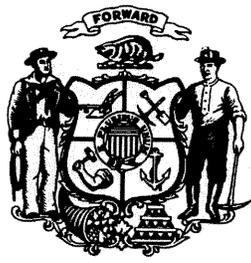


7/23 - called today



**MEMO**

July 9, 1999

~~Does not~~  
for

TO: All Legislators

FROM: Senator Jim Baumgart

RE: CO-SPONSORING LRB 2135/2 – relating to presumption of parenthood when the egg or sperm is donated or when a surrogate mother gives birth to the child.

I will be introducing legislation, at the request of a constituent, that would define natural parents in a surrogate parenting agreement. In such an agreement the intended parents would be considered the natural parents and not those who donated to the pregnancy.

***Analysis by the Legislative Reference Bureau***

Under current law, the husband of a woman who is artificially inseminated with the semen of a man who is not her husband is presumed to be the natural father of a child conceived as a result of the procedure. This bill makes that presumption inapplicable to the husband of a woman who is artificially inseminated under a surrogate parenting agreement, which is defined in the bill as an agreement under which a surrogate mother agrees to become impregnated through other than natural means and to relinquish the custody of the child born as a result of the pregnancy to an intended father and an intended mother who are married to each other and who intend to have parental rights and responsibilities over the child. In that case, the natural father of the child is presumed to be the intended father under the agreement and not the husband of the surrogate mother.

The bill also creates a presumption of maternity for when a woman is implanted with an egg donated by another woman. In that case, the woman who is implanted with the egg and who gives birth to the child is presumed to be the natural mother of the child, unless the child is born as a result of a surrogate parenting agreement, in which case the intended mother is presumed to be the natural mother of the child, notwithstanding that the surrogate mother gave birth to the child and regardless of who provided the egg.

Under current law, if a child is born to a surrogate mother, information about the surrogate mother must be entered on the child's birth certificate and information about the father must be omitted. If a court determines parental rights over the child, the state registrar of vital statistics must prepare and register a new birth certificate and impound the original birth certificate. This bill provides that if the intended parents of a child who is born to a surrogate mother submit to the state registrar within 365 days after the date of birth of the child a copy of the surrogate parenting agreement, together with affidavits sworn to by the surrogate mother, her husband, if any, the intended father and the intended mother indicating that each affiant consents to the preparation and registration of a new birth certificate, the state registrar must prepare and register a new birth certificate showing, among other things, the given name and surname of the registrant as requested by the intended parents and the names and personal information of the intended parents.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

# MEMO

August 2, 1999

TO: Jerry McCabe  
FROM: Patrick Henderson  
Senator Baumgart's Office  
RE: Presumed Parenthood Bill

.....

Here is a copy of the bill that we are introducing at your request. If the Judge is willing please provide us with a letter which explains the judge's support for the bill and explains the need for such legislation. The letter will be distributed to the members of the Senate Committee and the rest of the Legislature when the bill comes up for consideration.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me.

Presently a husband, whose wife is artificially inseminated with semen of another, is presumed to be the father. This bill makes that presumption absolute, under a legal surrogate parenting agreement. The father and intended mother would have all parental rights and responsibilities over the child.

The bill also creates a presumption of maternity for when a woman is implanted with an egg donated by another women. The women who is implanted with the egg and gives birth is presumed to be the natural mother, unless the child is born as a result of a surrogate parenting agreement.

Under current law, if a child is born to a surrogate mother, information about the surrogate mother must be entered on the child's birth certificate and information about the father must be omitted.

This bill allows, through a surrogate parenting agreement, a new birth certificate, the given name and surname of the registrant – such as the surrogate father.



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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

---

---

DATE: August 6, 1999

TO: SENATOR JAMES BAUMGART

FROM: Robert J. Conlin, Senior Staff Attorney

SUBJECT: LRB-2135/2, Relating to the Presumption of Parenthood in Surrogate Parenting Situations

This memorandum, prepared at your request, describes the provisions of LRB-2135/2 (the draft), relating to the presumption of parenthood in surrogate parenting situations. Generally, the draft creates a number of provisions in the statutes relating to surrogate parents and the determination of maternity and paternity and parental relationships when surrogate parenting agreements exist.

### A. CURRENT LAW

Currently, the only mention of surrogacy arrangements in Wisconsin's statutes relates to the issuance of a birth certificate for a child born to a surrogate mother. The law provides that if a child is born to a surrogate mother, information about the surrogate mother must be entered on the birth certificate. Further, information about the father must be omitted from the birth certificate. The law provides that a new birth certificate for such a child may be issued after a court order has established parental rights over the child. [s. 69.14 (1) (h), Stats.]

Wisconsin statutes are silent with respect to the determination of maternity. Under common law, the woman who gives birth to a child is considered to be the mother of the child (*mater est quam gestatio demonstrat*--the mother is demonstrated by gestation).

On the paternity side, a number of statutes relate to the judicial and administrative determination of paternity. [See ss. 767.45 to 767.62, Stats.] The statutes also contain a number of express provisions relating to a presumption of paternity. For example, a man is presumed to be the natural father of a child if he and the child's natural mother are or have been married to each other and the child is conceived or born after marriage and before the granting of a decree of divorce or legal separation. [s. 891.41, Stats.] Also, under current law, if, under the supervision of a licensed physician and with the consent of her husband, a wife is impregnated

artificially with semen donated by a man who is not her husband, the husband of the mother at the time of conception of the child is the natural father of the child. The donor of the semen in such a case is not the natural father of the child conceived, bears no liability for the support of the child and has no parental rights with regard to the child. [s. 891.40, Stats.]

Because of the state of current law, it is usually necessary for the surrogate mother, and perhaps her husband, to formally terminate their parental rights and the intended parents to formally adopt the child to complete a surrogate parenting agreement.

## **B. THE DRAFT**

As noted above, the draft creates a number of provisions in the statutes to help better define parental relationships in a surrogate parenting situation. Those provisions are described below.

### **1. Definitions**

The draft creates a number of definitions specific to the surrogate parenting relationship. Under the draft, a "surrogate parenting agreement" is an agreement under which a surrogate mother agrees to become impregnated through other than natural means and to relinquish to the intended parents the custody of the child born as a result of the pregnancy. Under the draft, a "surrogate mother" is a woman who enters into a surrogate parenting agreement. "Intended parents" are an intended father and intended mother who are married to each other and who enter into a surrogate parenting agreement. An "intended father" is defined as a man who is married to an intended mother and who intends to have the parental rights and responsibilities for a child born as a result of a surrogate parenting agreement. Similarly, an "intended mother" is a woman who is married to an intended father and who intends to have the parental rights and responsibilities for a child born as a result of a surrogate parenting agreement.

### **2. Determination and Presumption of Parenthood**

Under the draft, if a wife, with the consent of her husband, and by or under the direction or supervision of a licensed physician, is implanted with an egg donated by another woman, the wife is the natural mother of a child conceived, unless the wife is implanted under a surrogate parenting agreement, in which case the intended mother is considered the natural mother of the child conceived. The draft requires the husband's consent to be in writing and signed by him and his wife. The physician is required to certify the husband and wife's signatures and the date of the implantation, and is required to file the husband's consent with the Department of Health and Family Services. The filed consent must be kept confidential and in a sealed file which may generally, be released, only upon court order. The draft provides that the physician's failure to file the consent form, however, does not affect the legal status of mother and child. The draft specifies that if all papers and records pertaining to the implantation may be inspected only upon an order of the court for good cause shown.

Additionally, the draft provides that a woman is presumed to be the natural mother of a child if she gives birth to the child, notwithstanding that another woman may have donated the

egg. However, under the draft, if a child is born to a surrogate mother, the intended mother is presumed to be the natural mother of the child, notwithstanding that the surrogate mother gave birth to the child and regardless of whether the egg came from the intended mother, the surrogate mother or a donor who is not the intended mother or surrogate mother. Under this provision, the surrogate mother is not presumed to be the natural mother of the child, bears no liability for the support of the child and has no parental rights with regard to the child. Further, the draft provides that the husband of a surrogate mother who bears a child under a surrogate parenting agreement is not presumed to be the natural father of the child, bears no liability for the support of the child and has no parental rights with regard to the child.

Under the draft, the donor of an egg provided to a licensed physician for implanting in a woman other than the donor is not the natural mother of a child conceived, bears no liability for the support of the child and has no parental rights with regard to the child, unless the donor is the intended mother and the woman is a surrogate mother. Under the draft, if the donor is the intended mother, the donor is the natural mother of a child conceived, is liable for the support of the child and otherwise has all parental rights and responsibilities with regard to the child. Further, the draft provides that a donor of semen provided to a licensed physician for use in artificially inseminating a woman other than the donor's wife will be considered the natural father of the child conceived if the donor is the intended father and the woman is a surrogate mother. In such case, the donor is liable for the support of the child and otherwise has all parental rights and responsibilities with regard to the child. The draft makes clear that an intended father is considered the natural father of a child even if he donated semen to artificially inseminate the wife of another man if it is done under a surrogate parenting agreement.

### **3. Birth Certificate Information**

Under the draft, as under current law, if a surrogate mother gives birth to a child, the birth certificate must provide information about the surrogate mother and not the father. However, under the draft, if the intended parents under a surrogate parenting agreement submit to the State Registrar within 365 days after the date of birth of the child a copy of the surrogate parenting agreement together with a fee required and specified under current law, and together with affidavits sworn by the surrogate mother, her husband, if any, the intended mother and the intended father on a form prescribed by the State Registrar indicating that each affiant consents to the preparation and registration of a new birth certificate, the State Registrar must prepare and register a new birth certificate for the child. That new birth certificate must contain the following information:

- a. The given name and surname of the registrant as requested by the intended parents.
- b. The date and place of birth as transcribed from the original certificate.
- c. The names and personal information of the intended parents.
- d. The hospital and time of birth as unknown.

- e. The filing date on the original certificate.
- f. Any other information necessary to complete the new certificate.

**4. Definition of "Parent"**

Under current law, throughout the statutes a parent is defined for various purposes under state law as either a biological parent, a husband who has consented to the artificial insemination of his wife or a parent by adoption. The draft adds "a wife who gives birth as a result of an egg donation" to the definition of "parent." This modified definition of parent applies to, among other things, the Childrens Code [ch. 48, Stats.], various welfare programs, the Mental Health Act [ch. 51, Stats.], certain education provisions and the Juvenile Justice Code [ch. 938, Stats.].

Should you have any questions about this memorandum, please feel free to contact me at the Legislative Council Staff offices.

RJC:rv;ksm

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PAYMENT -

SPK/IKK  
ISSHM

P # 9 # 2, LINE 13, 14, 16

P-7 LINE 20 + 21

STUDY COMMITTEE  
10 YEARS Ago

---

John McCabe - Narrow to just the wife

- He wants his rights protected as the interested  
parent - he wants to be listed as the legal  
parent.

**GARY LANGHOFF**  
CIRCUIT COURT JUDGE

---

Circuit Court Branch III  
615 N. Sixth Street  
Sheboygan, WI 53081  
(920) 459-3085

August 25, 1999

Patrick Henderson  
c/o Senator Baumgart's Office  
State Capitol: PO Box 7882  
Madison, WI 53707-7882

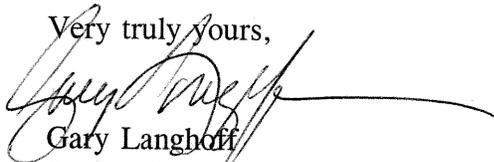
RE: Presumed Parenthood Bill

Dear Mr. Henderson:

I have been asked by one of Senator Baumgart's constituents, Jerry McCabe, to pen a letter of support for the pending Presumed Parenthood Bill. Although this bill may only affect a small number of individuals, I believe adoption of the bill will go along way to define the rights, duties, and obligations of individuals who are parties to surrogate parenting agreements. The proposed legislation clarifies the principles and dynamics surrounding a surrogate parenting agreement. Additionally, the Presumed Parenthood Bill determines the status of the parties to such agreements.

As I pointed out earlier, this bill may not have direct affect on vast numbers of the general populace, however, in the instances where the new law is applicable, it will avoid great trauma and pain for those individuals who are privy to a surrogate parenting agreement. This bill is needed to clear up ambiguities which are present in the current law. It will obviate the legal pitfalls which currently exist.

I have reviewed the draft of the Presumed Parenthood Bill, and I believe that it appropriately addresses most, if not all, of the issues embodied in surrogate parenting agreements. I support its adoption.

Very truly yours,  
  
Gary Langhoff  
Circuit Court Judge

GL/cjs

cc: Jerry McCabe



STEPHEN R. MILLER  
CHIEF

# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
P. O. BOX 2037  
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-8522

REFERENCE SECTION: (608) 266-0341  
REFERENCE FAX: (608) 266-5648

Introduced By: Baumgart

*Your copy of the fiscal estimate is enclosed  
and is submitted to you as the primary author of this bill.*

1999 Fiscal Estimate to: S Bill 2211  
(as affected by \_\_\_\_\_)

LRB Number 99 - 2135 / 2

Agency/Prepared By: DHFS

*Under Joint Rule 48, the fiscal estimate must be held in the Legislative Reference Bureau for  
5 working days unless its earlier publication is authorized by you.*

*During this time, the committee cannot hold its public hearing on the bill.*

\* **Release Date:** 09 / 22 / 99 (After 10:00 AM)

*The enclosed fiscal estimate will be released to Chief Clerk for insertion in the bill jacket, to the  
Fiscal Bureau and for printing on the date listed above. If you have questions about the enclosed fiscal  
estimate, you may contact the individual who prepared the fiscal estimate. If you disagree with the  
enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the  
fiscal estimate procedure.*

\* **To release this fiscal estimate for earlier publication, please sign and return this form  
to the Legislative Reference Bureau – Legal Section – Front Office – 5th Floor – 100 N. Hamilton St.  
Phone: (608) 266-3561 / FAX: (608) 264-6948**

Early Publication Authorized: \_\_\_\_\_

Date: \_\_\_\_\_ *Note: The enclosed fiscal estimate is for your files – only this form needs to be returned.*

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

LRB # -2135/2

INTRODUCTION # SB 221

Admin. Rule #

Subject

Presumption of Parenthood

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Decrease Costs

Local:  No local government costs

- 1.  Increase Costs
  - Permissive
  - Mandatory
- 2.  Decrease Costs
  - Permissive
  - Mandatory

- 3.  Increase Revenues
  - Permissive
  - Mandatory
- 4.  Decrease Revenues
  - Permissive
  - Mandatory

5. Types of Local Governmental Units Affected:
- Towns
  - Villages
  - Cities
  - Counties
  - Others \_\_\_\_\_
  - School Districts
  - WTCS Districts

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

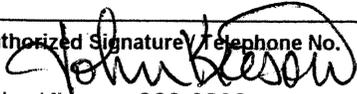
Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

This bill changes the way that surrogate parents register their child and provides for a new birth certificate form that allows information about the surrogate mother and the intended parents of the child. The bill also provides that, if a court determines parental rights over a child born to a surrogate mother, a new birth certificate must be registered. The Department estimates that this bill will affect fewer than 20 births annually. The Department can absorb the costs of these changes to birth certificates.

Long-Range Fiscal Implications:

Prepared By: / Phone # / Agency Name  
 Ellen Hadidian/266-8155  
 DHFS/OSF

Authorized Signature / Telephone No.  
  
 John Kiesow, 266-9622

Date  
 Sept. 8, 1999

# MEMORANDUM

from LAURA ROSE  
Legislative Council Staff  
(608) 266-9791  
laura.rose@legis.state.wi.us

11-18-99

Pat,

Finally, here is the memo.  
After reading it, please  
let me know which of  
these provisions the Senator  
would like to pursue, if  
any.

Thanks for your patience.  
Laura



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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

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Email: leg.council@legis.state.wi.us

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**DATE:** November 18, 1999

**TO:** SENATOR JAMES BAUMGART

**FROM:** Laura Rose, Senior Staff Attorney

**SUBJECT:** Possible Revisions to LRB-2135/2, Relating to the Presumption of Parenthood in Surrogate Parenting Situations

This memorandum responds to your request for suggestions on possible revisions to LRB-2135/2, relating to the presumption of parenthood in surrogate parenting situations. This draft was described in a prior memorandum to you from Robert Conlin, Senior Staff Attorney, Legislative Council Staff, dated August 6, 1999.

This memorandum also points out some additional issues you may wish to consider when revising the draft.

### **A. POSSIBLE REVISIONS TO LRB-2135/2**

The following are some possible revisions to LRB-2135/2:

1. The definitions of both "intended mother" and "intended father" should specify that these persons entered into a surrogate parenting agreement.
2. The definition of "surrogate mother" should specify that the surrogate mother is the woman who agrees to bear a child for the intended parents.
3. The definition of surrogate parenting agreement should probably specify that the agreement must be in writing.
4. A definition of "assisted conception" should probably be included. This definition could then be incorporated into the definition of "surrogate parenting agreement." Therefore, instead of the statement that a surrogate mother is one who "agrees to become impregnated through other than natural means," the definition would provide that the surrogate mother is one who "agrees to become impregnated through assisted conception."

5. On page 9, line 1 of the draft, it should be specified that the woman is a surrogate mother *who entered into a surrogate parenting agreement.*

## **B. ADDITIONAL ISSUES FOR CONSIDERATION**

The following portion of this memorandum highlights a number of issues and concerns you may wish to consider in further developing your draft.

### **I. General Policy Considerations**

The issue of surrogacy is often a controversial one. The dissent in *Johnson v. Calvert*, 851 P.2d 776 (S. Ct. Calif. 1993) provided a concise summary of the arguments for and against surrogacy:

Surrogacy proponents generally contend that gestational surrogacy, like the other reproductive technologies that extend the ability to procreate to persons who might not otherwise be able to have children, enhances "individual freedom, fulfillment and responsibility." Under this view, women capable of bearing children should be allowed to freely agree to be paid to do so by infertile couples desiring to form a family. The "surrogate mother" is expected "to weigh the prospective investment in her birthing labor" before entering into the arrangement, and, if her "autonomous reproductive decision" is "voluntary," she should be held responsible for it so as "to fulfill the expectations of the other parties . . . ."

Surrogacy critics, however, maintain that the payment of money for the gestation and relinquishment of a child threatens the economic exploitation of poor women who may be induced to engage in commercial surrogacy arrangements out of financial need. Some fear the development of a "breeder" class of poor women who will be regularly employed to bear children for the economically advantaged. Others suggest that women who enter into surrogacy arrangements may underestimate the psychological impact of relinquishing a child they have nurtured in their bodies for nine months.

Gestational surrogacy is also said to be "dehumanizing" and to "commodify" women and children by treating the female reproductive capacity and the children born of gestational surrogacy arrangements as products that can be bought and sold . . . .

Surrogacy critics . . . consider the unique female role in human reproduction as the determinative factor in questions of legal parentage. They reason that although males and females both contribute genetic material for the child, the act of gestating the

fetus falls only on the female. Accordingly, in their view, a woman who, as the result of gestational surrogacy, is not genetically related to the child she bears is like any other woman who gives birth to a child. In either situation the woman giving birth is the child's mother. [*Johnson v. Calvert*, 851 P. 2d at 792-793; internal citations omitted.]

Although the above passage does not represent a complete review of the arguments opposing or favoring surrogacy, it is indicative of the arguments that will likely be made in discussions of surrogacy and your draft. You may wish to keep them in mind as you further develop your draft.

## **2. Regulation of Surrogacy Agreements**

Although the draft is limited to a case in which a married couple utilizes the services of a gestational surrogate to carry and give birth to a child genetically related to the married couple, the draft also appears to carry with it an implicit recognition or acceptance of surrogacy arrangements and contracts. As noted above, surrogacy agreements are not currently regulated by the state. You may wish to expand the scope of the draft to encompass an explicit recognition of surrogacy contracts and a level of regulation of those contracts. Such regulations could cover the various matters governed by the other states' laws regulating surrogate parenting agreements, the Uniform Status of Children of Assisted Conception Act (attached) or past legislative efforts in Wisconsin, such as 1999 Senate Bill 270. This bill was the result of the Legislative Council Special Committee on Surrogate Parenting. One might argue that more comprehensive regulation of surrogacy agreements than you have originally proposed could be justified as protecting the best interests of children and the parties to surrogacy contracts. On the other hand, since it does not appear that the appellate courts in Wisconsin have had to rule on the issue of surrogacy contracts, it might be argued that there is no need for state oversight of surrogacy agreements.

Should you choose not to expand the draft to regulate the entire field of surrogacy, you may nevertheless wish to consider the following comments which are intended to address issues the draft leaves unresolved, and possibly ripe for litigation.

## **3. Medical Decisions**

You may wish to address the issue of responsibility for the medical decisions affecting the expected child and the gestational surrogate. Because the draft would appear to vest parental rights of the child in individuals other than the woman who will give birth to the child, you may wish to clarify who will have the right to make decisions regarding the management of the pregnancy, the right to abort or not to abort the expected child and the decision-making regarding prenatal testing and health care. Since the resolution of many of these issues may involve constitutionally protected privacy rights, you may wish to seek additional legal information on these issues.

#### **4. Applicability to Single Parents and Third-Party Ovum Donors**

As noted above, the draft applies only to married couples. It would not apply to single women who are unable to reproduce and who have an ovum fertilized through in vitro fertilization and implanted in a gestational surrogate. You may wish to consider extending the applicability of this provision to single parents in order to avoid litigation in such circumstances.

#### **5. Custody in Event of Parent's Death**

You may wish to consider provisions relating to the custody of the child in the event the genetic parents die prior to the birth of the child. For example, if the genetic parents die before the birth of the child, would the surrogate and her husband, if she is married, be considered the natural and legal parents of the child, or should the child be placed in the care and custody of relatives of the genetic parents? In the alternative, should this decision be left to the court after a consideration of the child's best interests? The resolution of this issue may also affect the child's rights with respect to beneficiary designations on life insurance policies, inheritance issues and other matters.

#### **6. Challenging Parentage**

You may wish to consider provisions relating to challenging the parentage of the intended genetic parents by the surrogate, the husband of the surrogate or another male. For example, if the gestational surrogate engages in sexual intercourse shortly after the zygote from the intended parents is implanted in her and before her pregnancy is confirmed, the surrogate and her sexual partner may be able to claim that they are the genetic parents of the child. Should they have the opportunity to seek blood or genetic testing to establish their parental rights?

One alternative to resolve this issue may be to require genetic testing immediately after the birth of the child to establish parentage in all cases. This may not, however, be conducive to a quick determination of parentage at the time of birth. Another alternative may be the creation of a presumption that any child born to a gestational surrogate approximately nine months after the surrogate had the zygote implanted in her is the child of the intended parents. Also, see item 8., below.

#### **7. Proof of Assisted Conception**

You may wish to consider provisions relating to the levels of proof necessary to show that assisted conception was performed. Should it be sufficient for the parties to allege in a petition or affidavit that the child was conceived by assisted conception? What if the parties do not agree? Would an affidavit from the doctor who performed the assisted conception be sufficient? Also, see item 8., below.

#### **8. Pre-Birth Judicial Declaration**

You may wish to consider the creation of a procedure whereby a couple utilizing the use of a gestational surrogate could obtain a declaration of parentage from a court prior to the birth

of the child indicating that they are the parents of the child so that the child can be "legitimated" at birth through the filing of a birth certificate listing the child as the child of the genetic parents. Absent such a provision, the issues of proof of assisted conception and parentage may be difficult to resolve after the birth and it may be difficult to convince the hospital authorities who file the birth certificate information with the Bureau of Vital Statistics who the natural and legal parents are.

Should you desire further assistance with the development of this draft, please contact me at 266-9791.

LR:rv;ksm

Attachment

UNIFORM STATUS OF CHILDREN OF  
ASSISTED CONCEPTION ACT

SECTION 1. DEFINITIONS. As used in this [Act]:

(1) "Assisted conception" means a pregnancy resulting from insemination of an egg of a woman with sperm of a man (i) by means other than sexual intercourse or (ii) by removal and implantation of an embryo after sexual intercourse, but does not include the pregnancy of a wife resulting from the insemination of her egg using her husband's sperm.

(2) "Donor" means an individual [other than a surrogate] whose body produces sperm or egg used for the purpose of assisted conception, whether or not a payment is made for the sperm or egg used, but does not include a woman who gives birth to a resulting child.

[(3) "Intended parents," means a man and woman, married to each other, who enter into an agreement providing that they will be the parents of a child born to a surrogate through assisted conception, under this [Act], using an egg or sperm of at least one intended parent.]

(4) "Surrogate" means an adult woman who enters into an agreement to bear a child conceived through assisted conception for intended parents.

(5) "Child" includes children.

SECTION 2. MATERNITY. [Except as provided in Sections 5 through 9 of this [Act],] a woman who gives birth to a child is the child's mother.

SECTION 3. ASSISTED CONCEPTION BY MARRIED WOMAN. [Except as provided in Sections 5 through 9 of this [Act],] the husband of a woman who bears a child through assisted conception is the father of the child, notwithstanding any declaration of invalidity or annulment of the marriage obtained after the assisted conception, unless within two years after learning of the child's birth he commences an action in which the mother and child are parties and in which it is determined that he did not consent to the assisted conception.

SECTION 4. PARENTAL STATUS OF DONORS AND DECEASED PERSONS. [Except as otherwise provided in Sections 5 through 9 of this [Act]:]

(a) A donor is not the parent of a child conceived through assisted conception.

(b) A person who dies before a conception using his sperm or her egg is not a parent of any resulting child born of the conception.

[ALTERNATIVE A -- Section 1(3) and the bracketed language in Sections 1(2), 2, 3 and 4 apply only to Alternative A.

SECTION 5. SURROGACY AGREEMENT.

(a) Notwithstanding any other provisions of this [Act], a surrogate, her husband, if any, and prospective intended parents may enter into a written agreement whereby the surrogate relinquishes all her rights and duties as parent of a child conceived through assisted conception, and the intended parents may become the parents of the child pursuant to Section 8.

(b) If a surrogacy agreement is not approved by the court under Section 6, the agreement is void and the surrogate is the mother of a resulting child and the surrogate's husband, if a party to the agreement, is the father of the child. If the surrogate's husband is not a party to the agreement or the surrogate is unmarried, paternity of the child is governed by [the Uniform Parentage Act].

SECTION 6. PETITION AND HEARING FOR APPROVAL OF SURROGACY.

(a) The intended parents and the surrogate, at least one of whom is a resident of this State, and the surrogate's husband if she is married, must join in a

petition in the [appropriate court] before conception. A copy of the written surrogacy agreement must be attached to the petition. The court shall name a [guardian ad litem] to represent the interests of any child who might be born as a result of assisted conception and shall [may] appoint counsel to represent the surrogate.

(b) The court shall hold a hearing on the petition and shall enter an order approving the agreement, authorizing the assisted conception for the period of 12 months after the date of the order, declaring the intended parents to be the parents of a child born pursuant to the agreement and discharging the guardian ad litem and attorney for the surrogate, upon finding that:

(1) the court has jurisdiction and all parties have submitted to its jurisdiction under subsection (e) of this Section and have agreed that the law of this State shall govern all matters arising under this [Act] and the agreement;

(2) the intended mother is unable to bear a child or is unable to do so without unreasonable risk to the unborn child or to the physical or mental health of the intended mother or child. This finding must be supported by medical evidence;

(3) the [relevant child welfare agency] has

made a home study of the intended parents and the surrogate and a copy of the report of the home study has been filed with the court;

(4) the intended parents, the surrogate, and the surrogate's husband, if any, meet the standards of fitness applicable to adoptive parents in this State;

(5) all parties have voluntarily entered into the surrogacy agreement and understand its terms and the nature, meaning, and effect of the proceeding;

(6) the surrogate has had at least one pregnancy and delivery and bearing another child will not pose an unreasonable risk to the unborn child or to the physical or mental health of the surrogate or the child. This finding must be supported by medical evidence;

(7) all parties have received counseling concerning the effect of the surrogacy by [a qualified health-care professional or social worker] and a report containing conclusions about the capacity of the parties to enter into and fulfill the agreement has been filed with the court;

(8) the results of any medical, psychological, or genetic screening agreed to by the parties or required by law have been filed with the court and made available to the parties;

(9) adequate provision has been made for all

reasonable health care costs associated with the surrogacy until the child's birth including responsibility for such costs in the event of termination under Section 7; and

(10) the agreement would not be substantially detrimental to the interest of any of the affected persons.

(c) Unless otherwise provided in the surrogacy agreement, all court costs, counsel fees, and other costs and expenses associated with the hearing shall be assessed against the intended parents.

(d) Notwithstanding any other law concerning judicial proceedings or vital statistics records, all hearings and proceedings conducted under this section must be held in camera, and all court records must be kept confidential and subject to inspection under the same standards applicable to adoptions in this State. At the request of any party, the court shall take all steps necessary to insure that the identities of the parties are not disclosed to each other.

(e) The court conducting the hearing has exclusive and continuing jurisdiction of all matters arising under the surrogacy agreement until any child born after entry of an order under this section is six months old.

SECTION 7. TERMINATION OF SURROGACY AGREEMENT.

(a) Subsequent to any order entered under Section 6, but before the commencement of surrogate pregnancy by assisted conception, the court for cause, or the surrogate, her husband, or the intended parents may terminate the agreement by giving written notice of termination to all other parties and filing notice of the termination with the court. Thereupon, the court shall vacate the order entered under Section 6.

(b) A surrogate who has provided the egg for the assisted conception pursuant to an approved agreement may terminate the agreement by filing written notice with the court within 180 days after the last insemination pursuant to the agreement. Upon finding, after notice to the parties to the agreement and hearing, that the surrogate has voluntarily terminated the surrogacy agreement and understands the nature, meaning, and effect of the termination the court shall vacate the order entered under Section 6. The surrogate incurs no liability to the intended parents for exercising her right of termination.

SECTION 8. PARENTAGE UNDER APPROVED SURROGACY. For surrogacy agreements approved under Section 6 the following rules of parentage apply:

(a) Upon birth of a child to the surrogate, the

intended parents are the parents of the child and the surrogate and her husband, if any, are not parents of the child unless the court vacates the order pursuant to Section 7(b). The intended parents shall file a written notice with the court that a child has been born to the surrogate within 300 days after assisted conception and the court shall thereafter enter an order requiring the [Department of Vital Statistics] to issue a new birth certificate naming the intended parents as parents, with the original birth certificate to be sealed in the records of the [department].

(b) If after notice of termination by the surrogate the court vacates the order under Section 7(b) the surrogate is the mother of the resulting child, and her husband, if a party to the agreement, is the father. If the surrogate's husband is not a party to the agreement or the surrogate is unmarried, paternity of the child is governed by [the Uniform Parentage Act].

#### SECTION 9. SURROGACY: MISCELLANEOUS PROVISIONS.

(a) Notwithstanding any law to the contrary, the surrogacy agreement that is the basis of an order under Section 6 may provide for the payment of a fee.

(b) A surrogacy agreement may not limit the right of the surrogate to make decisions regarding her health care or that of the fetus.

(c) After the entry of an order under Section 6, the marriage of the surrogate does not affect the validity of the order and her husband's consent to the surrogacy agreement is not required nor is he the father of any resulting child.

(d) A child born to a surrogate within 300 days after assisted conception pursuant to an order under Section 6 is presumed to result from the assisted conception. The presumption is conclusive as to all persons who have notice of the birth and who fail to file within six months after notice an action to assert the contrary in which the child and the parties to the agreement are named as parties. The action must be filed in the court that issued the order under Section 6.

(e) Health care providers shall not be liable for recognizing the surrogate as the mother before receipt of a copy of the order entered under Section 6 or for recognizing the intended parents as parents after receipt of an order entered under Section 6.

End of Alternative A]

[ALTERNATIVE B

SECTION 5. SURROGATE AGREEMENTS. Any agreement in which a woman agrees to become a surrogate or to relinquish her rights and duties as parent of a child conceived through assisted conception is void. The surrogate, however, is the mother of a resulting child and the surrogate's husband, if a party to the agreement, is the father of the child. If the surrogate's husband is not a party to the agreement or the surrogate is unmarried, paternity of the child is governed by [the Uniform Parentage Act].

End of Alternative B]

SECTION 10. RELATION OF PARENT AND CHILD. A child whose status as a child is declared or negated by this [Act] is the child only of his or her parent or parents as determined under this [Act] for all purposes including but not limited to succession and gift rights in Section 11 of this [Act].

SECTION 11. SUCCESSION AND GIFT RIGHTS. Unless superseded by later events forming or terminating a parent and child relationship, the status of parent and child declared or negated by this [Act] as to a given individual and a child born alive controls:

- (1) for purposes of intestate succession;
- (2) for purposes of probate law exemptions, allowances, or other protections for children in a parent's estate; and
- (3) for purposes of determining eligibility of the child or its descendants to share in a donative transfer from any person as a member of a class determined by reference to the relationship.

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

SECTION 13. SEVERABILITY. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 14. SHORT TITLE. This [Act] may be cited as the Uniform Status of Children of Assisted Conception.

SECTION 15. EFFECTIVE DATE. This [Act] shall take effect on \_\_\_\_\_ . Its provisions are to be applied prospectively.

SECTION 16. REPEALS. Acts or parts of acts inconsistent with this [Act] are repealed to the extent of the inconsistency.

December 30, 2000

Bob Ziegelbauer  
PO Box 8953  
Madison, WI 53708-8953

Dear Representative Ziegelbauer:

On December 21, 2000, our son, Nicholas, was born. The following day, hospital staff were preparing the worksheet for his birth certificate and informed us that we could not list the father's name on the birth certificate worksheet. We were required to fill out a "voluntary paternity acknowledgment" form and pay the state an additional \$10.

As parents of Nicholas, we were both very disturbed about Wisconsin's law regarding birth certificates for children of unmarried parents. If we both know, agree and willingly sign a birth certificate stating this is our child, I don't feel we should have to sign an additional form and pay an additional fee simply because we are unmarried.

The laws regarding listing of a father on the birth certificate are completely unfair to a child and show a total disregard to a father's rights. If a mother were married to a man other than the father at any time during her pregnancy, that man's name would, by state law, be listed on the child's birth certificate regardless of whether he is the father or not. This could possibly require a man to fight a paternity suit when he is not the father. A woman could make it difficult for a child's real father to actually establish paternity and to be a part of the child's life by simply marrying someone else prior to the child's birth, as state law would require her husband's name be listed on the birth certificate. I can think of many different scenarios that make these laws unjust to the mother, father or more importantly the child.

Wisconsin's laws regarding paternity and vital records are archaic and ridiculous. They insinuate that children of unmarried parents are fatherless and lend to the stereotypes that exist regarding unwed parents.

For the sake of our children and the pursuit of justice, I urge you to review these laws and do what you can to change them.

Sincerely,

Theresa Y. Vance

Jon R. Fessler



**BOB ZIEGELBAUER**

STATE REPRESENTATIVE • TWENTY FIFTH ASSEMBLY DISTRICT

January 10, 2001

Ms. Theresa Vance and Mr. Jon Fessler  
622 North 10<sup>th</sup> Street  
Manitowoc, WI 54220

Dear Ms. Vance and Mr. Fessler:

Thank you for your letter expressing your disappointment over the fact that you had to pay \$10 to file a voluntary paternity acknowledgement form with the county after the birth of your son, Nicholas.

As you know, parental rights have historically been automatically bestowed upon *married* couples upon the birth of their children. Wisconsin, like most other states, makes the assumption that the husband of a mother at the time of a child's birth is the biological father of that child. While this might cause problems in some cases, these cases are the exception and not the norm. Such cases require court proceedings to change the official records.

As I am sure you can appreciate, the state has an important interest in protecting the traditional family structure because families are the building block of our society. In conjunction with this, married couples enjoy several other benefits that unmarried couples do not, such as the authority to make medical decisions, joint tax filing, and military benefits for widowed or widower spouses of military personnel. While it respects the rights of its citizens to build families in non-traditional structures and holds no disregard for them or their dependents, the state requires additional paperwork to clarify the legal status of their family. The state requires this kind of paperwork to protect the interests of the children and also to help determine custody if the mother and father ever decide to split up. Since this paperwork requires additional time and resources to process and file, fees are charged.

Thank you again for your letter. As always, please do not hesitate to contact me with any additional thoughts you may have on this or any other issue.

Sincerely,

A handwritten signature in black ink that reads "Bob Z" with a stylized flourish.

Bob Ziegelbauer  
State Representative  
25<sup>th</sup> Assembly District

BZ/tmk

STATE CAPITOL: P.O. BOX 8953, MADISON, WI 53708-8953 • (608) 266-0315  
TOLL FREE : 1-888-529-0025 • FAX (608) 266-0316 • E-MAIL: bob.ziegelbauer@legis.state.wi.us

DISTRICT: 1213 S. 8TH STREET, P.O. BOX 325, MANITOWOC, WI 54221-0325  
MANITOWOC OFFICE: (920) 684-6783 • HOME: (920) 684-4362

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Manitowoc Co.

January 11, 2001

Bob Ziegelbauer  
PO Box 8953  
Madison, WI 53708-8953

Dear Representative Ziegelbauer:

I am in receipt of your letter of January 10, 2001(attached) regarding my previous correspondence in regards to voluntary paternity acknowledgment forms and fees.

With all due respect Mr. Ziegelbauer, I disagree with the position you have taken in your letter. The State requires this additional paperwork unnecessarily. I ask you what is the difference in the father agreeing and signing on the birth certificate that the child is his? If this were allowed, the additional paperwork would not be required and then neither would the additional time and resources (i.e. fees) be needed. Why is it that as a married couple I would need to pay NOTHING to file for a birth certificate for my child, but as a single parent, I need to pay an additional fee to have my child's father listed? Shouldn't a single parent be afforded the same rights as married parents (single parents pay taxes and vote too Mr. Ziegelbauer)?

This State does not respect the right of its citizens to build families in nontraditional structures. And it certainly does not protect the interest of the children by requiring the additional paperwork. Have you ever considered how many people might have chosen to leave the father off the birth certificate rather than pay the additional \$10 required to file the form? A form which is completely unnecessary at that. Mr. Ziegelbauer, have you even looked at this form? Please do so. You will see that it does not ask for any information that could not be placed on the birth certificate and signed by the father at the time it is filed with the state. Paternity tests are not necessary to complete the form. How does this additional paperwork help to determine custody if the mother and father split up? It is simply consent that the parents agree the child is theirs – signing the birth certificate would do the same thing. Instructions for this form clearly state “the unmarried mother has complete legal custody of the child until the court orders otherwise... This form does not change that.”

While I agree that a child is best raised in a two-parent household, I take issue with the state having “an important interest in protecting the traditional family structure...” Mr. Ziegelbauer, are you aware that in the 1990 Census 108,340 children were counted that were born to “never married” parents? Families may be the building block of our society, but are you discounting those single parent families that you do not include in your traditional family structure?

Wisconsin's laws regarding paternity teaches its citizens that children of unmarried parents are fatherless. Because it disregards fathers by leaving them off birth certificates, it teaches unwed mothers that it is all right to leave a father out of their child's life. And it tells our children that because their parents are not married that he is fatherless and different than children of married parents. It teaches unwed fathers that it's okay to disregard a child (emotionally and financially) simply because they are not married to the mother. These laws are not fair or just.

As your constituent, I once again urge you to review these laws and do what you can to change them. Mr. Ziegelbauer, this is about more than just a fee. Ten dollars to add Jon's name to Nicholas' birth certificate means nothing to me (however it could mean a lot to some single parents). The rights of my child to know who his legitimate father is, the rights of my husband (Incidentally, Jon and I were married on January 1, 2001.) as Nicholas' father and the rights of all single parent households should mean as much to the State of Wisconsin as it does to me. Before you disregard this letter and send back support of Wisconsin's current laws, please look at the Voluntary Paternity Acknowledgment Form and the laws regarding paternity and tell me how these could possibly be necessary.

Sincerely,

Theresa Y. Fessler



BOB ZIEGELBAUER

STATE REPRESENTATIVE • TWENTY FIFTH ASSEMBLY DISTRICT

January 17, 2001

Ms. Theresa Y. Fessler  
622 North 10<sup>th</sup> Street  
Manitowoc, WI 54220

Dear Ms. Fessler:

Thank you for your letter. I appreciated hearing from you.

While I understand your perspective, I continue to respectfully disagree.

Thank you again for your letter. If you would like to discuss this matter further, please feel free to call me at 684-6783 at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Bob Z" in a stylized, cursive script.

Bob Ziegelbauer  
State Representative  
25<sup>th</sup> Assembly District

BZ/tmk

P.S. Congratulations on your marriage to Jon.

STATE CAPITOL: P.O. BOX 8953, MADISON, WI 53708-8953 • (608) 266-0315  
TOLL FREE : 1-888-529-0025 • FAX (608) 266-0316 • E-MAIL: bob.ziegelbauer@legis.state.wi.us  
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Manitowoc Co.

January 19, 2001

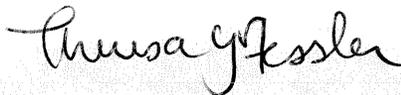
James Baumgart  
PO Box 7882  
Madison, WI 53707-7882

Dear Senator Baumgart:

I need your assistance. As you can see from the attached correspondence, Representative Ziegelbauer is not interested in the plight of single parents and is unwilling to do anything regarding Wisconsin's ridiculous laws. I gather Mr. Ziegelbauer didn't look at this form and probably didn't even read or respond to my letter – someone from his staff likely did.

Senator Baumgart, could you please review Wisconsin's Voluntary Paternity Acknowledgment form and see what you can do to change laws requiring this form.

Sincerely,



Theresa Y. Fessler