



**TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS
IN SUPPORT OF S. 0789**

Rhode Island Senate Committee on Judiciary
April 25, 2019

Dear Senator Lynch Prata, Chairperson, Senator Archambault, Vice Chairperson, Senator Metts, Secretary, and Members of the Senate Committee on Judiciary,

Thank you for the opportunity to submit testimony in support of S. 0789 – An act relating to domestic relations – Uniform Parentage Act (“Rhode Island Parentage Act”). This Act is a common-sense update to Rhode Island’s parentage law that promotes the security of all children. By articulating who can be a parent in Rhode Island and how to establish parentage, this Act ensures that Rhode Island parentage law recognizes, respects and protects all of the diverse families that enrich this state.

As 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 and long history in the protection and recognition of LGBTQ families, particularly ensuring that the lives of children are stable and secure. In Rhode Island, GLAD has been involved in groundbreaking family law cases including *Rubano v. DiCenzo*, 759 A.2d 959 (R.I. 2000) and *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>. 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 Vermont (*Baker v. State*, 170 Vt. 194, 744 A.2d 864 (Vt. 1999); *Miller-Jenkins v. Miller-Jenkins*, 180 Vt. 441, 912 A.2d 951 (Vt. 2006); *Sinnott v. Peck*, 2017 Vt. 115, 2017 Vt. LEXIS 133 (Vt. 2017)).

Beyond the courtroom, GLAD has successfully worked in coalition on legislation promoting the security 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. Enacted in 2015, the Maine Parentage Act provided a comprehensive update to Maine’s parentage statutes. In the 2017-2018 legislative session, I collaborated with stakeholders in Vermont to pass the Vermont Parentage Act (“VPA”).¹ Effective July 2018, the VPA modernized decades-old statutes and added to Vermont law critical advances designed to protect children, including access to parentage through assisted reproduction, access to parentage through surrogacy, and access to parentage through a gender-neutral voluntary acknowledgment of parentage. Currently, I serve on the Uniform Law Commission’s national Uniform Parentage Act Enactment Committee, and I am actively involved in legislative efforts to update the parentage laws of Massachusetts and Connecticut. In sum, GLAD is deeply engaged in and committed to protecting and securing the parentage of children, particularly of LGBTQ families.

Rhode Island has made important contributions to the recognition and protection of LGBTQ families. The Rhode Island Supreme Court’s ruling in *Rubano v. DiCenzo* (2000) established that a non-biological parent can be a de facto parent with full legal rights to their child, including the right to custody and parenting time. More recently, the Rhode Island Family Court granted an order of parentage for a Rhode Island non-biological mother to a child born through in-vitro fertilization who had initially sought a second-parent adoption in *In Re Parentage of a Minor Child* (2016). Rhode Island has also taken strong steps in the past to recognize LGBTQ relationships, passing legislation to recognize same-sex civil unions in 2011 and to legalize marriage for same-sex couples in 2013.

Even with these positive developments in Rhode Island, the rapid clip of changes in society and family creation have outpaced Rhode Island parentage law, which has not been

¹ H. 562, Reg. Sess. (Vt. 2018).

updated in over 40 years.² For example, nonmarital births are common in Rhode Island, where 45.1% of all births in 2015 (4,957 out of 10,993 births) were births to unmarried people.³ Additionally, births from assisted reproductive technology are becoming increasingly common. In 2015, 2.4% of all Rhode Island births involved the use of assisted reproductive technology (268 out of 10,993 births).⁴ Although Rhode Island has comprehensive mandated health insurance coverage for ART procedures, greater statutory protections are needed in Rhode Island to protect children who are born through assisted reproductive technology.⁵ Comprehensive legislation is needed to provide clarity for courts and families on who can be a parent and how parentage is established.

By considering this Act, the Legislature is responding to the needs of children and families through crucial legislation that addresses the needs of Rhode Island families for clarity, accessibility and stability in their family relationships. Substantively, the proposed Rhode Island Parentage Act, Chapter 8.1, has a structure that includes the following topics, broadly stated:

1. General provisions, which includes definitions, scope, and other procedural issues
2. Establishment of Parentage, which provides an overview of how a person can establish parentage either through birth, acknowledgment, presumption, de facto parentage, or consent to assisted reproduction or through a surrogacy agreement
3. Voluntary Acknowledgement of Parentage, which addresses parentage by acknowledgment and ensures equal access to VAP forms

² According to the results of Gallup Daily Tracking reported by the Williams Institute, Rhode Island's LGBTQ population is 4.5%. Rhode Island has the 14th largest percentage of adults identifying as LGBTQ in the United States. *LGBT People Rankings: Rhode Island*, The Williams Inst., <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=44&sortBy=percentage&sortDirection=descending#ranking> (last visited Apr. 24, 2019).

³ National Vital Statistics Reports, CDC, Vol. 66, No. 1, January 5, 2017, Table I-4.

⁴ Assisted Reproductive Technology Surveillance – United States, 2015, CDC, Feb. 16, 2018, Table 3.

⁵ According to the CDC's report on 2015 ART statistics, only four states (Illinois, Massachusetts, New Jersey, and Rhode Island) have comprehensive mandated health insurance coverage for ART procedures (i.e., coverage for at least four cycles of IVF). *See* Assisted Reproductive Technology Surveillance – United States, 2015, CDC, Feb. 16, 2018.

4. Genetic testing, which addresses testing and establishment of genetic parentage
5. Proceedings to adjudicate parentage, which addresses how to establish and adjudicate parentage, including for presumed parents and de facto parents
6. Parentage of child of assisted reproduction
7. Parentage of child born through surrogacy agreement
8. Miscellaneous provisions

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

I write to highlight certain provisions of S 0789 that GLAD believes particularly serve to increase the stability, security, and well-being of children born to LGBTQ families.

- Section 15-8.1-8, entitled “Establishment of Parent-Child Relationship,” clearly lays out categories of parents and who has access to courts to establish parentage. Section 15-8.1-9 affirmatively pronounces as the public policy of Rhode Island that parent-child relationships should be accessed equally, regardless of marital status of the parents.
- Sections 15-8.1-12 through 15-8.1-26 address Voluntary Acknowledgments of Parentage and ensure that parents who are LGBTQ and who conceive through assisted reproduction have equal access to the simple and quick administrative route to parentage that has long been available and used by different-sex non-marital couples. VAPs establish parentage of children by agreement and outside the court system. Allowing equal access to this method of establishing parentage will provide greater stability for children and increase efficiency in the courts.

- The provisions relating to presumed parentage clarify who qualifies as a presumed parent. These provisions ensure protection of and recognition for the children of non-marital couples who have jointly planned for and parented their children, bringing non-marital children on par with children of married couples.
- De Facto Parentage provisions ensure that a child can maintain a relationship with a person who has functioned as their parent.
- Provisions addressing how to resolve competing claims of parentage will provide helpful guidance to the court and allow the courts, in their discretion and in certain limited instances, to determine that a child can have more than two parents.
- Provisions regarding parentage through assisted reproduction, clarify how to establish parentage of children born through the use of assisted reproduction, which is conception without sexual intercourse. This means of conception is used by *non-LGBTQ* people and LGBTQ people alike. Rhode Island 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.
- Provisions regarding parentage through surrogacy agreements provide for a process and protections for all those involved in surrogacy arrangements, including gestational and genetic surrogacy agreements. Clear statutory guidance for surrogacy agreements protects all parties involved and will encourage consistency in Rhode Island courts.

GLAD enthusiastically supports the proposed Rhode Island Parentage Act and believes that this legislation will promote clarity, efficiency and fairness in Rhode Island courts and security for Rhode Island 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,

A handwritten signature in dark ink, consisting of a stylized capital 'P' followed by a long, horizontal, slightly wavy line that extends to the right.

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