

ESSENTIAL FEATURES OF A PUTATIVE FATHER REGISTRY

MARY BECK

104 Hulston Hall, Columbia, MO 65211,

573 882 7872/ 573 446 7554

beckm@missouri.edu

Mary Beck "Toward a National Putative Father Registry Database" 25:3 Harvard
Journal of Law and Public Policy 1031 (2002)

PATERNITY REGISTRY LEGISLATIVE INTENT

- PROTECT THE FATHER WHO 'GRASPS OPPORTUNITY TO PARENT' BY FILING W/ PFR &/or DEVELOPING A SUBSTANTIAL RELATIONSHIP WITH HIS CHILD
- PROTECT THE CHILD WHOSE FATHER DOES NOT GRASP HIS OPPORTUNITY

PUTATIVE FATHER REGISTRIES

- At least 35 states have some paternity registry (often associated with child support recovery registries)
- Over 15 states provide that sex serves fathers with notice of pregnancy
- The U.S. Supreme Court held PFR's constitutional over 20 years ago in *Lehr v. Robertson* 103 S.Ct. 2985 (1983)
- PFR's are not radical or new

PROPOSED NAT'L REGISTRY: PROUD FATHER ACT

- Located in Part B of title IV of Social Security Act
 - 42 USC 620 et seq.
- Federal law provides a database to collect registrations and to impart registrations
- States continue to use their own substantive adoption law

CONGRESSIONAL AUTHORITY

- Congressional authority is premised upon its spending power through state grants
 - Congress has power to fix terms upon which its money allotments to states shall be disbursed
- Fed'l intervention is required b/c individual states cannot address problems of interstate adoptions without a nationally linked paternity database

NATIONAL PATERNITY REGISTRY & FATHERS

- Defines putative father as a man who has had sexual relations with a woman whom he is not married and is therefore on notice that such woman may be pregnant as a result of such relations
- Sex = notice of pregnancy

CATEGORIES OF FATHERS

- Presumed father (marriage)
- Acknowledged father (affidavit)
- Adjudicated father
- Putative father (none of the above)
 - Registered putative father
 - Unregistered putative father

NATIONAL PATERNITY REGISTRY & MOTHERS

- States must protect safety and privacy of mothers
- Meaning: mothers should not be required to name possible fathers of child
- Rationale: 1 out of 4 women are abused by partner and abuse always escalates in pregnancy; privacy invaded by disclosure of all relevant sexual partners; mother unable to identify father

BIOLOGY DOES NOT DEFINE PARENTAGE

- Even old Uniform Parentage Act: artificial insemination statute provides that mother's husband is the legal father of her child conceived by artificial insemination with donor sperm
- Michael H. v Gerald D. 491 US 110 (1989)
marriage trumps filialty
- Putative father is not a legally recognized father:
can't enroll child in school, can't authorize medical treatment, can't enlist child in medical insurance, may not visit or support child

INFORMATION REQUIRED FOR NATIONAL REGISTRY

- Register father's information: name, birth date, SS#, driver's license # & state of issue, home address, phone #, employer.
- Register mother's information: name, address, birth date, race/ethnicity.
- Register child's information (if known): state of conception, due date or birth date, name, gender
- Time limit – pregnancy plus x days

NATIONAL PATERNITY REGISTRY REQUIREMENTS

- Media campaign to publicize registry
- Cooperative agreements with hospitals, courts, law enforcement, health dept's, welfare offices, vital records dept's
 - Registration materials
- False filing = crime punishable by \$25,000
- Child support recovery may use registrations

NATIONAL REGISTRY REQUIREMENTS

- Amend long arm jurisdiction to assume personal jurisdiction over men who register with national paternity registry
- States must define prebirth abandonment and provide that it constitutes implied consent
- States must set finite limits on time to attack adoptions for fraud, duress, & procedural irregularities
- States must establish a rebuttable presumption voiding an adoption over 2 years after final decree is not in the best interest of the child

EFFECT OF FATHER'S REGISTRATION

- Registered putative father gets notice of hearing and service with adoption petition
- Timely registered putative father protects his rights to consent to adoption, to intervene in adoption, to file paternity action etc

EFFECT OF NON REGISTRATION OR REGISTRATION OUT OF TIME

- Waive right to notice
- Waive right to intervene in adoption eg Ct, Mn
- Implied contest to adoption eg. Al, Ar, In, Mo, Ne,
Oh
- Grounds for termination of parental rights eg. Il.
Mn,
- Bars filing of paternity action eg Id, NH, Or

SEARCHING THE PATERNITY REGISTRY

- Adoptive petitioners must:
 - search the paternity registry
 - serve the registered father at the address he provides with notice of hearing and copy of petition for adoption
- Who may search?
 - (Mother), adoption agency, adoption attorney, state agencies, state courts
- Cost to search – National, some states

REGISTRY COSTS

- Federal bill contains \$50 million for 2006
- Each state submits a plan to the secretary and requests a grant to implement the paternity registry
- Some state solutions: place surcharge on adoption filing fee (\$50 in Indiana and Missouri) and do not charge to register or to search the registry
- Postage free registration postcards

STATE REGISTRY EXCEPTIONS:

FRAUD & IGNORANCE

- Ignorance is no excuse
 - Father's lack of knowledge of pregnancy does not excuse filing with PFR
- Fraud excuses registration requirement; may extend registry requirement
 - Mother fraudulently tells father she was not pregnant, she terminated the pregnancy, or the child died
- Father's registration time limit begins when he learns of the fraud and he then must file with the PFR w/in x days of discovery of the fraud

SUMMARY

- Establish registry
 - Time limits – 9 months plus 0 – 30 days
- Relieve mother of obligations
 - To tell father of pregnancy (sex = notice)
 - To identify father (father identifies himself by registering)
- Set consequences for failure to file timely
 - Father waives rights to notice
 - Father implies consent; waives rights to intervene; or waives right to contest adoption.
- States may require father to register plus file a paternity action to protect rights to child
- Serve presumed, adjudicated, acknowledged and timely registered fathers
 - do not serve non registered putative father without substantial relationship to child

ESSENTIAL FEATURES OF A PUTATIVE FATHER REGISTRY

MARY BECK

104 Hulston Hall, Columbia, MO 65211,

573 882 7872/ 573 446 7554

beckm@missouri.edu

Mary Beck "Toward a National Putative Father Registry Database" 25:3 Harvard
Journal of Law and Public Policy 1031 (2002)

PATERNITY REGISTRY LEGISLATIVE INTENT

- PROTECT THE FATHER WHO 'GRASPS OPPORTUNITY TO PARENT' BY FILING W/ PFR &/or DEVELOPING A SUBSTANTIAL RELATIONSHIP WITH HIS CHILD
- PROTECT THE CHILD WHOSE FATHER DOES NOT GRASP HIS OPPORTUNITY

PUTATIVE FATHER REGISTRIES

- At least 35 states have some paternity registry (often associated with child support recovery registries)
- Over 15 states provide that sex serves fathers with notice of pregnancy
- The U.S. Supreme Court held PFR's constitutional over 20 years ago in *Lehr v. Robertson* 103 S.Ct. 2985 (1983)
- PFR's are not radical or new

PROPOSED NAT'L REGISTRY: PROUD FATHER ACT

- Located in Part B of title IV of Social Security Act
 - 42 USC 620 et seq.
- Federal law provides a database to collect registrations and to impart registrations
- States continue to use their own substantive adoption law

CONGRESSIONAL AUTHORITY

- Congressional authority is premised upon its spending power through state grants
 - Congress has power to fix terms upon which its money allotments to states shall be disbursed
- Fed'l intervention is required b/c individual states cannot address problems of interstate adoptions without a nationally linked paternity database

NATIONAL PATERNITY REGISTRY & FATHERS

- Defines putative father as a man who has had sexual relations with a woman whom he is not married and is therefore on notice that such woman may be pregnant as a result of such relations
- Sex = notice of pregnancy

CATEGORIES OF FATHERS

- Presumed father (marriage)
- Acknowledged father (affidavit)
- Adjudicated father
- Putative father (none of the above)
 - Registered putative father
 - Unregistered putative father

NATIONAL PATERNITY REGISTRY & MOTHERS

- States must protect safety and privacy of mothers
- Meaning: mothers should not be required to name possible fathers of child
- Rationale: 1 out of 4 women are abused by partner and abuse always escalates in pregnancy; privacy invaded by disclosure of all relevant sexual partners; mother unable to identify father

BIOLOGY DOES NOT DEFINE PARENTAGE

- Even old Uniform Parentage Act: artificial insemination statute provides that mother's husband is the legal father of her child conceived by artificial insemination with donor sperm
- Michael H. v Gerald D. 491 US 110 (1989)
marriage trumps filialty
- Putative father is not a legally recognized father:
can't enroll child in school, can't authorize medical treatment, can't enlist child in medical insurance, may not visit or support child

INFORMATION REQUIRED FOR NATIONAL REGISTRY

- Register father's information: name, birth date, SS#, driver's license # & state of issue, home address, phone #, employer.
- Register mother's information: name, address, birth date, race/ethnicity.
- Register child's information (if known): state of conception, due date or birth date, name, gender
- Time limit – pregnancy plus x days

NATIONAL PATERNITY REGISTRY REQUIREMENTS

- Media campaign to publicize registry
- Cooperative agreements with hospitals, courts, law enforcement, health dept's, welfare offices, vital records dept's
 - Registration materials
- False filing = crime punishable by \$25,000
- Child support recovery may use registrations

NATIONAL REGISTRY REQUIREMENTS

- Amend long arm jurisdiction to assume personal jurisdiction over men who register with national paternity registry
- States must define prebirth abandonment and provide that it constitutes implied consent
- States must set finite limits on time to attack adoptions for fraud, duress, & procedural irregularities
- States must establish a rebuttable presumption voiding an adoption over 2 years after final decree is not in the best interest of the child

EFFECT OF FATHER'S REGISTRATION

- Registered putative father gets notice of hearing and service with adoption petition
- Timely registered putative father protects his rights to consent to adoption, to intervene in adoption, to file paternity action etc

EFFECT OF NON REGISTRATION OR REGISTRATION OUT OF TIME

- Waive right to notice
- Waive right to intervene in adoption eg Ct, Mn
- Implied contest to adoption eg. Al, Ar, In, Mo, Ne, Oh
- Grounds for termination of parental rights eg. Il. Mn,
- Bars filing of paternity action eg Id, NH, Or

SEARCHING THE PATERNITY REGISTRY

- Adoptive petitioners must:
 - search the paternity registry
 - serve the registered father at the address he provides with notice of hearing and copy of petition for adoption
- Who may search?
 - (Mother), adoption agency, adoption attorney, state agencies, state courts
- Cost to search – National, some states

REGISTRY COSTS

- Federal bill contains \$50 million for 2006
- Each state submits a plan to the secretary and requests a grant to implement the paternity registry
- Some state solutions: place surcharge on adoption filing fee (\$50 in Indiana and Missouri) and do not charge to register or to search the registry
- Postage free registration postcards

STATE REGISTRY EXCEPTIONS:

FRAUD & IGNORANCE

- Ignorance is no excuse
 - Father's lack of knowledge of pregnancy does not excuse filing with PFR
- Fraud excuses registration requirement; may extend registry requirement
 - Mother fraudulently tells father she was not pregnant, she terminated the pregnancy, or the child died
- Father's registration time limit begins when he learns of the fraud and he then must file with the PFR w/in x days of discovery of the fraud

SUMMARY

- Establish registry
 - Time limits – 9 months plus 0 – 30 days
- Relieve mother of obligations
 - To tell father of pregnancy (sex = notice)
 - To identify father (father identifies himself by registering)
- Set consequences for failure to file timely
 - Father waives rights to notice
 - Father implies consent; waives rights to intervene; or waives right to contest adoption.
- States may require father to register plus file a paternity action to protect rights to child
- Serve presumed, adjudicated, acknowledged and timely registered fathers
 - do not serve non registered putative father without substantial relationship to child