

09 HB 1258: CONCERNING THE REPEAL AND REENACTMENT OF THE "UNIFORM PARENTAGE ACT"

Bill Summary

Colorado Commission on Uniform State Laws. Repeals and reenacts the "Uniform Parentage Act", which is contained in the "Colorado Children's Code", to update the statutes on establishing legal parentage of children to reflect modern technologies used for conception and for genetic testing, as recommended by the national conference of commissioners on uniform state laws.

Defines how a mother-child relationship and a father-child relationship are established. Specifies that a knowing and voluntary acknowledgment of paternity is the equivalent of a judgment of paternity for enforcement purposes. States that such an acknowledgment is effective so long as there is not another presumed, acknowledged, or adjudicated father. Allows for rescission of acknowledgment of paternity if a proceeding is filed within 2 years of the acknowledgement. Allows for a counterpart denial of paternity by a presumed father that has the effect of a judgment of nonpaternity if another man has acknowledged paternity or is adjudicated to be the natural father. Also allows for the filing of a denial of paternity, which may be rescinded or challenged. Makes a reasonable probability of sexual contact between the putative father and the mother a sufficient basis to initiate a proceeding for genetic testing. Allows a putative father to initiate the proceeding to obtain the tests to prove that he is not the genetic father. Sets forth standards for genetic testing.

Makes the standard for presumption of paternity for genetic testing of a presumed father 99% probability of paternity based on appropriate calculations of the "combined paternity index". Provides that the presumption is rebuttable by further genetic evidence that excludes the putative father or that identifies another man as the genetic father. In a paternity proceeding, rebuttal of a presumption of paternity, acknowledged paternity, or prior adjudicated paternity, requires genetic information that, within the accepted probabilities, excludes the presumed father from paternity or establishes another man as the father of the child.

States that jurisdiction to bring an action is governed by the "Uniform Interstate Family Support Act". States that if there is no presumed, acknowledged, or adjudicated father, an action to determine paternity may be brought at any time. If there is a presumed father, establishes a statute of limitations for initiating a paternity action of 2 years following the birth of the child. Allows an action to disprove the presumed father's paternity to be brought at any time if the presumed father and mother did not cohabit or have sexual intercourse during the time of conception and the presumed father did not treat the child as his own. Authorizes a court to deny a motion for genetic testing. Allows a refusal to submit to genetic testing to ripen into an adjudication of paternity for the putative father who refuses. Specifies that only genetic evidence overcomes a presumption of paternity.

States that no child (as a party) is bound by an adjudication of paternity unless the adjudication of paternity was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown.

Provides for determining paternity when there is assisted reproduction. States that if a couple consents to any sort of assisted reproduction and the woman gives birth to the resulting child, they are the legal parents of the child. Specifies that the donor of either sperm or eggs used in an assisted reproduction may not be a legal parent under any circumstances.

States that a gestational agreement may be entered into between a woman and the intended parents obligating that woman to carry a child for the intended parents when the conception is accomplished with assisted reproduction. Specifies that the woman who carries the child to birth pursuant to a gestational agreement is not the legal mother of that child. Provides that, if the woman who carries the child to birth is married, her husband has no parental rights or obligation with respect to the child and that only the intended parents are the legal parents of the child. Specifies that a gestational agreement must be validated by a court before it is enforceable. Directs the court to verify the birth mother's qualifications to carry the child and the intended parents' qualifications to be parents. Permits the birth mother to be compensated. Allows any party to the agreement to terminate the agreement under certain conditions.

Specific Provisions of HB 1286:

19-4-201. Establishment of parent-child relationship.

- (2)The father-child relationship is established between a man and a child by:
- (a) an un rebutted presumption of the man's paternity of the child under section 19-4-204;
 - (b) an effective acknowledgment of paternity by the man under part 3 of this article, unless the acknowledgment has been rescinded or successfully challenged;
 - (c) an adjudication of the man's paternity;
 - (d) adoption of the child by the man;
 - (e) the man's having consented to assisted reproduction by a woman under part 7 of this article which resulted in the birth of the child; or
 - (f) an adjudication confirming the man as a parent of a child born to a gestational mother if the agreement was validated under part 8 of this article or is enforceable under other law.

19-4-204. Presumption of paternity.

- (1) A man is presumed to be the father of a child if:
- (a) he and the mother of the child are married to each other and the child is born during the marriage;
 - (b) he and the mother of the child were married to each other and the child is born within three hundred days after the marriage is terminated by death, annulment, declaration of

invalidity of marriage, dissolution of marriage or divorce, or after a decree of legal separation is entered by a court;

- (c) before the birth of the child, he and the mother of the child have married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred days after its termination by death, annulment, declaration of invalidity of marriage, dissolution of marriage or divorce, or after a decree of legal separation;
- (d) after the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child and:
 - (i) the assertion is in a record filed with the court or registrar of vital statistics; or
 - (ii) with his consent, he is named as the child's father on the child's birth certificate; or
 - (iii) he is obligated to support the child under a written voluntary promise or by court order or by an administrative order issued pursuant to section 26-13.5-110, c.r.s.;or
- (e) for the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.

(2) A presumption of paternity established under this section may be rebutted only by an adjudication under part 6 of this article.

19-4-607. Limitation - child having presumed father.

(1) Except as otherwise provided in subsection (2) of this section, a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father shall be commenced not later than two years after the birth of the child.

(2) A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the court determines that:

- (a) the presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and
- (b) the presumed father never openly held out the child as his own.

19-4-608. Authority to deny motion for genetic testing.

(1) In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the court may deny a motion seeking an order for genetic testing of the mother, the child, and the presumed or acknowledged father if the court determines that:

- (a) the conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and
- (b) it would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father.

(2) In determining whether to deny a motion seeking an order for genetic testing under this section, the court shall consider the best interests of the child, including the following factors:

- (a) the length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;
- (b) the length of time during which the presumed or acknowledged father has assumed the role of father of the child;

- (c) the facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity;
 - (d) the nature of the relationship between the child and the presumed or acknowledged father;
 - (e) the age of the child;
 - (f) the harm that may result to the child if presumed or acknowledged paternity is successfully disproved;
 - (g) the nature of the relationship between the child and any alleged father;
 - (h) the extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and
 - (i) other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.
- (3) In a proceeding involving the application of this section, a minor or incapacitated child shall be represented by a guardian ad litem.
- (4) Denial of a motion seeking an order for genetic testing shall be based on clear and convincing evidence.
- (5) if the court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

19-4-609. Limitation - child having acknowledged or adjudicated father.

- (1) If a child has an acknowledged father, a signatory to the acknowledgment of paternity or denial of paternity may commence a proceeding seeking to rescind the acknowledgement or denial or challenge the paternity of the child only within the time allowed under section 19-4-307 or 19-4-308.
- (2) If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is neither a signatory to the acknowledgment of paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child shall commence a proceeding not later than two years after the effective date of the acknowledgment or adjudication.
- (3) A proceeding under this section is subject to the application of the principles of estoppel established in section 19-4-608.

19-4-631. Rules for adjudication of paternity.

- (1) The court shall apply the following rules to adjudicate the paternity of a child:
- (a) the paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.
 - (b) unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under section 19-4-505 shall be adjudicated the father of the child.
 - (c) if the court finds that genetic testing under section 19-4-505 neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity.

(d) unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall be adjudicated not to be the father of the child.

Current Case Law in Colorado

N.A.H. v. S.L.S., 9 P.3d 354 (Colo. 2000).

Because a child can have only one legal father, the court must resolve the competing presumptions afforded these two men and adjudicate paternity for the child. Colorado's UPA specifies that in the face of conflicting presumptions, courts should look to the weight of policy and logic in settling the conflict and adjudicating paternity. Accordingly, we determine that a question of paternity is not automatically resolved by biological testing, but rather calls upon the courts to consider the best interests of the child in analyzing policy and logic as directed by the statute.

We hold that the best interests of the child must be of paramount concern throughout a paternity proceeding, and therefore, must be explicitly considered as a part of the policy and logic analysis that is used to resolve competing presumptions of fatherhood.

Parenthood in our complex society comprises much more than biological ties, and litigants increasingly are asking courts to address issues that involve delicate balances between traditional expectations and current realities.

Legal fatherhood imposes significant obligations as well, including the obligation of support and the obligation to teach moral standards, religious beliefs, and good citizenship.

Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

The best interests of the child, rather than biological ties, should control custody determinations, and that biological ties create only a rebuttable presumption of a right to custody.