

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL



March 16, 2009

Ms. Juanita De Vine
Regional Program Manager
Office of Child Support Enforcement
Administration for Children and Families, Region III
150 S. Independence Mall West, Suite 864
Philadelphia, PA 19106-3499

Re: Bill 18-66, the "Domestic Partnership Judicial Determination of Parentage Act 2009"

Dear Ms. De Vine:

On May 23, 2008, I requested an opinion from the Office of Child Support Enforcement ("OCSE") on the impact of the proposed "Domestic Partnership Judicial Determination of Parentage Act of 2008" ("bill") on the District of Columbia's compliance with federal child support requirements under Title IV, Part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 *et seq.*). The bill was drafted by a reputable family law professor in the District and introduced in the Council of the District of Columbia ("Council") on behalf of individuals and groups advocating for the recognition of the parental rights of individuals who create families through domestic partnerships. The bill created a presumption of parentage in the domestic partner of a natural parent that operated in a manner similar to the marital presumption under existing District law. We requested OCSE's opinion on the bill because we were concerned that some of its provisions, particularly the bill's amendments to the District's version of the Uniform Interstate Family Support Act ("UIFSA"), might contravene federal requirements. You responded on September 24, 2008 that portions of the bill, including the amendments to UIFSA and bill's change to the definition of "born out of wedlock", could indeed raise compliance issues under Title IV-D and the federal Defense of Marriage Act, Pub. L. 104-199. We provided OCSE's comments to the Council and other stakeholders for their consideration in connection with further action on the bill.

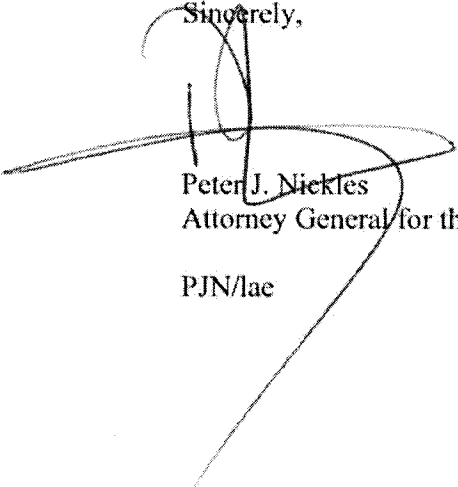
Since our last communication with you concerning the bill, the Council has been working with the drafters, advocates, family law experts, and representatives of my Office and other District agencies to address the issues you raised in your letter and other concerns about the bill. This process has resulted in significant changes to the bill that OCSE originally reviewed, a revised version of which was reported on favorably by the Council's Committee on Public Safety and the Judiciary on March 10, 2009. Among other things, these changes clarify the bill's

applicability, add provisions relating to the disestablishment of parentage, and determine the parental rights of individuals who agree to create children through artificial insemination. The current version also eliminates the amendments to UIFSA and the changes to the definition of "born out of wedlock" that OCSE found problematic. We believe that the recent changes improve the bill. Many of its current provisions are based on the 2002 Uniform Parentage Act and the American Bar Association's 2008 Model Act Governing Assisted Reproductive Technology and are similar to provisions enacted in other states.

Although the bill has been revised in a manner that addresses many of OCSE's concerns, I am requesting that OCSE conduct an additional, expedited review of the current version to ensure that, if the bill is enacted, the District will not suffer any negative regulatory consequences. The current version does not alter the definition of marriage under District law or change, to a significant degree, the manner in which parentage may be established for children who do not have two legal parents. What the bill does do, however, is expand the categories of people who, under local law, may be considered to be the legal parents of the children they create and care for while discouraging the disruption of stable family relationships. In doing so, the bill reflects the District's desire to join a growing number of states that are giving legal recognition to the richness and diversity of American families. Some of Title IV-D's paternity provisions incorporate a more traditional conception of parentage that is limited to relationships arising out of marriage and genetics, and, these provisions could be viewed as inconsistent with the new protections the bill would afford. However, federal law does not appear to prohibit states from extending parental rights and responsibilities to additional people, and recognizing these legal relationships for child support purposes would advance Title IV-D's goal of ensuring that children have and receive support from two legal parents.

I would appreciate it if you could provide OCSE's determination concerning the bill's compliance with federal child support requirements as soon as possible. The bill has broad support in the Council and we expect that the full Council will consider it during its next legislative session in early April. If the revised bill will result in a finding of regulatory non-compliance, it will be important for my Office to advise the Council of this fact before the bill is enacted. For your convenience, I am enclosing the Committee Print of the bill, the Committee Report, and copies of the District's current parentage law highlighting the bill's amendments. If needed, please feel free to contact me on 727-3400 and I will make my staff available to discuss the bill's impact on the District's existing legislation.

Sincerely,



Peter J. Nickles
Attorney General for the District of Columbia

PJN/lac

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Enclosures

cc: Benidia A. Rice, Deputy Attorney General, Child Support Services Division
Tonya A. Sapp, Deputy Attorney General for Health and Human Services
Wayne C. Witkowski, Deputy Attorney General, Legal Counsel Division