

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Tonya A. Sapp
Director of Legislative Affairs

COUNCILMEMBER MENDELSON
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October 3, 2008

The Honorable Phil Mendelson, Chairperson
Committee on the Judiciary and Public Safety
Suite 402
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Re: Bill 17-727: "Domestic Partnership Judicial Determination of Parentage Act of 2008"

Dear Chairperson Mendelson:

Please find attached an opinion letter from the federal Office of Child Support Enforcement on the amendments proposed in the above-referenced bill.

I may be contacted at (202) 724-5562 with any questions or concerns.

Very truly yours,

Peter J. Nickles
Acting Attorney General
for the District of Columbia

By: 
Tonya A. Sapp
Director of Legislative Affairs

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES
Administration for Children and Families, Region III

Suite 864
150 S. Independence Mall West
Philadelphia, PA 19106-3499

September 24, 2008

Peter J. Nickles
Interim Attorney General for the District of Columbia
Office of the Attorney General
One Judiciary Square
441 4th Street, N.W.
Washington, D.C. 20001

Dear Mr. Nickles:

This is in response to your May 23, 2008, inquiry to our office requesting an opinion on the impact of proposed legislation titled "The Domestic Partnership Judicial Determination of Parentage Act of 2008" (also known as the Domestic Partnership Act) on the Title IV-D Program.

As your letter indicates, the proposed Domestic Partnership Act seeks to amend Title 16 of the District of Columbia Official Code to include domestic partners as parents of children born in the District of Columbia; to amend the Uniform Interstate Support Family Act of 1995 (presumably the Uniform Interstate Family Support Act of 1996) to include domestic partners within coverage of the Act; and further seeks to amend the Vital Records Act of 1981 to allow domestic partners to be included on birth certificates.

First, the proposed Domestic Partnership Act appears to be flawed on its face with reference to amending Section 101 of the Uniform Interstate Family Support Act (UIFSA) of 1995. Section 466(f) of the Social Security Act (Act) requires that in order to satisfy the State plan requirements of section 454(20) of the Act, a State must enact the August 1996 version of UIFSA. In order to enact a different version of UIFSA or to modify any provisions of UIFSA 1996, a State would need to request and be granted an exemption. In August 2001, the National Conference of Commissioners on Uniform State Laws approved amendments to UIFSA (referred to as UIFSA 2001). On May 24, 2007, the District's request for an exemption to adopt UIFSA 2001 was approved by the Office of Child Support Enforcement (OCSE) based on enactment of DC Law 16-137, the Uniform Family Support Amendment Act of 2006. The waiver was granted because the District demonstrated that there were no procedural or substantive differences

2008 SEP 30 P 2:52
ATTORNEY GENERAL'S OFFICE
DISTRICT OF COLUMBIA

between UIFSA 1996 and UIFSA 2001 that would adversely affect the District's ability to process Title IV-D cases.

Secondly, UIFSA does not cover persons in domestic partnerships or define persons other than spouses. The District's amendment of its version of UIFSA to include domestic partners within the coverage of its UIFSA statute would be a substantive change to its UIFSA statute and would result in the District's Title IV-D State plan being out of compliance with section 454(20) of the Act.

The following comments have been provided on the other specific issues you raised:

Treatment of the Marital Presumption of Domestic Partners

The Domestic Partnership Act extends the marital presumption to people who are in a domestic partnership at the time of conception or birth of a child. In the District of Columbia, same sex couples qualify as domestic partners. What is OCSE's position on acknowledging this presumption where one of the parents in a domestic partnership is not biologically related to the child?

Response:

The proposed legislation would amend the "Vital Records Act of 1981" to provide for the automatic inclusion of the names of domestic partners on birth certificates as a parent. It would amend the District of Columbia Code to define a parent to be the mother or the father or the domestic partner of the mother or the father at the time of the birth. This proposed change could result in a conflict with section 466(a)(5)(D)(i) of the Act which requires States to have procedures which provide that "the name of the father shall be included on the record of birth of the child of unmarried parents only if – (I) the father and mother have signed a voluntary acknowledgment of paternity; or (II) a court or administrative agency of competent jurisdiction has issued an adjudication of paternity." Domestic partners would be "unmarried parents". (See subsequent discussion on the Defense of Marriage Act.) For example, if one member of a male domestic partnership donated semen that was used to impregnate a woman with the intention that the child would be raised by the male couple, under the proposed DC legislation, the biological father's name would automatically appear on the birth certificate as the father. The inclusion of the father's name on the birth certificate would conflict with section 466(a)(5)(D)(i) of the Act unless there were also a signed voluntary paternity acknowledgment or an adjudication of paternity by a court or administrative agency.

The proposed legislation would also amend section 16-907 of the DC Code to alter the definition of "born out of wedlock" to mean a child that "has been born to parents who, at the time of birth, were not married to, or in a domestic partnership with each other." The term "born out of wedlock" is used in the Act in section 452(g) of the Act in defining the paternity establishment percentage (PEP). While the Act does not define either born out of wedlock or paternity, the change would be inconsistent with how marriage is

