



**Legal Aid Society**  
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

**Testimony of  
Meridel Bulle-Vu  
Supervising Attorney, Family/Domestic Violence Law Unit  
&  
Amee Vora  
Senior Staff Attorney, Family/Domestic Violence Law Unit  
Legal Aid Society of the District of Columbia**

**Before the Committee on the Judiciary & Public Safety  
Council of the District of Columbia**

**Public Hearing Regarding:**

**Bill 24-0656  
“Paternity Establishment Amendment Act of 2022”**

**May 5, 2022**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits this testimony in support of Bill 24-0656, the Paternity Establishment Amendment Act of 2022.

Legal Aid has a long history of litigating child support and parentage cases in the District of Columbia. Starting in 2011, Legal Aid and another legal services provider, Bread for the City, received Access to Justice grant money from the D.C. Bar Foundation to fund a Child Support Community Legal Services Project. Through this Project, we operate the Child Support Resource Center, which provides court-based legal services at the Parentage & Child Support (P&S) Branch of the D.C. Superior Court. Five days per week, attorneys from Legal Aid and Bread for the City provide legal information, advice, and same-day temporary representation to parties – custodial and non-custodial parents, as well as men brought in as putative fathers – in their parentage and child support cases. Between us, we have over sixteen years of regularly

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<sup>1</sup> The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

practicing in the area of parentage and support, providing us with ample experience and observations about how D.C.'s current paternity laws work in practice.

For over ten years, Legal Aid has been testifying annually before this Committee at oversight hearings regarding the Office of the Attorney General (OAG) to raise concerns about D.C.'s antiquated paternity laws and the urgent need to reform them. We have testified about the many cases we've litigated against OAG and the injustices we've witnessed as a result. Every year, Legal Aid attorneys encounter mothers, putative fathers, alleged biological fathers, and even children who wish to vacate inaccurate paternity judgments that were entered as the result of mistakes, misinformation, fraud, confusion, or lack of knowledge. These clients seek our help correcting erroneous paternity judgments because of the disastrous legal, emotional, and financial repercussions they can and do have on children and families.

Today, we testify to applaud Attorney General Racine for introducing the Paternity Establishment Amendment Act of 2022 to the Council and to urge the Council to pass it into law.

### **The District's Parentage Statute is Out of Date and Presents an Obstacle for Families Who Wish to Correct Erroneous Acknowledgements of Paternity**

When it comes to paternity establishment and disestablishment,<sup>2</sup> D.C. is behind the times. Our paternity statutes regarding children born to unmarried parents are based on outdated, paternalistic notions that a child's paternity must be locked in as early as possible and untouchable forevermore, lest the child suffer the shameful fate of being fatherless. Evidence that the man legally identified as the "father" is genetically unrelated to the child is irrelevant in such a statutory scheme. The same is true of evidence that another man is conclusively the child's genetic father. The hope underlying this feudalistic policy is that a man will feel obligated to support any child who bears his name. This policy dates to a different era when there was no way to conclusively determine a child's genetic parents. In 2022, it does not make sense to continue to ignore genetics. DNA testing is readily accessible and accepted as the definitive method to determine a child's biological parents. D.C.'s paternity laws must catch up.

By way of background, when a child is born to unmarried parents in the District, the child's maternity is automatically established upon birth, but the child's paternity is not. Parents can opt to establish the paternity of the child by going to court to request DNA testing and the entry of an order establishing the child's paternity – a time-consuming process, leaving the child "fatherless" throughout – or they can opt to sign a legal form called an Acknowledgment of Paternity at the hospital or Vital Records.<sup>3</sup> The Acknowledgment of Paternity process was created by federal and D.C. law to provide unmarried biological parents with an efficient means of legally

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<sup>2</sup> Our testimony today, as well as the Paternity Establishment Amendment Act of 2022 itself, addresses only the establishment and disestablishment of paternity of children born to unmarried heterosexual parents who conceived without the assistance of assisted reproductive technologies, specifically through the procedures set out in D.C. Code §§ 16-909(b-1) and (b-2). All statements made throughout should be read with that limitation in mind.

<sup>3</sup> Presently, there is no option for parents to obtain DNA testing on-site at the hospital or Vital Records prior to signing an Acknowledgment.

recognizing the relationship between a father and child. To safeguard the Acknowledgment of Paternity process and ensure that the system is not abused, federal and D.C. law include procedural requirements that must be followed for biological parents to validly execute an Acknowledgment of Paternity (“Acknowledgment”). For instance, both parents must be placed under oath. They must also be given written and oral notice of the alternatives to, legal consequences of, and rights and responsibilities that arise from the Acknowledgment.<sup>4</sup> When these requirements are not followed, Legal Aid takes the legal position that the Acknowledgment cannot be used to establish paternity or require a putative father to pay child support; instead, when the deficiencies are raised in and credited by the court, the Acknowledgment must be vacated as invalid, and the parties must use an alternate method such as court-ordered DNA testing to establish paternity.

While more straightforward than going to Court, for a range of reasons, Acknowledgements of Paternity can reflect errors. Even if all procedures are followed, mistakes happen. There are also instances in which the process is abused – men are lied to or a mother may try to cut the real biological father out, for example. Whatever the reason, the wrong person not infrequently ends up legally recognized as the father of a child.

Current District law intentionally makes it hard to challenge an Acknowledgment, viewing it as a “conclusive presumption” of paternity.<sup>5</sup> While Legal Aid believes there is still room to challenge an erroneous Acknowledgment or court adjudication of paternity on the basis of the extraordinary circumstances that result from it, OAG has adopted a narrower reading of current law and, in nearly all individual cases, has opposed vacating an Acknowledgment or adjudication even when the mother, child, and the person recognized as the father all agree that the paternity determination is incorrect.

For example, in one prior case, Legal Aid represented a putative father who had undergone private DNA testing, the results of which showed that our client was not the biological father of the custodial parent’s child. Our client and the child’s mother had signed an Acknowledgment shortly after the child was born, which had established Legal Aid’s client as the child’s father. Both the custodial parent and our client jointly sought to disestablish paternity, and our client initiated the court case upon the advice of the Department of Vital Records. At Court for the initial hearing, we learned that the parties never received the requisite warnings or explanations before they signed the Acknowledgment of Paternity at the hospital and did not understand the legal significance, permanence, and implications of signing this form. When the parties jointly argued that paternity should be disestablished in light of the invalidly executed Acknowledgment of Paternity and the DNA testing results, OAG opposed the request based on the agency’s interpretation of current law. Upon hearing the parties’ testimony regarding the legally deficient execution of the Acknowledgment of Paternity, the Court agreed to order DNA testing over OAG’s objections. At the next hearing, despite the official DNA testing results confirming that the putative father was not the biological parent of this child, OAG asked the Court not to disestablish paternity until it could first subpoena the alleged biological father of the child to essentially guarantee that his paternity would be established immediately after our client’s

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<sup>4</sup> Cite to statute

<sup>5</sup> D.C. Code § 16-2342.01(a)(1).

paternity was disestablished. The Court denied this request, agreeing with Legal Aid that the subsequent establishment of the biological father's paternity was a separate legal issue that needed to be addressed in a separate, subsequent case, and was not a legitimate reason to further delay the resolution of the disestablishment case at hand.

While we were successful in achieving disestablishment in that instance, many other families are forced to live with lies and errors. Children are denied recognition by the correct person. They are denied relationships with their biological fathers and their families. They are denied knowledge about their ancestry, their correct medical history, and information they may need to figure out their place in the world. They may be denied the support and inheritance to which they should be entitled. And they are legally tied to someone who is a biological stranger, someone who nonetheless has the right to seek and obtain custody over them. For the adults involved, the results can be devastating. An erroneous Acknowledgement of Paternity can mean that the wrong person is ultimately ordered to pay child support and subjected to enforcement actions up to and including incarceration. Biological fathers are denied their constitutional rights to parent.

More broadly, District residents – those directly impacted by the error and those who only hear about the system that requires the error to remain in place – lose faith in our system of laws that turns a blind eye to the truth. And because Acknowledgments are disproportionately used by lower-income families of color in the District, the negative, lasting consequences of inappropriate use and the inability to readily correct errors falls more heavily on this already vulnerable population.

For years, we have shared how the way that the current parentage statute has been written and interpreted has caused injustice. For this reason, we hope that the Council will reform the provisions of the law that limit broader relief to families facing a mismatch between the person recognized as a child's father and the person biologically responsible for the child's creation.

### **The Paternity Establishment Amendment Act Makes Key Improvements to the Parentage Statute**

The Paternity Establishment Amendment Act of 2022 is the result of OAG's decision to put DNA at the forefront and to work with stakeholders, including Legal Aid, to decide where statutory changes were most urgently needed. We applaud OAG for recognizing the need for legislative change to remove barriers to aligning paternity with biological truth. We do believe a complete overhaul of the District's paternity statutes will ultimately be necessary to untangle the complex mess of our overlapping, cross-referencing, sometimes even conflicting parentage statutes. Such an overhaul is especially important given that we want unrepresented litigants to be able to understand the law and seek relief under it. However, the provisions in this bill are a critical first step, making it clearer to all parties how they can go about addressing erroneous Acknowledgements or court adjudications of paternity.

Before describing what the bill does, it is essential to note that the proposed revisions only affect the paternity determinations of children born to parents who are unmarried at time of the birth. The proposals would not affect parentage stemming from marriage or children born using assisted reproductive technologies. Further, the bill does not propose changes to the process by

which Acknowledgments are executed or court adjudications of paternity are entered. Ultimately, the Paternity Establishment Amendment Act of 2022:

- 1) Clarifies the Council’s intent that only Acknowledgments signed in accordance with the procedures laid out in the statute legally establish paternity;
- 2) Allows certain individuals to request DNA testing through the courts even after an Acknowledgment has been signed or an adjudication of paternity entered; and
- 3) Provides guidance to the Court on what effect DNA evidence should have on an otherwise valid Acknowledgment or adjudication.

These three relatively narrow revisions will help tear down current barriers to recognizing the truth to ensure that, when mistakes happen, there is a way to correct them.

Acknowledgements Signed Without Required Procedural Protections are Invalid

Turning to the first revision, the language added to §§ 16-909.01(a)(1) and 16-2342.01(a)(1) clarifies the Council’s intent that Acknowledgements are only valid if all of the statutory protections are followed.<sup>6</sup> Existing language in § 16-909(b-1)(2) already states that a conclusive presumption of parentage is created “if the father has acknowledged paternity in writing *as provided in § 16-909.01(a)(1)*” (emphasis added). While we believe and regularly argue that the current language is clear that only an Acknowledgment that was signed following the requirements in §16-909.01(a)(1) can establish paternity, there has nonetheless been confusion on this point; even OAG has previously argued that a signed Acknowledgment established paternity despite clear evidence that the procedures were not followed. In several cases we litigated, parties testified that they did not receive the statutory safeguards or warnings prior to being asked to sign the Acknowledgment, yet they faced opposition when they sought to invalidate those forms and obtain DNA testing to confirm paternity.

The clarifying language makes clear that, when a challenge to an Acknowledgment is raised, the Court should inquire into the circumstances surrounding the signing and provide the challenging party an opportunity to provide evidence that the requirements of § 16-909.01(a)(1) were not met. If the Court determines that all of the procedures were not followed, DNA testing would then be the appropriate next step towards establishing paternity.<sup>7</sup>

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<sup>6</sup> The proposed insertion at the end of § 16-909.01(a)(1) states, “An acknowledgment of paternity signed in the District shall be binding and shall establish paternity pursuant to § 16-909(b-1)(2) unless it is proven that the requirements of this paragraph were not fully met.” We request that the Council strike the words “shall be binding and” as that phrase is extraneous and could cause confusion about the legal status of a validly signed acknowledgment.

<sup>7</sup> D.C. Code § 16-909(b-1)(1).

### DNA Testing Through the Court Should be Easily Accessible When Concerns Arise Regarding Paternity

As it stands now, DNA testing is readily accessible everywhere but through the courts – where it matters most. The second revision, to § 16-2343(a), ensures easy access to court-ordered DNA testing by a select group of individuals, thereby modernizing D.C.’s laws. The mother, the person who signed an Acknowledgment or adjudication as the father, the child, or a person who has a fact-based reason to believe they may be the biological father can request and obtain DNA testing from the court even after an Acknowledgment or adjudication has been entered.

In our experience, families almost always know the truth before they come to court. In most of our cases, our clients have already undergone private DNA testing – which has become increasingly affordable and accessible – before seeking the court’s intervention or enlisting our help. Our clients frequently come to us armed with conclusive results showing that the person established as the child’s father is not actually a biological parent. They optimistically ask the Court to correct the erroneous Acknowledgment or adjudication and to remove the unrelated individual from the child’s birth certificate, assuming that such a request will be as easy to come by as their private DNA results. In light of such scientific certainty, our clients and their families are often perplexed, frustrated, and heartbroken to learn that disestablishing paternity under current laws is not straightforward, swift, or even guaranteed.

The first essential step to obtaining relief from an otherwise valid but erroneous Acknowledgment or adjudication is obtaining DNA testing. But not just any DNA test results will suffice: in order to be considered evidence by the Court, the DNA samples must be collected at a certified lab, and the expert report showing the statistical probability of paternity must be accompanied by certified documentation of the chain of custody. Further, the request for DNA testing must come from the right person. Currently, § 16-2343 does not allow the child whose parentage is at issue or an individual with a factual basis upon which to claim to be the biological parent to seek court-ordered DNA testing, even though both would be eligible to initiate a new proceeding to determine parentage under § 16-2342(a). In addition, § 16-2343 includes an exception from mandatory testing upon request when an Acknowledgment or adjudication has previously been signed. It is precisely in the circumstances when there is a pre-existing Acknowledgment or adjudication that easy accessibility to DNA is essential to resolve any question about paternity and bring closure to all interested parties. Expanding the group of individuals who can request the acceptable court-ordered testing while removing the limitation on the Court’s authority to order it after an Acknowledgment or adjudication has been signed ensures all interested parties – including the child – can have the truth recognized.

### The Court Should Set Aside an Acknowledgment or Adjudication of Paternity if DNA Excludes the Signatory as the Biological Father

The third provision in the bill confirms the legal import of court-ordered DNA testing – specifically, that DNA evidence on its own can be the basis for setting aside a conflicting Acknowledgment or adjudication.

Acknowledgments of Paternity are meant to be proxies for DNA testing; they are explicitly meant to identify and establish who a child's *biological* parents are. Alternate processes exist for non-related individuals to claim rights to a child. Inappropriate use of an Acknowledgment of Paternity by a non-biological parent – whether intentional or inadvertent – denies the biological parent his fundamental parental rights while allowing someone without a genetic relationship to claim custody of a child. Whether the result of fraud by one party, collusion by both signatories, or a simple miscalculation about the probability of paternity, it is improper for a non-biological parent to establish parentage through an Acknowledgment of Paternity. DNA evidence that the person legally recognized as a child's father is not a biological parent is proof that something went wrong in Acknowledgment process.

The bill provides essential guidance to the courts that DNA results excluding the person whose paternity was previously established by Acknowledgment or adjudication (or proving that another person is the biological parent instead) are evidence that, necessarily, one of the following scenarios occurred: the man was misled, one signatory signed under duress, both parties colluded to commit fraud, or one or both signatories were operating under a material mistake of fact at the time they signed. This aligns with federal and existing D.C. law, under which an Acknowledgment can only be set aside on the basis of fraud, duress, or mistake of fact.

At present, when the Court is presented with or orders DNA testing that proves the non-paternity of a signatory to an Acknowledgment or adjudication of paternity, the legal significance of the DNA results is unclear. Parties face prolonged proceedings and are often required to demonstrate the extraordinary circumstances resulting from the conflict between biology and legal parentage before the Court can remedy the conflict and correct the mistake. The current legal process is nearly impossible for unrepresented parties to navigate, and the stress of the prolonged proceedings is harmful to District children and families. In one of our cases, our client, a mother, has been attempting to disestablish paternity on behalf of her child for over a decade. Before finally obtaining our help in 2016, she was given inconsistent and contradictory advice and information about what she needed to do to correct this mistake. As a result of how challenging and time-consuming it has been for her to disestablish paternity, she has never received child support on behalf of her now adult child.

The provision adding to § 16-909(c-1) would significantly simplify and shorten disestablishment proceedings, setting out the Council's clear intent that Acknowledgments or adjudications of paternity are only intended as a way to efficiently establish paternity for *biological* parents – not an option to circumvent biology and the adoption process. Although the bill as drafted leaves a small amount of discretion for the Court as to whether paternity must be vacated in light of DNA evidence of non-paternity, we hope and expect that it will be the rare exception for the Court to leave in place an Acknowledgment or adjudication proven to be in conflict with biology, particularly given the alternatives through de facto parenthood or third party custody for that individual to gain rights and access to the child, as appropriate and in the child's best interests. Indeed, we read the language “may require” as establishing a presumption in favor of setting aside the conflicting Acknowledgment or adjudication, barring any evidence and arguments of extraordinary circumstances. We would otherwise be concerned that the narrow opening left by the word “may” could be abused to continue protracted, contentious, fact-intensive litigation to the detriment of the truth and the individuals, child, and family involved; in that case, we would advocate for an amendment to change that key language to “shall.” Clarity about the legal

impact of exclusionary DNA results is pivotal to protecting the rights of unrepresented parties who otherwise face nearly insurmountable obstacles to making the legal arguments necessary to disestablish paternity when an Acknowledgment or adjudication conflicts with the results of court-ordered DNA.

### **Conclusion**

Parentage is an important legal issue with far-reaching consequences, and the law must prioritize getting it right. Given the increased availability and accuracy of DNA testing and the critical importance of accurate parentage establishments to children, the D.C. Council should pass the Paternity Establishment Amendment Act of 2022 to ensure that parentage determinations do not conflict with biology and to make it easier to correct errors when they occur.

While the District of Columbia has been relatively progressive regarding matters of parentage, the last substantive update to our laws was in 2009. In the last decade, D.C. has been outpaced by other states taking the lead on aligning parentage with biology. D.C.'s paternity laws as a whole are confusing and due for a rewrite to simplify them and make them more accessible for District parents and the many unrepresented litigants in the Parentage and Support Branch of Family Court. Short of a full rewrite, passage of the Paternity Establishment Amendment Act of 2022 will increase access to justice and demonstrate D.C.'s recognition of the significance of biology to children and their families. Implementing these changes will align D.C. law with modern science, popular concepts of parenthood, and other progressive states.<sup>8</sup> Moreover, these legislative changes are essential to alleviate the disparate impact of our current system on low-income communities of color.

We commend the Council to take this opportunity to update the District's parentage laws to better account for the availability and accuracy of genetic testing. These revisions increasing access to DNA testing and allowing for the vacatur of Acknowledgments or adjudications that do not align with DNA will provide a clearer legal recourse to men who were misled about paternity or families living with a mistake, ensure that biological parents' rights are not short-circuited, and ultimately benefit D.C. families and children. Passage of this Act will demonstrate the District's commitment to and respect for the D.C. families of color reliant on Acknowledgements of Paternity to establish their families' legal relationships.

We thank the Council for taking up the Paternity Establishment Amendment Act of 2022 and urge you to pass it. We hope, going forward, the Council will monitor the impact of this legislative change to ensure it has the intended effect of simplifying the process of disestablishment for District families.

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<sup>8</sup> Our nearest neighbor, Maryland, has long allowed parties to access DNA testing through its courts to confirm or challenge paternity determinations made by acknowledgment (there, declarations) or court adjudication. MD. CODE ANN., FAM. LAW § 5-1029. Maryland law further provides that a declaration of paternity in an order can be modified or set aside if a genetic test establishes that the individual named in the order is not the biological father. MD. CODE ANN., FAM. LAW § 5-1038 (2).