid of ART.⁶ By updating Pennsylvania law to include gender-neutral terms in the contexts of ART and related areas of parentage law, HB 350 places LGBTQ+ couples and their children on equal footing with non-LGBTQ+ couples and their children.

By providing equal access to parental rights for LGBTQ+ Pennsylvanians, HB 350 also ensures compliance with the United States Constitution. In 2015, the U.S. Supreme Court held in *Obergefell v. Hodges* that laws barring marriage between two people of the same sex are unconstitutional.⁷ In 2017, the Court expanded on its ruling in *Obergefell*, holding in *Pavan v. Smith* that a state may not deny married same-sex couples recognition on their children’s birth certificates.⁸ As a consequence of *Obergefell* and *Pavan*, “parentage laws that treat same-sex couples differently from different-sex couples are likely unconstitutional.”⁹ In light of the constitutional requirement prescribing equal access to legal parentage, “eighteen states and the District of Columbia have expressly adopted or updated their . . . statutes” to protect LGBTQ+ parents. By passing HB 350, the General Assembly allows Pennsylvania to join these states in guaranteeing same-sex spouses the same constitutionally required benefits afforded couples in opposite-sex marriages.

Revising Pennsylvania parentage law so that it includes gender-neutral terms would also have immediate, practical effects. If, for example, “an unmarried lesbian couple has a child through assisted reproduction . . . both women [would] be legal parents of the child.”¹⁰ Additionally, “the women [would] be able to sign an acknowledgment of parentage,” which, under federal law, “must be treated as a judgment . . . and given full faith and credit in other states.”¹¹ The clarity and predictability of these outcomes will likely obviate the need to litigate the legal questions presented in *Glover v. Junior*. Inserting gender-neutral terms into Pennsylvania parentage law not only ensures equal application of the law for all Pennsylvanians; it also promotes judicial economy, sparing family court judges the difficulty of resolving important decisions unaddressed by existing statute.

⁴ Isaac Avilucea et al., *Charted: Pennsylvania's LGBT population*, Axios Philadelphia (Feb. 27, 2024), <https://www.axios.com/local/philadelphia/2024/02/27/lgbtq-population-pennsylvania-chart>.

⁵ UCLA Sch. of L. Williams Inst., *LGBT Proportion of Population: Pennsylvania* (2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=42#density>.

⁶ Goldberg et al., *Research Report on LGB-Parent Families*, UCLA Sch. of L. Williams Inst. 1, 5 (July 2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Parent-Families-Jul-2014.pdf>.

⁷ 135 S. Ct. 2584 (2015).

⁸ 137 S. Ct. 2075, 2078-79 (2017).

⁹ *The New Uniform Parentage Act of 2017*, supra note 2.

¹⁰ *The New Uniform Parentage Act of 2017*, supra note 2.

¹¹ *Id.*

2. Establishment of “*De Facto*” and “Presumed” Parents as Forms of Legal Parentage

Under existing Pennsylvania law, “parentage . . . may be proven in only four ways: biology, adoption, a presumption attendant to marriage, or ‘legal parentage by contract’ – where a child is born with the assistance of a donor who relinquishes parental rights and/or a non-biologically related person who assumes legal parentage.”¹² These finite number of pathways do not account for the other ways in which individuals may seek to establish parentage in the 21st century. If, for instance, a married couple decides to conceive a child via ART but fails to execute a contract agreeing to co-parent the child together, a family court judge could issue a ruling inadvertently voiding the non-biological parent’s rights and attendant support obligations if the couple eventually separates. While the Supreme Court of Pennsylvania has explained that “nothing . . . absolutely foreclose[s] the possibility of attaining recognition as a legal parent through other means,” the law remains unclear on what those means may permissibly entail.¹³

By incorporating the provisions of UPA (2017) into Pennsylvania law, HB 350 fills this gap, crafting workable standards designed to introduce stability and predictability into parentage law. First, the bill creates a “presumption of parentage” standard, which can be satisfied, among other ways, by demonstrating that while the child was a minor, the individual resided in the same household as the child and either openly held the child out as that individual’s child or provided support for the child. Therefore, in addition to presumptively establishing a parent-child relationship through more traditional means (e.g., by demonstrating that both individuals were married at the time the child was born), this provision extends parental rights to individuals who have functioned as parents to children but may be unconnected to those children through biology or marriage.

HB 350 also incorporates a UPA (2017) provision designed to establish a “*de facto* parent” as a child’s legal parent. Pursuant to proposed Chapter 96 of Title 23, an individual may file a pleading with the court alleging facts that support his or her claim to be a parent of the child. As part of that pleading, the individual must demonstrate by clear and convincing evidence that the individual resided with the child for a significant period of time, engaged in consistent caretaking of the child, undertook full and permanent parental responsibilities, held out the child as that person’s child, and established a bonded relationship with the child that is “parental in nature.”

The *de facto* parentage standard establishes a viable test that acknowledges the rights of those who have manifested an intent to serve as a child’s parent while still ensuring, via a heightened evidentiary standard and the enumerated factors above, that parental rights may not be conferred on just anyone. Codifying this standard into Pennsylvania law accords with the fact that “[m]ost states recognize and extend at least some parental rights to people who have functioned as parents to children” even when they lack genetic or marriage-based ties to those children. Passing HB 350 thus eschews inflexible determinations of parentage in favor of a fact-based and context-driven standard that recognizes the efforts put into childrearing by nontraditional families, for whom a rigid “reliance on biology, adoption and contracts is insufficient.”¹⁴

¹² *C.G. v. J.H.*, 193 A.3d at 911 (Pa. 2018) (Dougherty, *J.*, concurring).

¹³ *Id.* at 904 n.11.

¹⁴ *Id.* at 913-14.

3. Precluding Perpetrator of Sexual Assault from Establishing Legal Parentage

HB 350 would incorporate into Pennsylvania law a provision empowering individuals to preclude their sexual assailants from establishing a parent-child relationship with the children to whom those individuals gave birth. This statutory change tracks advancements in federal law. In 2015, the federal government enacted the Rape Survivor Child Custody Act, codified at 34 U.S.C. §§ 21301-08.¹⁵ This Act incentivized states to enact “a law that allows the mother of any child that was conceived by rape to seek court-ordered termination of the parental rights of her rapist with regard to that child, which the court [must] grant upon clear and convincing evidence of [the] rape.”¹⁶

HB 350 provides language to effectuate this incentive via proposed subparagraph § 9614 of Title 23. This provision states that if an individual’s pregnancy is the result of a sexual assault, that individual may seek to preclude the alleged or adjudged perpetrator of the assault from establishing parentage of the child. The individual may do so by proving in a proceeding that the individual was convicted of the charge or by demonstrating, by clear and convincing evidence, that the alleged perpetrator committed the assault against the individual. If the court determines that the allegation is legitimate, the court must find that the perpetrator is not a parent of the child and may also require that the perpetrator pay child support, birth-related costs, or both.

Permitting individuals who have suffered egregious violations of their bodily autonomy to bar their assailants from establishing legal ties to the resulting child is a common-sense outcome that deserves explicit codification in Pennsylvania law. Proposed subparagraph § 9614 serves the Commonwealth’s public policy goals of maximizing the predictability of legal outcomes, permitting individuals to protect and define the scope of their families as they see fit, and holding perpetrators of sexual assault to account for their actions.

4. Modernizing Surrogacy Provisions

HB 350 would codify technological and other advancements in surrogacy, an arrangement through which an individual agrees to bear a child on behalf of another person who will become the child's parent following birth. Proposed Chapter 98 within the bill “permits enforceable agreements between intended parents and [individuals] acting as . . . surrogates, with various safeguards for all involved, including a requirement that the parties have independent legal counsel.”¹⁷

To be enforceable, the surrogacy agreement must be in a record signed by each party (e.g., by one or more of the intended parents and the surrogate) and validated by the court. The agreement must also contain certain provisions designed to provide clarity and to match the parties’ expectations, such as an acknowledgment on the part of the surrogate that the surrogate has no claim to parentage of the child conceived. Should any party wish to terminate the surrogacy agreement, HB 350 provides an off-ramp, allowing them to provide notice of termination to all other parties at any time before embryo transfer.

Together, the legislation’s surrogacy provisions honor legal, technological, and familial developments that have occurred across the country, permitting individuals to establish legal parentage absent a genetic or gestational connection to the resulting child so long as they comply with standardized,

¹⁵ *The New Uniform Parentage Act of 2017*, supra note 2.

¹⁶ 34 U.S.C. § 21303 (2015).

¹⁷ *The New Uniform Parentage Act of 2017*, supra note 2.

uniform requirements. This statutory arrangement goes hand-in-hand with the inclusion of the gender-neutral terms described above, extending equal protection to same-sex couples reliant on such procedures to begin their families.

5. Setting Forth Rights of Children Conceived through ART

According to data collected by the Centers for Disease Control and Prevention in 2021, “approximately 2.3%¹⁸ of all infants born in the United States every year are conceived using ART,” and “[d]ata suggest that this percentage continues to increase.”¹⁹ As this childbirth technique becomes increasingly common, it is important that state law keeps pace, setting forth clear expectations and mirroring developments related to the practice. HB 350 includes such provisions, addressing the right of children conceived through ART to access the medical and identifying information of their gamete providers.

Specifically, the bill requires gamete banks and fertility clinics to make a “good faith effort” to provide the child with the identifying information of the donor (to include their phone number and email and physical addresses), unless the donor has signed a declaration indicating a wish to remain anonymous. Such banks and clinics are also required to collect donors’ non-identifying medical history information at the time of the gamete donation and to make a good faith effort to provide children access to that information upon their request.

Taken together, these provisions create a sensible balance. They acknowledge the foreseeable inquisitive inclinations of children interested in learning more about the identity and medical history of their gamete donors, just as adopted children often seek to access information about their birth parents. At the same time, they also honor those donors’ privacy protections if they elect to invoke them. In addition, by necessitating the collection and provision of donors’ non-identifying medical information to children conceived via ART, HB 350 allows the children of those donors to plan for their future in a manner conducive to their health and well-being. In so doing, the bill promotes the vitality of our Commonwealth’s future.

¹⁸ Ctrs. for Disease Control and Prevention, *ART Success Rates* (last updated Jan. 8, 2024), <https://www.cdc.gov/art/artdata/index.html#print>.

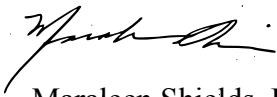
¹⁹ *The New Uniform Parentage Act of 2017*, supra note 2.

C. Conclusion

For these reasons, we urge you to vote in favor of HB 350. By passing this bill, the General Assembly will provide courts, lawyers, and families with clarity and guidance on how to establish legal parentage, affording all family types in Pennsylvania the dignity that parental status confers and providing legal security and protections to the children entrusted to their care.

If you have any questions concerning this matter, we would be happy to discuss them with you at your convenience.

Respectfully,



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Executive Director



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Staff Attorney

cc: The Hon. Benjamin V. Sanchez, Prime Sponsor, HB 350
The Hon. Dan L. Miller, Sponsor, HB 350, and House Majority Whip
The Hon. Joanna McClinton, Speaker, House of Representatives
The Hon. Bryan Cutler, Minority Leader, House of Representatives
Members of the General Assembly's LGBTQ+ Equality Caucus
Pennsylvania Interbranch Commission Members
Interbranch Commission's LGBTQ+ Rights Committee
Interbranch Commission's Domestic Violence and Sexual Assault Victims/Survivors Committee