



Testimony of Robin Elizabeth Pope, Attorney - April 10, 2017

Senate Bill 512 - with -2 Amendments

Chair Prozanski and members of the Senate Judiciary Committee: My name is Robin Pope. I am an attorney in private practice; my practice is limited to family formation law, including adoption, surrogacy and related matters. Over the past 30+ years I have represented birth parents, adoptive parents, adoption agencies, putative fathers, intended parents, and gestational surrogates. I am here to testify regarding SB 512 with -2 Amendments.

My background includes: Membership since 1997 in the American Academy of Adoption Attorneys and American Academy of Assisted Reproductive Technology Attorneys (where I am currently a Board Trustee), a national association of attorneys who practice, or have otherwise distinguished themselves, in the field of family formation law; longtime membership in the Oregon State Bar Family Law Section Standing Committee on Adoption and Assisted Reproductive Technology Law and several years as chair of that committee; many years of pro bono service to Oregon citizens as a Pro Tem Judge in Clackamas County Circuit Court (family law matters) and Washington County Circuit Court (small claims court); service on three Oregon Law Commission Work Groups (paternity, parentage and open adoption records); and service on Oregon DHS Work Groups to review and revise Oregon Administrative Rules regarding adoptions and adoption agencies.

I appreciate having the chance to appear in front of you to testify regarding SB 512 with -2 Amendments and request that this statement be submitted for the record.

The Summary for SB512 states: "Modify laws regarding establishment of parentage of a child".

The -2 amendments are purported to simply extend the current marital presumption to include same-sex spouses of birth mothers and "ungender" our paternity statutes. A main goal of the bill is to allow the establishment of parentage for same sex spouses and thus be able to establish those parents' child support obligations. While I understand and support this laudable goal, SB 512 with -2 Amendments is not the correct way to do this. And in fact, it is my opinion that SB 512 as written will muddy the waters in adoption and paternity matters, and create new law that we may or may not have intended to create.

Based on my review of SB 512 with -2 Amendments, this bill attempts to ungender Oregon's paternity statutes in a piecemeal fashion by performing the search and replace function in word processing, replacing the term "paternity" with "parentage", and "husband" or "wife" with "spouse". Our paternity and parentage laws are more nuanced than that. The determination and establishment of a child's legal parent(s) should be achieved through a more careful and thoughtful analysis of the changes we want to make to our current law.

In light of the many ways in which a child can now be brought into the world (there are 16 ways to make a baby today, compared to the two in existence when many of our parentage laws were written) and the recognition of same-sex marriage, Oregonians will be better served by addressing the complex issues of parentage establishment by starting anew. Several other states have done that, including Washington, Maine, and New Hampshire.

Here are some of the troublesome issues with SB 512:

1. There are no definitions of crucial terms such as "parentage" and "parent".
2. Oregon law needs to continue to allow for the establishment of paternity, as well as parentage. There are times when what we need to do is establish a man's paternity.

SB 512 is not clear in this regard. Some of the changes run counter to the establishment of paternity.

3. Creation of new law that may not be intended. E.g., on Page 2 of the -2 amendments, new language would be "(d) A person is the mother of a child the person gives birth to."

Do we mean to allow a person to become a legal parent when that person is not the genetic parent of the child? An increasing number of mothers who give birth to a child do so using donor eggs. There is no genetic connection with the person who gives birth. I suspect this issue has not been considered. It should be.

4. Some references to paternity are left in, others are not. There times when paternity needs to be mentioned, especially in the case of adoptions. Several statutes that address paternity are not part of the Conforming Amendments in SB 512.
5. Page 24 of the -2 Amendments, line 25: In my opinion, changing "paternity" to parentage" here will create problems in adoptions. Under current law, this statute tells us how to treat a putative father, the biological father, of a child born to the mother of the child. This should not be changed.
6. ORS 432. 098, our current statute that allows paternity to be established through the filing of a voluntary acknowledgment of paternity form with Oregon Vital Records, is not part of the conforming Amendments. Paternity is established under this statute. Yet if SB 512 passes, "parentage" is established under ORS 109.070, not paternity. Does parentage include paternity? While I assume it does, it's not clear. The lack of definitions and careful analysis of the overall impact of this bill's changes will muddy the waters.

In conclusion, I strongly encourage you to not move this bill as written. If we want Oregon parentage laws to provide an updated, comprehensive framework for determining a child's parentage, let's do so in a thoughtful and careful fashion.

Thank you for taking the time to consider my input on this important matter.

Sincerely,

Robin Elizabeth Pope

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Oregon Family Formation Lawyer