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AMERICAN BAR ASSOCIATION

JUDICIAL DIVISION
NATIONAL CONFERENCE OF FEDERAL TRIAL JUDGES
NATIONAL CONFERENCE OF STATE TRIAL JUDGES
STANDING COMMITTEE ON THE AMERICAN JUDICIAL SYSTEM
BUSINESS LAW SECTION
SECTION OF LITIGATION
SECTION OF DISPUTE RESOLUTION
SECTION OF INTELLECTUAL PROPERTY LAW
TORT TRIAL AND INSURANCE PRACTICE SECTION
SECTION OF ANTITRUST LAW

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association adopts the ABA Guidelines for the Appointment and Use of Special Masters in Federal and State Civil Litigation, dated January 2019; and

FURTHER RESOLVED, That Bankruptcy Rule 9031 should be amended to permit courts responsible for cases under the Bankruptcy Code to use special masters in the same way as they are used in other federal cases.
ABA Guidelines for the Appointment and Use of Special Masters in Federal and State Civil Litigation

Consistent with the Federal Rules of Civil Procedure or applicable state court rules:

(1) It should be an accepted part of judicial administration in complex litigation (and in other cases that create particular needs that a special master might satisfy), for courts and the parties to consider using a special master and to consider using special masters not only after particular issues have developed, but at the outset of litigation.

(2) In considering the possible use of a special master, courts, counsel and parties should be cognizant of the range of functions that a special master might be called on to perform and roles that a special master might serve.

(3) In determining whether a case merits appointment of a special master, courts should weigh the expected benefit of using the special master, including reduction of the litigants' costs, against the anticipated cost of the special master's services, in order to make the special master's work efficient and cost effective.

(4) Participants in judicial proceedings should be made aware that special masters can perform a broad array of functions that do not usurp judicial functions, but assist them. Among the functions special masters have performed are:
   a. discovery oversight and management, and coordination of cases in multiple jurisdictions;
   b. facilitating resolution of disputes between or among co-parties;
   c. pretrial case management;
   d. advice and assistance requiring technical expertise;
   e. conducting or reviewing auditing or accounting;
   f. conducting privilege reviews and protecting the court from exposure to privileged material and settlement issues; monitoring; class administration;
   g. conducting trials or mini-trials upon the consent of the parties;
   h. settlement administration;
   i. claims administration; and
   j. receivership and real property inspection.

In these capacities special masters can serve numerous roles, including management, adjudicative, facilitative, advisory, information gathering, or as a liaison.

(5) Courts should develop local rules and practices for selecting, training, and evaluating special masters, including rules designed to facilitate the selection of special masters from a diverse pool of potential candidates.

(6) Courts should choose special masters with due regard for the court’s needs and the parties’ preferences and in a manner that promotes confidence in the selection process by helping to ensure that qualified and appropriately skilled and experienced candidates are identified and chosen.
(7) The referral order appointing the special master should describe the scope of the engagement, including, but not limited to, the special master's duties and powers, the roles the special master may serve, the rates and manner in which the special master will be compensated, power to conduct hearings or to facilitate settlement, requirements for issuing decisions and reporting to the court, and the extent of permissible ex parte contact with the court and the parties. Any changes to the scope of the referral should be made by a modification to the referral order.

(8) Courts and the bar should develop educational programs to increase awareness of the role of special masters and to promote the acquisition and dissemination of information concerning the effectiveness of special masters.

(9) Courts and, where applicable, legislatures should make whatever modifications to laws, rules, or practices that are necessary to effectuate these ends.
Executive Summary

1. Summary of Resolution.

This Resolution adopts the ABA Guidelines for the Appointment and Use of Special Masters in Federal and State Civil Litigation and Recommends that Bankruptcy Rule 9031 be amended to permit courts responsible for matters under the Bankruptcy Code to use special masters in the same way as they are used in other federal cases.

2. Summary of the issue which the Resolution addresses.

While the ABA has been a leading voice in favor of various forms of ADR, the appointment of special masters is an underutilized dispute resolution tool that could aid in the “just, speedy and inexpensive” resolution of cases. In 2016, the Lawyers Conference of the ABA Judicial Division (JD) formed a Committee on Special Masters to promote research and education concerning special masters and to make proposals concerning their use. This Committee concluded that one of the difficulties faced by both courts and practitioners is the lack of a methodical and consistent approach to the appointment and use of special masters.

To solve this problem, the Committee constituted a Working Group across ABA sections, divisions and forums to develop consensus guidelines for the use of special masters. The Working Group was formed in August 2017, included members of the Judicial Division (including the National Conference of Federal Trial Judges, the National Conference of State Trial Judges and the Lawyers Conference), the Business Law Section, the Standing Committee on the American Judicial System, Section of Antitrust Law, the Section of Dispute Resolution, the Section of Intellectual Property Law, the Section of Litigation and the Tort Trial and Insurance Practice Section, who collectively worked well over 1,000 hours to create these consensus guidelines.

3. An explanation of how the proposed policy position will address the issue.

The best practices described in this Resolution encourage courts to make greater and more systematic use of special masters to assist in civil litigation. These Guidelines provide recommendations concerning the use, selection, administration, and evaluation of special masters.

4. A summary of any minority views or opposition internal and/or external to the ABA which have been identified.

There is no known opposition to this Resolution.
RESOLVED, That the American Bar Association encourages federal, state, local, territorial, and tribal legislatures and court systems, in conjunction with state and local bar associations, to support and assist with the establishment and maintenance of lactation areas in courthouses. The lactation areas should be available to members of the public, including lawyers, jurors, litigants, witnesses, and observers. The lactation areas should: (1) be shielded from view and free from intrusion from the public; (2) have a door that can be locked; (3) include a place to sit, a table or other flat surface, and an electrical outlet; (4) be readily accessible to and usable by individuals with disabilities; and (5) not be located in a restroom.
EXECUTIVE SUMMARY

1. **Summary of Resolution.**

   This resolution encourages federal, state, local, territorial, and tribal legislatures and court systems, in conjunction with state and local bar associations, to support and assist with the establishment and maintenance of lactation areas in courthouses. The lactation areas should be available to members of the public, including lawyers, jurors, litigants, witnesses, and observers. The lactation areas should: (1) be shielded from view and free from intrusion from the public; (2) have a door that can be locked; (3) include a place to sit, a table or other flat surface, and an electrical outlet, (4) be readily accessible to and usable by individuals with disabilities; and (5) not be located in a restroom.

2. **Summary of the Issue which the Resolution addresses.**

   This Resolution aims to provide members of the public, especially attorneys who are nursing mothers, with a clean, accessible, comfortable, and private space within which to express milk while in court. New mothers physiologically must stick to a strict feeding and expressing schedule in order to make enough breast milk to feed their child(ren), and the absence of any clean, accessible, comfortable, and private lactation areas in courthouses often precludes them from doing so. A working, nursing mother should not have to choose between going to work and feeding her child. This Resolution is a step in the direction of providing working, nursing mothers with the protection they need to never have to make this choice in the first place.

3. **An explanation of how the proposed policy position will address the issue.**

   The policy will encourage legislatures, court systems, and bar associations across the country to work together to offer clean, accessible, comfortable, and private lactation areas in courthouses across the country.

4. **A summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

   No minority or opposing views have been identified.
RESOLVED, That the American Bar Association urges the enactment of a rule by all state, local, territorial, and tribal legislative bodies or their highest courts charged with the regulation of the legal profession, as well as by all federal courts, providing that a motion for continuance based on parental leave of either the lead attorney or another integrally involved attorney in the matter shall be granted if made within a reasonable time after learning the basis for the continuance unless: (1) substantial prejudice to another party is shown; or (2) the criminal defendant’s speedy trial rights are prejudiced.
**EXECUTIVE SUMMARY**

1. **Summary of Resolution.**

   This Resolution urges the enactment of a rule by all state, local, territorial, and tribal legislative bodies or their highest courts charged with the regulation of the legal profession, as well as by all federal courts, providing that a motion for continuance based on parental leave of either the lead attorney or another integrally involved attorney in the matter shall be granted if made within a reasonable time after learning the basis for the continuance unless: (1) substantial prejudice to another party is shown; or (2) the criminal defendant’s speedy trial rights are prejudiced.

2. **Summary of the Issue which the Resolution addresses.**

   This Resolution addresses the absence of a rule of practice providing for a rebuttable presumption that a continuance should be granted in a matter where the primary or secondary attorney is on parental leave following the birth or adoption of a new child at home.

3. **An explanation of how the proposed policy position will address the issue.**

   The policy will encourage the bodies charged with regulating the legal profession to enact a rule providing that a motion for continuance based on parental leave of the primary or secondary attorney in the matter shall be granted if made within a reasonable time after learning the basis for the continuance with limited exceptions.

4. **A summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

   No minority or opposing views have been identified.
RESOLVED, That the American Bar Association reaccredits for an additional five-year term the DUI Defense program of the National College for DUI Defense; and

FURTHER RESOLVED, That the American Bar Association extends the accreditation period of the Family Trial Law and Criminal Trial Law programs of the National Board of Trial Advocacy until the adjournment of the next meeting of the American Bar Association's House of Delegates in August, 2019.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution asks for reaccreditation of the DUI Defense specialist certification program of the National College for DUI Defense, and extension of the accreditation period of the Family Trial Law and Criminal Trial Law programs of the National Board of Trial Advocacy until August 2019.

2. Summary of the Issue that the Resolution Addresses

Accreditation by the Association is a formal requirement for certified lawyers to claim certification in approximately two dozen states, and the ABA Standards for Accreditation of Specialist Certification Programs for Lawyers requires periodic reaccreditation of all such programs.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Passage of the Resolution will allow continuation of the accreditation of these programs by the Association. Accreditation by the Association is a formal requirement for certified lawyers to claim certification in approximately two dozen states.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None identified.
RESOLVED, That the American Bar Association approves the following paralegal education programs: Irvine Valley College, Paralegal Studies Program, Irvine, CA; Baton Rouge Community College, Paralegal Studies Program, Baton Rouge, LA; and Molloy College, Paralegal Studies Program, Rockville Centre, NY;

FURTHER RESOLVED, That the American Bar Association reapproves the following paralegal education programs: Los Angeles City College, Paralegal Studies Program, Los Angeles, CA; University of New Haven, Legal Studies Program, West Haven, CT; St. Petersburg College, Legal Studies Program, Clearwater, FL; Georgia Piedmont Technical College, Paralegal Studies Program, Covington, GA; Herzing University, Legal Studies Program, Atlanta, GA; Wilbur Wright College, Paralegal Program, Chicago, IL; Des Moines Area Community College, Legal Assistant Program, Des Moines, IA; Finger Lakes Community College, Paralegal Program, Canandaigua, NY; Monroe Community College, Paralegal Studies Program, Rochester, NY; SUNY Rockland Community College, Paralegal Studies Program, Suffern, NY; South University, Paralegal and Legal Studies Program, Columbia, SC; Brightwood College, Paralegal Studies Program, Nashville, TN; and Pioneer Pacific College, Legal Assistant/Paralegal Program, Wilsonville, OR;

FURTHER RESOLVED, That the American Bar Association withdraws the approval of the following paralegal education programs: Baker College of Jackson, Paralegal Program, Jackson, MI; and Gannon University, Legal Studies Program, Erie, PA, at the request of the institutions; and

FURTHER RESOLVED, That the American Bar Association extends the terms of approval until the August 2019 Annual Meeting of the House of Delegates for the following paralegal education programs: Faulkner University, Legal Studies Program, Montgomery, AL; South University, Paralegal Studies and Legal Studies Program, Montgomery, AL; California State University, Paralegal Studies Program, Los Angeles, CA; West Los Angeles College, Paralegal Studies Program, Culver City, CA; University of San Diego, Paralegal Program, San Diego, CA; Community College of Aurora, Paralegal Program, Denver, CO; Miami Dade College, Paralegal Studies Program, Miami, FL; Kapi‘olani Community College, Paralegal Program, Honolulu, HI; Midstate
College, Paralegal Studies Program, Peoria, IL; Ball State University, Legal Studies, Muncie, IN; Anne Arundel Community College, Paralegal Studies Program, Arnold, MD; Bay Path University, Legal Studies, Longmeadow, MA; Macomb Community College, Legal Assistant Program, Warren, MI; Winona State University, Paralegal Program, Winona, MN; New Hampshire Technical Institute, Paralegal Studies Program, Concord, NH; Atlantic Cape Community College, Paralegal Studies Program, Mays Landing, NJ; Rowan College at Burlington County, Paralegal Program, Pemberton, NJ; Union County College, Paralegal Studies Program, Cranford, NJ; Hofstra University, Paralegal Studies Program, Hempstead, NY; Schenectady County Community College, Paralegal Studies, Schenectady, NY; Westchester Community College (SUNY), Paralegal Studies Program, Valhalla, NY; Methodist University, Legal Studies Program, Fayetteville, NC; South College, Asheville, Legal/Paralegal Studies Program, Asheville, NC; Fayetteville Technical College, Paralegal Technology Program, Fayetteville, NC; National American University, Paralegal Studies Program, Sioux Falls, SD; University of Tennessee Chattanooga, Legal Assistant Studies Program, Chattanooga, TN; Chattanooga State Community College, Paralegal Studies Program, Chattanooga, TN; Southwest Tennessee Community College, Paralegal Studies, Memphis, TN; Texas A&M University Commerce, Paralegal Studies Program, Commerce, TX; Milwaukee Area Technical College, Paralegal Program, Milwaukee, WI; and American National University, Paralegal Program, Salem, VA.
EXECUTIVE SUMMARY

Submitting Entity: Standing Committee on Paralegals

Submitted By: Chris S. Jennison, Chair

1. Summary of the Resolution

This Resolution recommends that the House of Delegates grants approval to three programs, grants reapproval to thirteen paralegal education programs, withdraws the approval of two programs at the requests of the institutions, and extends the term of approval to 31 paralegal education programs.

2. Summary of the issue which the Resolution Addresses

The programs recommended for approval and reapproval in the enclosed report meet the Guidelines for the Approval of Paralegal Education Programs. The programs recommended for withdrawal of approval in the enclosed report have requested that approval be withdrawn.

3. Please Explain How the Proposed Policy Position will address the issue

The programs recommended for approval, reapproval, and withdrawal of approval in this report have followed the procedures required by the Association and are in compliance with the Guidelines for the Approval of Paralegal Education Programs.

4. Summary of Minority Views

No other positions on this resolution have been taken by other Association entities, affiliated organizations or other interested group.
RESOLVED, That the American Bar Association supports the principle that the doctrine of “fair use” should be applied in a manner consistent with the constitutional goal of copyright, which is “to Promote the Progress of Science and useful Arts” by giving authors exclusive rights in their works for limited times (see U.S. Const., Art. I, §8, cl.8); and

FURTHER RESOLVED, That the American Bar Association supports the principle that when a user of copyrighted works merely repackages the copyrighted material and delivers it to the copyright owner’s actual or potential market, that use should not in and of itself be deemed a transformative use that would weigh in favor of fair use, regardless of whether the user can deliver that copyrighted material more efficiently than the copyright owner or its current licensees; and

FURTHER RESOLVED, That the American Bar Association supports the principle that the copyright owner’s actual or potential market includes those markets that are traditional, reasonable or likely to be developed, regardless of whether the copyright owner has already entered a particular market or has plans to do so.
EXECUTIVE SUMMARY

1. Summary of the Resolution

   This Resolution addresses interpretation and application of the fair use doctrine in copyright law by calling for a consistent approach to fair use that furthers the constitutional purpose of copyrights and balances the interests of various stakeholders, with particular attention to application of fair use in the context of the digital environment and with respect to repackaging copyrighted material. If a user of copyrighted works merely repackages the copyrighted material and delivers it to the copyright owner’s actual or potential market, that use does not qualify as a transformative use that would weigh in favor of fair use, and a copyright owner’s actual or potential market includes markets that are traditional, reasonable or likely to be developed. This approach to fair use will reduce uncertainty for a spectrum of users and innovative businesses and provide greater clarity for the attorneys advising them.

2. Summary of the Issue that the Resolution Addresses

   During the 24 years since the Supreme Court last provided guidance on interpretation and application of fair use doctrine, advances in digital technology and communications have made possible previously unknown means of creating, delivering and enjoying copyrighted works, while inconsistent interpretation and application of fair use by the courts has led to practical difficulties for lawyers and burdensome uncertainty for a diverse range of users and innovative businesses looking to utilize those advances.

3. Please Explain How the Proposed Policy Position Will Address the Issue

   The Resolution calls for a consistent approach to fair use in accordance with the constitutional purpose of copyrights, including an interpretation and application of statutory fair use factors in which (1) distribution of a copyright owner’s work in whole or in substantial part, using an efficient new technology or new means of distribution, should not in itself be deemed a “transformative” act in support of a fair use determination, and (ii) a copyright owner’s absence from a particular market is not determinative of whether the copyright owner can be harmed if his content is exploited in that market.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

   No known opposition.
RESOLVED, That the American Bar Association House of Delegates concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated January 2019 to Standard 316 (Bar Passage) of the ABA Standards and Rules of Procedure for Approval of Law Schools.
Standard 316. BAR PASSAGE

At least 75 percent of a law school’s graduates in a calendar year who sat for a bar examination must have passed a bar examination administered within two years of their date of graduation.

(a) A law school’s bar passage rate shall be sufficient, for purposes of Standard 301(a), if the school demonstrates that it meets any one of the following tests:

(1) That for students who graduated from the law school within the five most recently completed calendar years:
   (i) 75 percent or more of these graduates who sat for the bar passed a bar examination; or
   (ii) In at least three of these calendar years, 75 percent of the students graduating in those years and sitting for the bar have passed a bar examination.

In demonstrating compliance under sections (1)(i) and (ii), the school must report bar passage results from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency.

(2) That in three or more of the five most recently completed calendar years, the school’s annual first-time bar passage rate in the jurisdictions reported by the school is no more than 15 points below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar examination in these same jurisdictions.

In demonstrating compliance under section (2), the school must report first-time bar passage data from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. When more than one jurisdiction is reported, the weighted average of the results in each of the reported jurisdictions shall be used to determine compliance.

(b) A school shall be out of compliance with this Standard if it is unable to demonstrate that it meets the requirements of paragraph (a)(1) or (2).

(c) A school found out of compliance under paragraph (b) and that has not been able to come into compliance within the two year period specified in Rule 13(b) of the Rules of Procedure for Approval of Law Schools, may seek to demonstrate good cause for extending the period the law school has to demonstrate compliance by submitting evidence of:
(1) The law school’s trend in bar passage rates for both first-time and subsequent takers: a clear trend of improvement will be considered in the school’s favor, a declining or flat trend against it.

(2) The length of time the law school’s bar passage rates have been below the first-time and ultimate rates established in paragraph A: a shorter time period will be considered in the school’s favor, a longer period against it.

(3) Actions by the law school to address bar passage, particularly the law school’s academic rigor and the demonstrated value and effectiveness of its academic support and bar preparation programs; value-added, effective, sustained and pervasive actions to address bar passage problems will be considered in the law school’s favor; ineffective or only marginally effective programs or limited action by the law school against it.

(4) Efforts by the law school to facilitate bar passage for its graduates who did not pass the bar on prior attempts: effective and sustained efforts by the law school will be considered in the school’s favor; ineffective or limited efforts by the law school against it.

(5) Efforts by the law school to provide broader access to legal education while maintaining academic rigor; sustained meaningful efforts will be viewed in the law school’s favor intermittent or limited efforts by the law school against it.

(6) The demonstrated likelihood that the law school’s students who transfer to other ABA-approved schools will pass the bar examination: transfers by students with a strong likelihood of passing the bar will be considered in the school’s favor, providing the law school has undertaken counseling and other appropriate efforts to retain its well-performing students.

(7) Temporary circumstances beyond the control of the law school, but which the law school is addressing; for example, a natural disaster that disrupts operations or a significant increase in the standard for passing the relevant bar examination(s).

(8) Other factors, consistent with a law school’s demonstrated and sustained mission, which the school considers relevant in explaining its deficient bar passage results and in explaining the school’s efforts to improve them.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the resolution seeks concurrence in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated January 2019 to Standard 316 (Bar Passage) of the ABA Standards and Rules of Procedure for Approval of Law Schools.

2. Summary of the Issue that the Resolution Addresses

The resolution addresses Standard 316 (Bar Passage) of the ABA Standards and Rules of Procedure for Approval of Law Schools. In accordance with Internal Operating Practice 8, the Council engages in an ongoing review of the Standards.

3. Please Explain How the Proposed Policy Position will address the issue

The proposals amend the 2018-2019 ABA Standards and Rules of Procedure for Approval of Law Schools.

4. Summary of Minority Views

At the time of this submission, the Council has not been notified by any ABA or other entity that it is opposed to this resolution. That said, and as indicated in the Report, opposition to the change to Standard 316 when it was first considered, centered principally on the following concerns: the lack of studies on how the proposed change would affect diversity and law school curricula; the lack of data on how law schools in states with low bar passage rates would be impacted; the lack of data that two years is sufficient for graduates to take a bar exam in that there is anecdotal evidence that graduates do not take the bar in consecutive administrations; and the lack of data on how the Uniform Bar Exam will affect law schools’ bar passage rates.
AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON GUN VIOLENCE
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
CRIMINAL JUSTICE SECTION
COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association opposes laws and policies that would authorize teachers, principals or other non-security school personnel to possess a firearm in, or on the grounds of, a pre-K through grade 12 public, parochial, or private school; and

4 FURTHER RESOLVED, That the American Bar Association opposes the use of government or public funds to provide firearms training to teachers, principals, or other non-security school personnel, or to purchase firearms for those individuals.
EXECUTIVE SUMMARY

1. Summary of the Resolution

With significant exceptions, the Gun-Free Schools Zones Act of 1990, as amended, prohibits firearms in, or within 1,000 feet of the grounds of a public, parochial or private school. Virtually all states also have laws that prohibit firearms in a school zone. President Trump and certain interest groups have suggested the solution to school shootings is to arm teachers. This resolution opposes laws that would authorize teachers, principals or other non-security school personnel to possess a firearm in, or on the grounds of, a public, parochial, or private school. It also opposes the use of government or public funds to provide firearms training to teachers, principals, or other non-security school personnel, or to purchase firearms for those individuals. This Resolution excludes and does not take a position on the advisability of having armed security personnel in schools.

2. Summary of the Issue that the Resolution Addresses

President Trump and certain interest groups advocate the solution to school shootings is to arm teachers.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposed policy opposes arming teachers because available data suggests doing so will likely increase the risk to students rather than reduce it, and because other comprehensive, evidence-based solutions are available.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to reduce potential harm that individuals may inflict on themselves or others by enacting statutes, rules, or regulations allowing individuals to temporarily prevent themselves from purchasing firearms. Such measures should include, at minimum, the following provisions that:

1. any person may voluntarily and confidentially request that their own name be added to the Index of the National Instant Criminal Background Check System, an equivalent state background system, or to both, to prevent future firearms purchases;

2. the statute, rule, or regulation provide a procedure with appropriate safeguards whereby the person may have their name removed and such record deleted from the System; and

3. the statute, rule, or regulation provide appropriate safeguards to reasonably ensure that persons who request inclusion or removal from the System do not face stigma, discrimination, or any adverse action, and are entitled to confidentiality so that the fact that the person prohibited from purchasing a firearm is only disclosed when a valid background check is done.
106B

EXECUTIVE SUMMARY

1. Summary of the Resolution

To reduce the risk of suicides and other deadly incidents, this resolution urges that individuals be allowed to: 1) voluntarily submit their names into databases used for gun background checks, and 2) remove themselves from those systems.

2. Summary of the Issue that the Resolution Addresses

Roughly two thirds of gun related deaths are suicides. Most suicides are impulsive acts and most successful suicides involve a firearm. This resolution allows persons who self-identify as being at risk of harming themselves (or in many cases others) to take proactive steps to lessen this likelihood.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution sets general standards, and provides wide latitude to states to enact laws to help a portion of an at-risk population insulate themselves against further harm.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None identified.
RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal courts and legislatures to develop policies and protocols as to who may carry firearms in courthouses, courtrooms, and judicial centers that allow only those persons necessary to ensure security have weapons in the courthouse, courtroom, or judicial center, including common areas within the buildings as well as the grounds immediately adjacent to the justice complex, and that require training for those who are permitted to carry firearms.
106C

EXECUTIVE SUMMARY

1. Summary of the Resolution
Urges that the possession of firearms in and around courthouses be limited to persons with an official role in security. Also urges that such persons be required to complete annual training in firearm safety.

2. Summary of the Issue that the Resolution Addresses
Increasingly, there have been occurrences where violence has erupted and firearms are used inside and outside of the courtroom as well as areas in the surrounding justice complex. When parties and court personnel believe court facilities are not safe, the integrity of the entire judicial process is compromised. Courtrooms and the judicial complex should be perceived as safe and secure environments.

3. Please Explain How the Proposed Policy Position Will Address the Issue
Limiting firearm possession in and around courthouses to personnel with an official security role will reduce the likelihood that interpersonal conflicts in courthouses, where criminal and civil complaints are adjudicated, would escalate into an armed confrontation. Moreover, it will reduce the likelihood of suicide or accidental death or injury.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified
None at this time.
RESOLVED, That the American Bar Association urges the federal judiciary to recognize the substantial privacy and confidentiality interests implicated by searches and seizures of electronic devices at the border; and

FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation and, until legislation is enacted, urges the U.S. Department of Homeland Security to adopt policy, that would:

(1) require a warrant based on probable cause for seizures (other than temporary seizures for the purpose of obtaining a warrant) and searches of electronic devices carried by individuals at the border;

(2) prohibit any government entity from denying a lawful permanent resident entry or exit based on the person’s failure to disclose an access credential or provide access to an electronic device for a search;

(3) implement policies and procedures to preserve the attorney-client privilege, the work product doctrine, and the lawyer’s ethical obligation to maintain confidential information during border crossings; and

(4) require the government to record each instance in which it conducts a search of an electronic device seized at the border and issue an annual report summarizing such searches.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution calls on the federal judiciary, Congress, and the Department of Homeland Security to protect the privacy of millions of individuals who cross our nation’s borders each year.

2. Summary of the Issue that the Resolution Addresses

The right to be free from unreasonable searches and seizures is fundamental to the American constitutional structure. The widespread adoption of modern communications technologies has made it possible to travel with constant access to personal and professional contacts, and to maintain constant access to vast quantities of information—from the most sensitive and confidential communications to the more mundane and routine records. The proliferation of cell phones and other electronic devices that enable individuals to carry personal information with them, wherever they go, has significant implications for privacy law. In particular, old rules governing searches of persons and property do not take into account these recent technological changes.

Searches conducted at the international border now implicate significant privacy interests given the volume and sensitivity of records stored on and accessible via electronic devices. Given the Supreme Court’s recent rulings expanding the scope of Fourth Amendment protections for cell phone data in other contexts, it is necessary for the courts, Congress, and the Department of Homeland Security to impose limits on searches of electronic devices at the border (which had traditionally been exempt from Fourth Amendment limitations).

3. Please Explain How the Proposed Policy Position Will Address the Issue

This policy will reaffirm the ABA’s commitment to personal privacy and the protection of communications and other personal data. By adopting this Resolution, the ABA can assist the work of privacy advocates, lawmakers and litigators that are working to ensure that important Fourth Amendment and privacy law protections are not eroded due to technological changes.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

The Standing Committee on Law and National Security has reviewed the resolution and opposes it in the current form.
RESOLVED, That the American Bar Association urges legal employers not to require pre-dispute mandatory arbitration of claims of unlawful discrimination, harassment or retaliation based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity or expression, marital status, or status as a victim of domestic or sexual violence.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This resolution urges legal employers not to require pre-dispute mandatory arbitration of claims of unlawful discrimination, harassment or retaliation based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity or expression, marital status or status as a victim of domestic or sexual violence.

2. **Summary of the Issue that the Resolution Addresses**
   The legal community is currently discussing the propriety of mandatory pre-dispute agreements to arbitrate employment disputes in general, and disputes over statutory protections in particular. Many law students and recruiting offices are requesting that requirement to be dropped, and many law firms are considering that change. This policy urges that, with respect to unlawful categorical discrimination, harassment and retaliation, an applicant or employee should not be forced to give up the right to a jury trial as a condition of employment.”

3. **Please Explain How the Proposed Policy Position will address the issue**
   Adoption of this policy will allow the ABA to oppose mandatory pre-dispute arbitration agreements as a condition of employment in the legal profession. It will apply to claims of unlawful discrimination, harassment or retaliation based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity or expression, marital status, or status as a victim of domestic or sexual violence. It does not bear on voluntary agreements to arbitrate after the dispute arises.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**
   None as of this writing.
RESOLVED, That the American Bar Association adopts the recommendations and action points in the report, *Experienced Lawyers, American Families, and the Opioid Crisis–Report of the Opioid Summit May 2018*; and

FURTHER RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal courts, governmental entities, bar associations, public health agencies, lawyer assistance programs, lawyer regulatory entities, institutions of legal education, and law firms to implement the recommendations and action points in the report, *Experienced Lawyers, American Families, and the Opioid Crisis–Report of the Opioid Summit May 2018*. 
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges the American Bar Association to adopt and urges all federal, state, local, territorial, and tribal courts, governmental entities, bar associations, public health agencies, lawyer assistance programs, lawyer regulatory entities, institutions of legal education, and law firms to implement the recommendations and action points in the report, *Experienced Lawyers, American Families, and the Opioid Crisis–Report of the Opioid Summit May 2018* found at [http://ambar.org/opioid](http://ambar.org/opioid).

2. Summary of the Issue that the Resolution Addresses

The nine recommendations and 45 action points in the report, *Experienced Lawyers, American Families, and the Opioid Crisis–Report of the Opioid Summit May 2018*, by the ABA Senior Lawyers Division represent a significant step by the ABA to confront the opioid crisis—the deadliest epidemic in U.S. history.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The recommendations and action points in the Opioid Summit Report are directed toward a full range of stakeholders and resulted from the May 4, 2018 Opioid Summit held in collaboration with twenty ABA entities and non-ABA organizations.

If implemented, these recommendations and action points will build on the broader understanding that addressing the opioid crisis requires reframing our understanding of drug use and abuse from a moral failing to a chronic disease. Additionally, the effort to do so requires leadership within and across professional organizations, as well as a commitment to reshaping policy and regulations to better support individuals, families, and communities.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None have been identified.
RESOLVED, That the American Bar Association urges the United States Attorney General to rescind the policy of prosecuting all individuals who enter the United States without authorization at the southern border for the misdemeanor offense of illegal entry pursuant to 8 U.S.C. §1325, end the practice of expedited mass prosecution of immigrants, and allow for an individualized determination in deciding whether to file criminal charges;

FURTHER RESOLVED, That the American Bar Association urges the federal judiciary to take appropriate measures to ensure that every defendant charged with the misdemeanor offense of illegal entry is represented by counsel who has had an adequate opportunity to consult with the defendant, and that any guilty plea is knowing, intelligent, and voluntary;

FURTHER RESOLVED, That the American Bar Association urges Congress to provide sufficient funding for the judiciary to enable it to take the above measures and sufficient funding to ensure that each defendant receives effective assistance of counsel; and

FURTHER RESOLVED, That the American Bar Association urges the United States Attorney General to exercise prosecutorial discretion and refrain from prosecuting asylum seekers for the offense of illegal entry.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges the Attorney General to rescind the “Zero Tolerance” and “Operation Streamline” policies mandating the prosecution of all persons alleged to have improperly entered the United States for the first time, a misdemeanor under 8 U.S.C. 1325, and urges the Attorney General to refrain completely from prosecuting asylum seekers and first-time offenders, and to focus resources instead on prosecuting violent criminal activity and other serious felonies at the southern border. This Resolution also urges Congress to provide sufficient funding for the federal judiciary to ensure adequate resources for legal representation when entry-related criminal offenses are prosecuted, adequate investigation of viable defenses, and effective assistance of counsel to all indigent individuals who are prosecuted.

2. Summary of the Issue that the Resolution Addresses

This Resolution addresses the Attorney General’s policies of criminal prosecution for illegal entry of all individuals entering the United States at the southern border without prior authorization under 8 U.S.C. 1325, without exercising prosecutorial discretion for asylum seekers and first-time offenders, without adequate legal resources for indigent individuals subject to such prosecutions, and in lieu of prosecutions for serious violent criminal activity in that region of the U.S.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution will be used by the ABA, as well as by ABA members who wish to engage with members of Congress and the Executive Branch to advocate on behalf of the interests expressed in this resolution.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

No internal or external opposition or expression of minority views have been identified.
RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal legislatures to define criminal arrests, charges, and dispositions that are eligible for expungement or removal from public view by sealing, and set out procedures for individuals to apply for the same.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges federal, state, local, territorial and tribal legislatures to define criminal arrests, charges, and dispositions eligible for expungement or removal from public view via sealing, and set out procedures for individuals to apply for the same.

2. Summary of the Issue that the Resolution Addresses

The resolution addresses the effort to reduce the consequences of federal, state, local, territorial and tribal criminal convictions on a person’s ability to work via expungement or sealing of these records.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Record expungement and/or sealing allows individuals to not be burdened by the judgment and discrimination that occurs when they must disclose criminal arrests, records, and convictions to potential employers.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified. None
RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal legislatures to enact legislation, and correctional and detention facilities to enact policies, to provide all women prisoners in all forms of detention, both adult and juvenile, with unrestricted access, on housing units, to free toilet paper and a range of free feminine hygiene products, including both tampons and sanitary pads, in sufficient quantities to address their needs.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges federal, state, local, tribal and territorial governments to enact legislation, and correctional and detention facilities to enact policies, to provide all women prisoners in all forms of detention with unrestricted access to a free toilet paper and a range of free feminine hygiene products, including both tampons and sanitary pads in sufficient quantities to address their needs.

2. Summary of the Issue that the Resolution Addresses

The resolution addresses the need for all correctional facilities to provide women prisoners with appropriate hygiene products.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The resolution urges all correctional facilities to provide feminine hygiene products in sufficient quantities and to make them available free of charge.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.

Some correctional facilities have expressed concerns about women hoarding supplies, or using sanitary napkins to clean cells or housing units, quiet squeaky doors, stabilize uneven chairs or tables, to protect blisters, or to pad cold metal toilet seats.
RESOLVED, That the American Bar Association urges federal, state, local, tribal and territorial governments to amend existing laws or enact new laws to clearly define child torture and make child torture a felony offense regardless of whether a serious physical injury occurs; and

FURTHER RESOLVED, That the American Bar Association urges governments to promote training for judges, prosecutors, physicians, law enforcement, child protection authorities, and victim-witness advocates on emerging evidence-based, victim-centered and effective practices, and to utilize the Child Advocacy Care (CAC) model of collaboration and providing services to improve government responsiveness to severe cases of child abuse.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges federal, state, territorial and tribal legislatures to amend existing laws or enact new laws to clearly define child torture and make child torture a felony offense regardless of whether a serious physical injury occurs, and to promote training for all court and medical personnel in these cases on emerging evidence-based, victim-centered, using the Child Advocacy Care (CAC) model of collaboration to improve government responsiveness to severe maltreatment of children that does not inflict serious bodily injury.

2. Summary of the Issue that the Resolution Addresses

Child abuse is a significant problem in the United States. In fiscal year 2016 (the latest year for which we have national data), 50 states, the District of Columbia, and the Commonwealth of Puerto Rico substantiated 676,000 children as victims of child abuse and neglect. The U.S. Department of Health and Human Services estimated that for the same year at least 1,750 children died from child abuse and neglect.

Child torture is a documented subset of severe child abuse. Child torture includes a combination of two or more cruel inhuman degrading treatments occurring for protracted periods of time, such as:

- intentionally starving the child,
- forcing the child to sit in urine or feces,
- binding or restraining the child,
- repeatedly physically injuring the child,
- exposing the child to extreme temperatures without adequate clothing,
- locking the child in closets or other small spaces, and
- forcing the child into stress positions or exercise, resulting in prolonged suffering, permanent disfigurement/dysfunction, or death.

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38 Id at 53; see U.S. Gov’t Accountability Office, Child Maltreatment: Strengthening National Data on Child Fatalities Could Aid in Prevention, GAO-11-599, at 9 (2011) (“More children have likely died from maltreatment than are reflected in the national estimate. . . . A major reason for the likely undercounting of child maltreatment fatalities is that nearly half of states report to NCANDS data only on children already known to CPS agencies—yet not all children who die from maltreatment were previously brought to the attention of CPS”), https://www.gao.gov/assets/330/320774.pdf.

39 See Barbara L. Knox, et al., Child Torture As A Form Of Child Abuse, 7 J. Child Adolescent Trauma 38, 44-46 (2014), https://pdfs.semanticscholar.org/2d88/139a3af0775d9a20333b03bb8f356c6c6615.pdf?_ga=2.7318258.1186776278.1539534964-179640352.1539534964.

40 Id.
In a number of states, a felony abuse charge requires a serious physical injury.\textsuperscript{41} Some cases of child torture do not result in a category of serious physical injury required by these statutes. Amending or enacting criminal codes to include a felony charge for these cases will protect child survivors. Furthermore, promoting education of judges, law enforcement, child protection authorities, prosecutors, and victim advocates on emerging evidence-based, victim-centered and effective practices, and to utilize the Child Advocacy Care (CAC) model of collaboration to improve government responsiveness to severe cases of child abuse will also help protect child victims.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The resolution urges these jurisdictions to enact laws that clearly define torture and make child torture a felony regardless of whether serious physical injury occurs. The resolution will close the gap in certain state criminal codes which allow cases of severe child abuse to be potentially treated as a misdemeanor, and urges jurisdictions to improve government responsiveness to child abuse by providing training on emerging issues in child protection, and by utilizing the Child Advocacy Care (CAC) model of collaboration and providing services.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

N/A

\textsuperscript{41} See, e.g., Sadie Gurman, Woman Pleads Guilty In Denver Child Abuse Case, Coloradoan: A Part of the USA Today Network (Aug. 8 2014) (“Prosecutors said . . . the case was among the most horrific they had ever seen, but the state’s child abuse laws kept them from pursuing harsher penalties because the children, ages 2 to 6, did not suffer serious physical injuries”), https://www.coloradoan.com/story/news/local/colorado/2014/08/08/woman-pleads-guilty-denver-child-abuse-case/13800793/.
RESOLVED, That the American Bar Association approves the Uniform Criminal Records Accuracy Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

That the American Bar Association approves the Uniform Criminal Records Accuracy Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2018 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. **Summary of the Issue that the Resolution Addresses**

The Uniform Criminal Records Accuracy Act is designed to improve the accuracy of criminal history records, commonly called a RAP sheet, that are frequently used in determining the eligibility of a person for employment, housing, credit, and licensing, in addition to law enforcement purposes. The Act imposes duties on governmental law enforcement agencies and courts that collect, store and use criminal history records, to ensure the accuracy of the information contained in the RAP sheet. The Act provides individuals the right to see and correct errors in their RAP sheet. Through use of a mistaken identity prevention registry, the Act also provides a mechanism by which an individual whose name is similar to and confused with a person who is the subject of criminal-history-record information, a means to minimize the possibility of a mistaken arrest or denial of housing, employment, credit, or other opportunities.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

Approval of the Uniform Criminal Records Accuracy Act by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

None known.
RESOLUTION

1 RESOLVED, That the American Bar Association approves the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

That the American Bar Association approves the Uniform Unauthorized Disclosure of Intimate Images Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2018 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. **Summary of the Issue that the Resolution Addresses**

The disclosure of private, sexually explicit images without consent and for no legitimate purpose—often referred to as “revenge porn”—causes immediate, devastating, and in many cases irreversible harm. States have adopted criminal and civil laws to address this issue. However, they differ considerably in their definitions, scope, effectiveness, and remedies. The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act provides uniformity, eliminates confusion, and offers victims a clear path to justice.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

Approval of the Uniform Unauthorized Disclosure of Intimate Images Act by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

None known.
RESOLUTION

RESOLVED, That the American Bar Association approves the Uniform Fiduciary Income and Principal Act (UFIPA), promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   That the American Bar Association approves the Uniform Fiduciary Income and Principal Act, promulgated by the National Conference of Commissioners on Uniform State Laws in July 2018 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. **Summary of the Issue that the Resolution Addresses**

   The Uniform Fiduciary Income and Principal Act provides rules for allocating receipts and disbursements between income and principal accounts of a trust in accordance with the fiduciary duty to treat all beneficiaries loyally and impartially, unless the terms of the trust specify otherwise. This revision includes provisions allowing conversion of a traditional trust with income and principal beneficiaries into a total-return unitrust when all beneficiaries consent.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

   Approval of the Uniform Fiduciary Income and Principal Act by the ABA House of Delegates would help demonstrate to state legislatures that the Act is an appropriate approach for addressing the issues described above.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

   None Known.
RESOLUTION

RESOLVED, That the American Bar Association approves the Uniform Nonparent Custody and Visitation Act promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law contained in the act.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Uniform Nonparent Custody and Visitation Act (2018), promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

The Uniform Nonparent Custody and Visitation Act (2018) provides states with a uniform framework for establishing child custody and visitation rights of nonparents.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Approval of the Uniform Nonparent Custody and Visitation Act (2018) by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified:

None known.
RESOLVED, That the American Bar Association approves the Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2018 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

The Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act provides commercial law rules using the time-tested duties and rights of customers of securities intermediaries under the Uniform Commercial Code. The Supplemental Act does this by requiring the incorporation of Article 8 of the Uniform Commercial Code into the agreement made between a virtual-currency licensee or registrant and users.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Approval of the Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.
RESOLUTION

RESOLVED, That the American Bar Association adopts the ABA Model Act Governing Assisted Reproduction [2019] dated January 28, 2019 (“Model Act [2019]”) to replace the 2008 ABA Model Act Governing Assisted Reproductive Technology; and

FURTHER RESOLVED, That the American Bar Association approves the Model Act [2019] as an appropriate Act for those states desiring to adopt the specific substantive law contained in the Act.
ARTICLE 1. GENERAL PROVISIONS

SECTION 101. SHORT TITLE
SECTION 102. DEFINITIONS

ARTICLE 2. INFORMED CONSENT

SECTION 201. INFORMED CONSENT STANDARDS
SECTION 202. RECORD AUTHORIZATION REQUIRED
SECTION 203. DISCLOSURES
SECTION 204. DONOR LIMITATIONS
SECTION 205. COLLECTION OF GAMETES OR EMBRYOS FROM CRYOPRESERVED TISSUE OR FROM DECEASED OR INCOMPETENT INDIVIDUALS
SECTION 206. LOSS OF EMBRYOS OR GAMETES DUE TO NATURAL DISASTER, ACT OF GOD, TERRORISM OR WAR

ARTICLE 3. MENTAL HEALTH EVALUATION AND ADDITIONAL COUNSELING

SECTION 301. MENTAL HEALTH EVALUATION
SECTION 302. ADDITIONAL COUNSELING REQUIREMENTS

ARTICLE 4. PRIVACY AND CONFIDENTIALITY

SECTION 401. INDIVIDUALLY IDENTIFIABLE MEDICAL INFORMATION
SECTION 402. INFORMATION ABOUT DONORS

ARTICLE 5. EMBRYO TRANSFER AND DISPOSITION OF GAMETES AND EMBRYOS

SECTION 501. DISPOSITION OF GAMETES AND EMBRYOS
SECTION 502. DONATION OF UNUSED GAMETES AND EMBRYOS
SECTION 503. SCREENING OF GAMETE AND EMBRYO DONORS
SECTION 504. ABANDONMENT OF GAMETES AND EMBRYOS AND DISPOSITION OF ABANDONED GAMETES AND EMBRYOS
SECTION 505. TRANSPORTATION OF GAMETES AND EMBRYOS

ARTICLE 6. CHILD OF ASSISTED REPRODUCTION

SECTION 601. SCOPE OF ARTICLE
SECTION 602. PARENTAL STATUS OF DONOR
SECTION 603. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION
SECTION 604. CONSENT TO ASSISTED REPRODUCTION
SECTION 605. LIMITATION LEGAL SPOUSE’S DISPUTE OF PARENTAGE
SECTION 606. EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL OF CONSENT
SECTION 607. PARENTAL STATUS OF DECEASED INDIVIDUAL

ARTICLE 7. SURROGACY

SECTION 701. SURROGACY AGREEMENTS AUTHORIZED
SECTION 702. ELIGIBILITY
SECTION 703. REQUIREMENTS FOR A SURROGACY AGREEMENT
SECTION 704. TERMINATION OF SURROGACY AGREEMENT PRIOR TO PREGNANCY
SECTION 705. ESTABLISHMENT OF PARENT CHILD RELATIONSHIP – GESTATIONAL SURROGACY
SECTION 706. ESTABLISHMENT OF PARENT CHILD RELATIONSHIP – GENETIC SURROGACY
SECTION 707. DUTY TO SUPPORT
SECTION 708. EFFECT OF SURROGATE’S SUBSEQUENT MARRIAGE
SECTION 709. IRREVOCABILITY
SECTION 710. NONCOMPLIANCE
SECTION 711. EFFECT OF NONCOMPLIANCE
SECTION 712. IMMUNITIES
SECTION 713. DAMAGES
SECTION 714. INSPECTION OF RECORDS
SECTION 715. EXCLUSIVE, CONTINUING JURISDICTION

ARTICLE 8. PAYMENT TO DONORS AND GESTATIONAL AND GENETIC SURROGATES

SECTION 801. REIMBURSEMENT
SECTION 802. COMPENSATION

ARTICLE 9. HEALTH INSURANCE

SECTION 901. INFERTILITY AND EXPERIMENTAL PROCEDURES
SECTION 902. REQUIRED NOTICE
SECTION 903. QUALIFICATION OF PROVIDERS

ARTICLE 10. QUALITY ASSURANCE

SECTION 1001. QUALIFICATION OF PROVIDERS
SECTION 1002. COLLABORATIVE REPRODUCTION REGISTRIES
SECTION 1003. HEALTH INFORMATION MANAGEMENT
SECTION 1004. PATIENT SAFETY
ARTICLE 11. ENFORCEMENT

SECTION 1101. DAMAGES

ARTICLE 12. MISCELLANEOUS PROVISIONS

SECTION 1201. LIMITATION OF MEDICAL PROFESSIONAL LIABILITY

SECTION 1202. SEVERABILITY
ARTICLE 1. GENERAL PROVISIONS

SECTION 101. SHORT TITLE

This Act is entitled the Model Act Governing Assisted Reproduction [2019].

SECTION 102. DEFINITIONS

1. “ART Storage Facility” means a licensed facility that stores reproductive, biological, or genetic material used in Assisted Reproductive Technology, and is in compliance with the Fertility Clinic and Certification and Success Rate Act of 1992 (FCSRCA, or Public Law 102-493).

2. “Assisted Reproduction” means a method of causing pregnancy through means other than by sexual intercourse. In the foregoing context, the term includes, but is not limited to:
   (a) Intrauterine or intracervical insemination;
   (b) Donation of eggs or sperm;
   (c) Donation of Embryos;
   (d) In vitro fertilization and Embryo Transfer; and
   (e) Intracytoplasmic sperm injection.

3. “Assisted Reproductive Technology” (“ART” as used in this Act) means any medical or scientific procedures or treatment provided by a medical Provider, with the intent of having a Child.


5. “Child” means an individual born pursuant to Assisted Reproduction whose parentage may be determined under this Act or other law.

6. “Collaborative Reproduction” means any Assisted Reproduction in which an individual other than an Intended Parent provides genetic material or any Assisted Reproduction involving a Gestational or Genetic Surrogate.

7. “Compensation” means payment of any valuable consideration for time, effort, pain and/or risk.

8. “Consultation” means a meeting with a licensed mental health professional for the purpose of counseling and educating the Participant in accordance with ASRM guidelines about the effects and potential consequences of their participation in any ART procedure.

9. “Court” means the appropriate court with competent jurisdiction as determined by the State.
10. "Donor" means an individual, including an Embryo Donor or a Genetic Surrogate, who provides gametes for Assisted Reproduction. The term does not include: (a) an Intended Parent who provides gametes to be used for Assisted Reproduction; (b) a woman who gives birth to a Child by means of Assisted Reproduction except as otherwise provided in Article 6; or (c) a Parent under Article 6 or an Intended Parent under Article 7.

11. "Embryo" means a fertilized egg that has the potential to develop into a fetus if transferred into a uterus.

12. "Embryo Donor" means an individual who transfers ownership of an Embryo to another and intends to have no parental rights or obligations to the resulting Child.

13. "Embryo Transfer" (also referred to herein as “Transfer”) means the placement of an Embryo into a uterus.

14. "Escrow Account" means an independent, insured, bonded escrow depository maintained by a licensed, independent, bonded escrow company; or an insured and bonded trust account maintained by an attorney.

(a) For purposes of this section, a non-attorney ART Agency may not have a financial interest in any escrow company holding client funds. A non-attorney ART Agency and any of its officers, managers, owners of more than 5% ownership interest, directors or employees shall not be an agent of any escrow company holding client funds; and

(b) Client funds may only be disbursed by the attorney or Escrow Agent as set forth in the assisted reproduction agreement and the fund management agreement between the Intended Parent(s) and the Escrow Account holder.

15. "Escrow Agent" means the trustee for an Escrow Account.

16. "Evaluation" means a Consultation with and, where required by this Act, an assessment in accordance with ASRM guidelines as to whether a Participant is cleared to proceed with participation in any ART procedure.

17. "Gamete" means a cell containing a haploid complement of DNA that has the potential to form an Embryo when combined with another Gamete. Sperm and eggs are Gametes. A Gamete may consist of nuclear DNA from one human being combined with the cytoplasm, including cytoplasmic DNA, of another human being.

18. "Gamete Provider" means an individual who provides sperm or eggs for use in Assisted Reproduction.
19. “Genetic Surrogate” means an adult, not an Intended Parent, who enters into a Surrogacy Agreement to bear a Child and who is a Gamete Provider for the Child.

20. “Genetic Surrogacy Agreement” is a written contract between Intended Parent(s) and a Genetic Surrogate.

21. “Genetic Surrogacy Arrangement” means the process by which a Genetic Surrogate intends to carry and give birth to a Child.

22. “Gestational Surrogate” means an adult, not an Intended Parent, who enters into a Surrogacy Agreement to bear a Child and who is not a Gamete Provider for the Child.

23. “Gestational Surrogacy Agreement” is a written contract between Intended Parent(s) and a Gestational Surrogate.

24. “Gestational Surrogacy Arrangement” means the process by which a Gestational Surrogate intends to carry and give birth to a Child.

25. “Independent Legal Representation” (also referred to herein as “Independent Legal Counsel”) means representation of the Participants by separate legal counsel as required by the applicable rules of professional responsibility.

26. “Infertility” means the definition set forth by ASRM.

27. “Intended Parent” means an individual who intends to be legally bound as a Parent of the Child.

28. “Legal Spouse” means an individual married to another.

29. “Medical Evaluation” means a Consultation with and an evaluation by a physician meeting the requirements of Section 903.

30. “Medical Information” means any protected individually identifiable health information obtained by a health care provider in the course of Medical Evaluation, Consultation, diagnosis, or treatment.

31. “Mental Health Counseling” means additional Consultation(s) after an initial Consultation for the purpose of advising and supporting the Participant throughout the implementation of any ART procedure.

32. “Mental Health Evaluation” means a Consultation with and an evaluation by a mental health professional meeting the requirements of Section 301.

33. “Parent” means an individual who has established a Parent-Child Relationship under this Act or other applicable law.
“Parent-Child Relationship” means the legal relationship between the Child and a Parent of the Child.

“Participant” means an Intended Parent, Donor, Gestational or Genetic Surrogate and their Legal Spouse, if applicable, who is involved in Collaborative Reproduction under this Act.

“Patient” means an individual participating in Assisted Reproduction under the direction of a Provider.

“Physician” means an individual licensed to practice medicine.

“Provider” means an individual, including all medical, psychological, or counseling professionals: (a) licensed to administer health care; (b) who is qualified under this Act to provide Assisted Reproduction services; and (c) has a Provider-Patient relationship with a Participant. Any professional corporation or corporation licensed by the State to provide health care, of which a Provider is an owner or employee, is also a Provider.

“Record” means information inscribed in a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form.

“Retrieval” means the procurement of eggs or sperm from a Gamete Provider.

“State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Surrogacy Agreement” is a written contract between Intended Parent(s) and a Gestational or Genetic Surrogate.

“Surrogacy Arrangement” means the process by which a Gestational or Genetic Surrogate intends to carry and give birth to a Child.

“Transfer” means a procedure for Assisted Reproduction by which an Embryo or sperm is placed into the body of the individual who will give birth to a Child.

ARTICLE 2. INFORMED CONSENT

The requirements of Article 2 apply only to medical facilities providing ART to Participants.

SECTION 201. INFORMED CONSENT STANDARDS

1. Informed consent must be provided by all Participants to the ART Provider prior to the commencement of any medical or scientific procedures or treatment.
2. Informed consent requires that all of the following be provided to all Participants orally and in a Record that meets the requirements of Section 202:

(a) A statement that the Patient retains the right to withhold or withdraw consent at any time prior to Transfer of Gametes or Embryo Transfer without affecting the right to receive and/or make decisions about future care or treatment, or risking the loss or withdrawal of any program benefits to which the Patient would otherwise be entitled.

(b) A statement that the ART Provider retains the right to withdraw for reasonable justification and with reasonable notice.

(c) A statement that the Donor's, right to withhold or withdraw consent to fertilization terminates upon Retrieval of his or her Gametes, subject only to the terms of any prior agreement in a Record pursuant to Article 5.

(d) A statement of the known, potential medical and procedural risks and benefits of ART. Such description shall include the inherent risk of Embryo loss due to aneuploidy, thawing, and failure of implantation; the risks associated with the use of hormones and other drugs that may be used; the procedural risks associated with egg Retrieval and/or other ART procedures; the incidence of, and risks regarding, multiple pregnancies and selective reduction; and the incidence and risk of birth defects associated with IVF.

(e) A statement of acknowledgement that alternative therapies and options have been discussed in detail.

(f) A statement that the Patient shall be informed that there may be foreseen, or unforeseen legal consequences and that Independent Legal Representation is advisable and may be required by this Act or by State law.

(g) A statement describing all existing confidentiality protections.

(h) A statement of guarantee that a Patient, whether a Donor, Intended Parent, Gestational Surrogate or Genetic Surrogate (a Participant), has access to all of his/her Medical Information to the extent allowed by applicable law and not otherwise waived by the Participant. The Patient may have to pay a fee for copies of the Record.

(i) A statement that the Intended Parent has a right to access a summary of medical and psychological information about Donors and Gestational or Genetic Surrogates as described in this Act.

(j) A statement that the release of any Participant-identifiable information, including images, shall not occur without the consent of the Participant in a Record.
(k) A statement that the Intended Parent(s) or an Embryo Donor, not the ART Provider or ART Storage Facility, has the right to possession and control of their Embryos, subject to any prior agreement in a Record or as provided in Section 504.

(l) A statement of the need for Intended Parents to agree in advance who shall acquire the right to possession and control of the Embryos or Gametes in the event of marriage dissolution or separation of the Intended Parents, death of one or both of them, or subsequent disagreement over disposition in compliance with the provisions of Section 501 of this Act.

(m) The policy of the provider regarding the number of Embryos Transferred and any limitation on the number of Embryos Transferred, as well as the existence of national guidelines as published by the ASRM.

(n) A statement of the need for Participants to decide whether the Embryos or Gametes can be used for purposes other than Assisted Reproduction.

(o) Signed in presence of member of staff of the Provider or notary.

SECTION 202. RECORD AUTHORIZATION REQUIRED

1. The Provider must document informed consent in a Record for each Participant that must:

   (a) Be in plain language;

   (b) Be dated and signed by the Provider and by the Participant in the presence of a member of the staff of the provider or before a notary;

   (c) State that disclosures have been made pursuant to this Act;

   (d) Specify the length of time the consent remains valid; and

   (e) Advise the party signing the informed consent document of the right to receive a copy of the Record.

2. The Record(s) must be executed in accordance with this Act before informed consent is valid or the commencement of any ART.

3. The Record required in paragraph 1 of this Section shall become part of the medical record.

4. Prior to the start of any medications, the Record must reflect whether the Participants have entered into a legal agreement.
SECTION 203. DISCLOSURES

1. Disposition of cryopreserved Gametes or Embryos: Prior to each Retrieval, a Provider must disclose to all Intended Parents and Donors, whose identity is known to the Provider, the following possible dispositions of Embryos:

   (a) Storage, including length of time, costs, and location;
   (b) Embryo Transfer;
   (c) Donation:
      (i) To a known individual for Embryo Transfer;
      (ii) To an anonymous individual for Embryo Transfer, either directly or through the provider, or through a third party Embryo donation program;
      (iii) For scientific or clinical research, including the institution conducting the research and the intended nature of the research, if known, subject to any agreement in a Record as provided in Section 502; or
   (d) Destruction.

2. Right to transport. A Provider is not required to offer all possible dispositions, but the provider must inform the Patient that other providers may offer other options and that the Patient has the right to transport Embryos to other providers.

3. Embryo Transfer disclosure. Before each Embryo Transfer cycle, the Provider must provide each Intended Parent with the following information in a Record, where applicable:

   (a) Method used to achieve fertilization and the results of semen analysis, including, but not limited to, motility, count, and morphology;
   (b) Number of eggs retrieved;
   (c) For the Retrieval and Transfer of fresh Embryos:
      (i) Number formed;
      (ii) Number viable for Embryo Transfer;
      (iii) Number to be Transferred;
      (iv) Number to be cryopreserved;
(v) Quality of each Embryo Transferred; and
(vi) Quality of each Embryo cryopreserved;

(d) For the Transfer of cryopreserved Embryos:

(i) Number of Embryos thawed;
(ii) Number of Embryos viable for Embryo Transfer after thawing; and
(iii) Quality of Embryos Transferred;
(iv) Remaining viability of thawed but unused Embryos, if any.

(e) A statement that failure to adhere to drug administration schedules may affect
the outcome of the treatment.

4. Disclosure to Donors. If additional information is learned through Medical Evaluation or
Mental Health Evaluation prior to or upon Retrieval of Gametes that is relevant to the
Donor’s health that information must be made available to the Donor if the Donor has
made such a request. The Provider must disclose to a Donor that such information can
be made available upon request.

5. Disclosure regarding health. Individuals from whom eggs are retrieved must be
informed prior to the Retrieval or commencement of medications of the health risks and
adverse effects of ovarian stimulation and retrieval. Women undergoing Transfer must
be informed of the health risks of that process. Health risk disclosures must include,
where relevant, the following information regarding the fertility drugs to be used:

(a) Known potential present and future side effects;
(b) Alternative drug therapies and natural cycling;
(c) Process of drug administration; and
(d) Whether the drug is approved by the Food and Drug Administration (FDA).

6. Disclosure regarding multiple births/Retrievals. Where relevant, a Provider must
disclose in a Record, to Participants other than Donors, prior to Retrieval, the known risks
of multiple births to the Participant and to the fetuses, including the positive and negative
factors involved in selective reduction; and the known potential birth defects related to
IVF. A Provider must disclose prior to Retrieval to individuals undergoing egg retrieval
the known potential present and future risks of multiple courses of ovarian stimulation
drugs. A Provider must disclose prior to Embryo Transfer to a Gestational Surrogate or
Genetic Surrogate the number of embryos to be transferred.
7. Disclosure regarding Embryo research. A Provider shall not accept from a Participant
an Embryo designated for research under Section 502, and the Provider must disclose
the existence of any financial or professional relationship with any entity accepting the
Embryo for research.

SECTION 204. DONOR LIMITATIONS

In accordance with the requirements set forth elsewhere in this Act:

1. A Donor of Gametes or Embryos may condition donation on a reasonable assurance
of anonymity so long as non-identifying health information is provided.

2. A Donor who has given permission for release of identifying health or other information
may not revoke such permission after transfer of ownership of the donated Gametes or
Embryos.

3. A Donor of Gametes or Embryos may condition donation on other reasonable use or
disposition restrictions as set forth in a Record prior to donation.

SECTION 205. COLLECTION OF GAMETES FROM CRYOPRESERVED TISSUE
OR GAMETES FROM DECEASED OR INCOMPETENT INDIVIDUALS

1. Gametes shall not be collected from deceased or incompetent individuals or from
cryopreserved tissues unless consent in a Record was executed prior to death or
incompetency by the individual from whom the Gametes are to be collected, or the
individual’s authorized fiduciary who has express authorization from the principal to so
consent, does consent.

2. In the event of an emergency where the required consent is alleged but unavailable
and where, in the opinion of the treating Physician, loss of viability would occur as a result
of delay, and where there is a genuine question as to the existence of consent in a
Record, an exception is permissible.

3. If Gametes are collected pursuant to paragraph 2 of this Section, Transfer of Gametes
or of an Embryo formed from such a Gamete is expressly prohibited unless approved by
a Court. Absence of a Record as described in paragraph 1 of this Section shall constitute
a presumption of non-consent.

Legislative Note: States should customize this article to comport with the State’s
criminal code.

SECTION 206. LOSS OF EMBRYOS OR GAMETES DUE TO NATURAL
DISASTER, ACT OF GOD, TERRORISM, OR WAR
An ART Storage Facility for Embryos or Gametes is not liable for destruction or loss of Embryos due to natural disaster, act of God, terrorism or war.

ARTICLE 3. MENTAL HEALTH EVALUATION AND ADDITIONAL COUNSELING

The requirements of Article 3 apply only to medical facilities providing ART to Participants.

SECTION 301. MENTAL HEALTH EVALUATION

1. Intended Parents must receive a Consultation prior to undergoing any Collaborative Reproduction ART procedure.

2. All other Participants known to the ART Provider, other than Intended Parents, must undergo a Mental Health Evaluation with a Mental Health Professional in accordance with the most recently published Professional Guidelines of ASRM prior to Collaborative Reproduction ART procedure. The results of this Evaluation shall only be used to determine suitability to participate in Collaborative Reproduction.

3. During a Consultation or Mental Health Evaluation described above, the Provider must inform the Participant(s) of additional counseling options. The Participant’s acceptance of additional counseling is voluntary.

4. For purposes of this Article, Mental Health Professional is an individual who:

   (a) Holds a master’s or doctoral degree in the field of psychiatry, psychology, counseling, social work, psychiatric nursing, marriage and family therapy, or State equivalent; and

   (b) Is licensed, certified, or registered to practice in the mental health field; and

   (c) Has received training in reproductive physiology; the testing, diagnosis, and treatment of Infertility; and the psychological issues in Infertility and Collaborative Reproduction. If there are questions about inherited or genetic disorders, the Mental Health Professional must refer the Participant to a qualified professional for Consultation.

SECTION 302. ADDITIONAL COUNSELING REQUIREMENTS

1. An ART procedure using Collaborative Reproduction shall not be initiated or performed until:

   (a) All Participants made known to the ART Provider have been offered Mental Health Counseling following the initial Mental Health Evaluation or Consultation as provided for in Section 301; and
(b) The Mental Health Professional(s) have prepared and delivered to the medical Provider(s) a statement in a Record that he or she has met with the Participant(s) and that they have undergone the requisite Mental Health Evaluation and/or Consultation;

2. Opportunity to receive counseling. It shall be conclusively presumed that a Participant has been offered an opportunity to receive additional counseling from a Mental Health Professional pursuant to Section 301 if that individual signs a statement containing the following language:

“I understand that counseling is recommended for all participants in collaborative reproduction and that counseling is a separate process from any consultation that [Provider] has required me to complete. [Provider] has given me the opportunity to meet with and receive counseling from a mental health professional with specialized knowledge of the social and psychological impact of assisted and collaborative reproduction on participants. I understand that I may choose any such mental health professional, and that I am not required to choose one recommended by this treatment facility.”

3. Assessment available to Intended Parents. A Mental Health Professional’s recommendation regarding the assessment of a Gamete Donor or Surrogate Participant for Collaborative Reproduction shall be transmitted to an Intended Parent only if:

(a) Intended Parent has requested such recommendation;

(b) Intended Parent’s request is prior to Transfer of Gametes or Embryos;

(c) Intended Parent’s request is prior to execution of any Collaborative Reproduction agreement; and

(d) The affected Participant’s Informed Consent was obtained pursuant to Article 201.

(e) Any such transmission as well as the retention of the information transmitted or the documents or other materials upon which the assessment was based, shall otherwise be controlled by applicable state or Federal law.

ARTICLE 4. PRIVACY AND CONFIDENTIALITY

The requirements of Article 4 apply only to medical facilities providing ART to Participants.

SECTION 401. INDIVIDUALLY IDENTIFIABLE MEDICAL INFORMATION

All individually identifiable information obtained or created in the course of ART treatment is Medical Information and subject to medical record confidentiality requirements.
SECTION 402. INFORMATION ABOUT DONORS

1. DEFINITIONS.

(a) “Identifying information” means: the full name of a Donor; the date of birth of the Donor; and the permanent and, if different, current address of the Donor at the time of the donation.

(b) “Medical history” means information regarding any: present illness of a Donor; past illness of the Donor; and social, genetic, and family history pertaining to the health of the donor.

2. COLLECTION OF INFORMATION.

For Gametes collected after the effective date of this Act, a Gamete bank or Provider licensed in this State shall collect from a Donor the Donor’s identifying information and medical history at the time of the donation. If the Gametes of a Donor are sent to another Gamete bank or Provider, a sending Gamete bank or Provider also shall forward any identifying information and medical history of the Donor, including the Donor’s signed declaration under Section 402 (3) regarding identity disclosure, to a receiving Gamete bank or Provider. A receiving Gamete bank or Provider licensed in this State must collect and retain the information about the Donor and the sending Gamete bank or Provider.

3. DECLARATION REGARDING IDENTITY DISCLOSURE.

(a) A Gamete bank or Provider licensed in this State that collects Gametes from a Donor shall:

(i) provide the Donor with information in a Record about the Donor’s choice regarding identity disclosure; and

(ii) obtain a declaration from the Donor regarding identity disclosure.

(b) The Gamete bank or Provider shall give the Donor the choice to sign a declaration, attested by a notarial officer or witnessed by at least one individual, that either:

(i) states that the Donor agrees to disclose the Donor’s identity to a Child conceived by assisted reproduction with the Donor’s Gametes on request once the Child becomes 18 years of age; or

(ii) states that the Donor presently does not agree to disclose the Donor’s identity to the Child.
(c) The Gamete bank or Provider shall permit a Donor who has signed a declaration under paragraph (b)(ii) of this Section to withdraw the declaration by signing a declaration under paragraph (b)(i) of this Section at any time.

4. DISCLOSURE OF IDENTIFYING INFORMATION AND MEDICAL HISTORY.

(a) On request of a Child conceived by Assisted Reproduction who is at least 18 years of age, a Gamete bank or Provider licensed in this State which collected, stored, or released for use the Gametes used in the Assisted Reproduction shall make a good-faith effort to provide the Child with identifying information of the Donor who provided the Gametes, unless the Donor signed and did not withdraw a declaration under paragraph 3(b)(ii) of this Section. If the Donor signed and did not withdraw a declaration under paragraph 3(b)(ii) of this Section, the Gamete bank or Provider must make a good-faith effort to notify the Donor, who may elect disclose the Donor’s identity declaration under paragraph 3(b)(i) of this Section.

(b) Regardless of whether a Donor signed a declaration under paragraph 3 of this Section, on request by a Child conceived by Assisted Reproduction who is at least 18 years of age, or, if the Child is a minor, by a Parent or guardian of the Child, the Gamete bank or Provider shall make a good faith effort to provide the Child or, if the Child is a minor, the Parent or guardian of the Child, access to non-identifying medical history of the Donor.

5. RECORDKEEPING. A Gamete bank or Provider licensed in this State, which collects, stores, or releases Gametes for use in Assisted Reproduction, shall collect and maintain identifying information and medical history about each Donor. The Gamete bank or Provider shall collect and maintain records of Gamete screening and testing and comply with reporting requirements, in accordance with federal law and applicable law of this State other than this Act.

ARTICLE 5. EMBRYO TRANSFER AND DISPOSITION OF GAMETES OR EMBRYOS

The requirements of Article 5 apply only to medical facilities providing ART to Participants.

SECTION 501. DISPOSITION OF GAMETES AND EMBRYOS

1. Intended Parent(s) shall enter into a written agreement prior to Embryo formation through in vitro fertilization detailing:

(a) Intended use of Embryos;

(b) Disposition of cryopreserved Embryos in the event of:

(i) Dissolution of Intended Parents’ relationship (or divorce of Intended Parents, if married); and
(ii) Incapacity or death of one or both Intended Parents.

2. Such agreements may be amended in a Record provided to the Provider, at any time prior to Embryo Transfer or the death of either Intended Parent.

3. Intended Parent(s) entering into such agreements shall provide the Provider with an address and permanent identifier.

4. All such agreements must be delivered to the Providers and the ART Storage Facility, if any.

5. Any party to an Embryo storage or disposition agreement may withdraw his or her consent to the terms of the agreement in writing prior to an Embryo Transfer to a uterus of an Intended Parent, Gestational Surrogate, or Genetic Surrogate.

   (a) Notice of said withdrawal of consent to the terms of the agreement must be given in a Record to the parties to the agreement and to the Providers and ART Storage Facility, if any.

   (b) After receipt of said notice in a Record by the other Intended Parent and/or by the ART Provider or ART Storage Facility of that individual's intent to avoid Embryo Transfer, an Intended Parent may not Transfer the Embryos into the uterus of any individual with the intent to have a Child. No prior agreement to the contrary will be enforceable.

   (c) In the event that an Embryo Transfer occurs after receipt of notice in a Record of this Section that Intended Parent will not be the Parent of a resulting Child.

6. Following the death of an Intended Parent who has previously consented in a Record to posthumous use of cryopreserved Gametes and/or Embryos, the surviving Intended Parent or the individual designated in the Record to receive control of use of the Embryos may use the Embryos in accordance with the decedent's written consent in a Record. Except as otherwise provided in the enacting jurisdiction's probate code, the Child born as a result of Embryo Transfer after the death of an Intended Parent or Gamete Provider is not the Child of that Gamete Provider or Intended Parent unless the deceased individual consented in a Record that if Assisted Reproduction were to occur after death, the deceased individual would be a Parent of the Child.

7. No Provider shall Transfer or form any Embryos following the death of an Intended Parent unless the necessary consent referred to in paragraph 6 of this Section is obtained and permanently recorded.
8. In the event that a written agreement pursuant to paragraph 1 of this Section is not executed prior to Embryo formation, the Intended Parent[s] may execute an agreement consistent with this Section that may be enforceable on a prospective basis.

SECTION 502. DONATION OF UNUSED GAMetes OR EMBRYOS

Intended Parent(s) may choose to donate their unused Gametes or Embryos for any of the following purposes subject only to any limitations set forth in a Record prior to donation as permitted and imposed pursuant to the provisions of Section 204 hereof, which choices shall be reflected in their agreement(s):

1. Donation to another Patient(s), either known or anonymous, for the purpose of the recipient attempting to have a Child and become that Child’s Parent.

2. Donation for approved research, the nature of which may be specifically set forth in the informed consent Record and which has received the approval of an institutional review board. No research will be permitted that is not within the scope of the informed consent of the recorded agreement. This agreement may only be modified with the consent of the Intended Parent(s). After an Intended Parent has died, that individual’s consent endures and is irrevocable.

SECTION 503. SCREENING OF GAMETE OR EMBRYO DONORS

Donors shall be screened prior to such donation in compliance with applicable State and federal law in accordance with applicable medical standards. Records of the donation shall be maintained in compliance with applicable State and federal law.

SECTION 504. ABANDONMENT OF GAMETES OR EMBRYOS AND DISPOSITION OF ABANDONED GAMETES OR EMBRYOS

1. A Gamete or an Embryo is deemed to be abandoned only if:

   (a) At least five years have elapsed since last communication from Intended Parents to Provider and/or ART Storage Facility unless the Participants select another time by agreement as provided in a Record; and

   (b) A diligent attempt to notify the interested Participants, as well any Provider(s) who contracted for storage, that the Gamete or Embryo is deemed to be abandoned (such attempt shall include, but not be limited to, notice by certified mail (or equivalent trackable medium) to each interested Participant’s permanent address or last known address, and shall require a period of not less than ninety days to elapse before any action is taken); and

   (c) The interested Participants have acknowledged that they have been informed of the provisions of (a) and (b) of this paragraph in an agreement in a Record executed prior to storage with the Provider and/or ART Storage Facility.
2. Disposition of a Gamete or an Embryo deemed to be abandoned under paragraph 1 of this Section must be in accordance with the most recent recorded agreement between Participants and the ART Storage Facility. If there is no agreement in a Record, or if no agreement in a Record can be found after a diligent search, disposition must be as ordered by a Court.

3. Any Provider and/or ART Storage Facility that disposes of Gametes or Embryos in compliance with this Section is immune from all civil and criminal liability that may arise as a result of the disposition of such Gametes or Embryos, absent criminal intent, gross negligence, or intentional misconduct.

SECTION 505. TRANSPORTATION OF GAMETES OR EMBRYOS

1. Transportation of Gametes or Embryos is the responsibility of the individual or individuals requesting the transport.

2. Unless the ART Storage Facility has requested or required transport, it is immune from all civil and criminal liability incurred as a result of the transport, absent criminal intent, gross negligence, or intentional misconduct.

ARTICLE 6. CHILD OF ASSISTED REPRODUCTION

SECTION 601. SCOPE OF ARTICLE

This Article does not apply to the birth of a Child conceived by means of sexual intercourse, or as the result of a Surrogacy Agreement as provided in Article 7.

SECTION 602. PARENTAL STATUS OF DONOR

A. A Donor is not a Parent of a Child conceived by means of Assisted Reproduction.

B. A determination that an individual is a Donor under paragraph (A) of this Section does not require proof of a written agreement or compliance with Articles 1 through 5 of this Act.

C. Donor Agreements Authorized.

1. A Gamete Donor and an Intended Parent(s) may enter into an agreement in a Record providing:

   (a) That the Donor agrees to donate Gametes in order for the Intended Parent(s) to conceive a Child through Assisted Reproduction; and

   (b) That the Donor, and spouse if married, has no property, parental, or other rights, responsibilities and claims with respect to any resulting Gametes, Embryos, and any Child born as a result of the Gamete donation;
(c) That any donated Gametes, and any Embryos formed from the donated Gametes, shall be the sole property and responsibility of the Intended Parent(s), subject to the terms of the Donor agreement; and

(d) That the Donor is not a Parent of any Child conceived through Assisted Reproduction using the Donor’s gamete(s), and the Intended Parent(s) shall be the Child’s Parent(s) with all the rights and responsibilities resulting therefrom.

2. Any Donor limitations as noted in Section 204 should be specified in the Donor agreement.

SECTION 603. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION

An individual who consents to Assisted Reproduction by an individual as provided in Section 604 with the intent to be a Parent of the Child is a Parent of the resulting Child. Compliance with Articles 1 through 5 of this Act is not required for a determination that an individual is a Parent under this Section.

SECTION 604. CONSENT TO ASSISTED REPRODUCTION

1. Except as otherwise provided in Section 604(2), the consent described in Section 603, must be in a Record signed by the individual giving birth to a Child conceived by Assisted Reproduction and any individual who intends to be a Parent of the Child.

2. Failure of an Intended Parent to sign a consent in a Record as required by paragraph 1 of this Section, before or after birth of the Child, does not preclude a finding of parentage if:

   (a) The individual seeking to establish that the Intended Parent is a Parent of the Child proves by clear-and-convincing evidence the existence of an express agreement entered into before conception that the Intended Parent and the individual who gave birth intended they both would be Parents of the Child; or

   (b) the individual giving birth and the individual alleged to be an Intended Parent resided together with the Child during the first two years of the Child’s life and openly held out the Child as their own, unless the individual dies or becomes incapacitated before the Child becomes two years of age or the Child dies before the Child becomes two years of age, in which case a court may find consent to parentage under this paragraph if a party proves by clear-and-convincing evidence that the individual giving birth and the individual intended to reside together in the same household with the Child and both intended that the individual would openly hold out the Child as the individual’s Child, but that the individual was prevented from carrying out that intent by death or incapacity.

SECTION 605. LIMITATION ON LEGAL SPOUSE’S DISPUTE OF PARENTAGE
1. Except as otherwise provided in Section 605(2), an individual, who at the time of a Child’s birth, is the Legal Spouse of the woman who gave birth to the Child by Assisted Reproduction, may not challenge the individual’s parentage of the Child unless:

   (a) Not later than two years after the birth of the Child, the individual commences a proceeding to adjudicate the individual’s parentage of the Child; and

   (b) A Court finds the individual did not consent to the Assisted Reproduction, before, on, or after birth of the Child, or withdrew consent under Section 606.

2. A proceeding to adjudicate a Legal Spouse’s parentage of a Child born by Assisted Reproduction may be commenced at any time if the court determines the:

   (a) Legal Spouse neither provided a gamete for, nor consented to, the Assisted Reproduction;

   (b) Legal Spouse and the woman who gave birth to the Child have not cohabited since the probable time of Assisted Reproduction; and

   (c) Legal Spouse never openly held out the Child as the Legal Spouse’s Child.

3. This Section applies to a Legal Spouse’s dispute of parentage even if the Legal Spouse’s marriage is declared invalid after Assisted Reproduction occurs.

SECTION 606. EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL OF CONSENT

1. If a marriage is dissolved before an insemination or Embryo Transfer the former spouse is not a Parent of the resulting Child unless the former spouse consented in a Record that if Assisted Reproduction were to occur after a divorce, the former spouse would be a Parent of the Child.

2. The consent of an individual to Assisted Reproduction may be withdrawn by that individual in a Record with written notice to the individual undergoing Assisted Reproduction at any time before an insemination or Embryo Transfer. An individual who withdraws consent under this Section is not a Parent of the resulting Child.

SECTION 607. PARENTAL STATUS OF DECEASED INDIVIDUAL

Except as otherwise provided in the enacting jurisdiction's probate code, if an individual who consented in a Record to be a Parent by Assisted Reproduction dies before an insemination or Embryo Transfer, the deceased individual is not a Parent of the resulting Child unless the deceased spouse consented in a Record that if Assisted Reproduction were to occur after death, the deceased individual would be a Parent of the Child.
ARTICLE 7. SURROGACY

SECTION 701. SURROGACY AGREEMENTS AUTHORIZED

A. A Gestational or Genetic Surrogate and, if married, the Gestational or Genetic Surrogate’s Legal Spouse and the Intended Parent(s) may enter into an agreement in a Record providing that:

1. The Gestational or Genetic Surrogate agrees to attempt pregnancy by means of Assisted Reproduction;

2. The Gestational or Genetic Surrogate and, if married, the Gestational or Genetic Surrogate’s Legal Spouse have no claims to parentage with respect to any Child resulting from the Assisted Reproduction procedure(s); and

3. The Intended Parent(s) shall be recognized as the sole Parent(s) of the Child.

B. A Surrogacy Agreement may provide for payment of consideration under Article 8 of this Act.

C. A Surrogacy Agreement may not limit the right of the Gestational or Genetic Surrogate to make any health and welfare decisions regarding the Surrogate and the Surrogate’s pregnancy. This Act does not enlarge or diminish the surrogate’s right to terminate or to continue the pregnancy.

D. A Genetic Surrogacy Agreement shall be subject to the following additional requirements and is enforceable only if:

1. Judicially validated as provided in Section 706; and

2. The Assisted Reproduction procedure(s) utilized to attempt a pregnancy are performed under the supervision of a licensed Physician.

SECTION 702. ELIGIBILITY

A. A Gestational or Genetic Surrogate shall be deemed to have satisfied the requirements of this Act if the Gestational or Genetic Surrogate has met the following requirements at the time the Surrogacy Agreement is executed and prior to the anticipated pregnancy. The Gestational or Genetic Surrogate:

1. Is at least twenty-one (21) years of age;

2. Has given birth to at least one (1) Child;

3. Has completed a Medical Evaluation relating to the anticipated pregnancy;
4. Has completed a Mental Health Evaluation relating to the anticipated Surrogacy Arrangement;

5. Is represented by Independent Legal Counsel and has undergone legal Consultation regarding the terms of the Surrogacy Agreement and the potential legal consequences of the Surrogacy Arrangement;

6. Has or will obtain a health insurance policy or other coverage for major medical treatments and hospitalization and the health insurance policy has a term that extends throughout the duration of the expected pregnancy and for eight (8) weeks after the birth of the Child.

B. The Intended Parent(s) shall be deemed to have satisfied the requirements of this Act if the Intended Parent(s) have met the following requirements at the time the Surrogacy Agreement is executed and prior to the anticipated pregnancy:

1. Intended Parent(s) have completed a Consultation relating to the anticipated Surrogacy Arrangement; and

2. Intended Parent(s) are represented by Independent Legal Counsel and have undergone legal Consultation regarding the same and the potential legal consequences of the Surrogacy Arrangement.

C. The relevant State regulatory agency may adopt rules pertaining to the required Medical Evaluations, Consultations and Mental Health Evaluations for a Surrogacy Agreement. Until the relevant State regulatory agency adopts such rules, Medical Evaluations, Consultations and Mental Health Evaluations and procedures shall be conducted in accordance with the recommended guidelines published by ASRM. The rules may adopt these guidelines or others by reference.

SECTION 703. REQUIREMENTS FOR A SURROGACY AGREEMENT

A. A Surrogacy Agreement is enforceable only if:

1. It meets the contractual requirements set forth in Section 703(B); and

2. It contains at a minimum each of the terms set forth in Section 703(C); and

3. If the Surrogacy Agreement is a Genetic Surrogacy Agreement, it must be judicially validated, as required by Section 706, prior to attempting pregnancy by means of Assisted Reproduction.

B. A Surrogacy Agreement shall meet the following requirements:

1. It shall be in writing;
2. It shall be executed prior to the commencement of any medical procedures in furtherance of the Surrogacy Arrangement (other than Medical Evaluations, Consultations or Mental Health Evaluations necessary to determine eligibility of the parties pursuant to Section 702 of this Act), by:

   (a) A Gestational or Genetic Surrogate meeting the eligibility requirements of Section 702(A) of this Act and, if married, the Gestational or Genetic Surrogate’s Legal Spouse; and

   (b) The Intended Parent(s) meeting the eligibility requirements of Section 702(B) of this Act.

3. The Gestational or Genetic Surrogate, and, if married, the Gestational or Genetic Surrogate’s Legal Spouse, and the Intended Parent(s) shall be represented by Independent Legal Counsel in all matters concerning the Surrogacy Arrangement and the Surrogacy Agreement;

4. Each of the parties acknowledge in writing that they received information about the legal, financial, and contractual rights, expectations, penalties, and obligations of the Surrogacy Agreement;

5. If the Surrogacy Agreement provides for the payment of Compensation to the Gestational or Genetic Surrogate, the Compensation shall be placed in escrow with an independent Escrow Agent prior to the Gestational or Genetic Surrogate’s commencement of any medical procedure (other than Medical Evaluations, Consultation or Mental Health Evaluations necessary to determine the Gestational or Genetic Surrogate’s eligibility pursuant to Section 702(A) of this Act); and

6. Each party’s signature shall be notarized or witnessed by two (2) competent adults who are not parties to the Surrogacy Agreement.

C. A Surrogacy Agreement shall provide for:

1. The express written agreement of the Gestational or Genetic Surrogate to:

   (a) Undergo Assisted Reproduction procedure(s) to achieve a pregnancy and attempt to carry and give birth to a Child; and

   (b) Surrender custody of any Child resulting from such Assisted Reproduction procedure(s) to the Intended Parent(s) immediately upon birth;

2. If the Gestational or Genetic Surrogate is married, the express agreement of the Gestational or Genetic Surrogate’s Legal Spouse to:
(a) Undertake the obligations imposed on the Gestational or Genetic Surrogate pursuant to the terms of the Surrogacy Agreement; and

(b) Surrender custody of any Child resulting from such Assisted Reproduction procedure(s) to the Intended Parent(s) immediately upon birth;

3. The right of the Gestational or Genetic Surrogate to utilize the services of a Physician chosen by the Gestational or Genetic Surrogate to provide care to the Gestational or Genetic Surrogate during the pregnancy; and

4. The right of the Gestational or Genetic Surrogate to make any health and welfare decisions regarding the Surrogate and the Surrogate’s pregnancy including continuation or termination of the pregnancy.

5. The express written agreement of the Intended Parent(s) to:

(a) Accept custody of any Child resulting from such Assisted Reproduction procedure(s) immediately upon birth regardless of number, gender, or mental or physical condition; and

(b) Assume sole responsibility for the support of the Child immediately upon birth.

6. Intended Parent(s) payment of reasonable legal, medical and/or ancillary expenses, including:

(a) The premiums for a health insurance policy that covers medical treatment and hospitalization for the Gestational or Genetic Surrogate unless otherwise mutually agreed upon by the parties, pursuant to the terms of the Surrogacy Agreement; and

(b) The payment of all uncovered medical expenses; and

(c) The payment of reasonable legal fees for the Gestational or Genetic Surrogate’s legal representation; and

(d) The payment of life insurance premiums; and

(e) Other reasonable financial arrangements mutually agreed upon by the parties, including any applicable reimbursement and compensation schedule, pursuant to the terms of the Surrogacy Agreement.
D. A court has jurisdiction to determine the Parent-Child Relationship pursuant to a Surrogacy Agreement where:

1. At least one of the parties to the Surrogacy Agreement is a resident; or

2. At least one of the medical procedures pursuant to the Surrogacy Agreement occurs; or

3. The birth occurs or is anticipated to occur.

4. If none of the above applies, the appropriate jurisdiction for determining the Parent-Child Relationship may be determined under the Uniform Child Custody Jurisdiction and Enforcement Act.

E. A Surrogacy Agreement is enforceable even if it contains one or more of the following provisions:

1. The Gestational or Genetic Surrogate’s agreement to undergo all medical exams and/or treatments, and to follow activity restrictions, as instructed by the Physician for the success of the pregnancy (although there shall be no specific performance remedy for a breach of such provisions);

2. The agreement of the Intended Parent(s) to pay the Gestational or Genetic Surrogate reasonable Compensation;

3. The agreement of the Intended Parent(s) to pay for or reimburse the Gestational or Genetic Surrogate for reasonable expenses (including, without limitation, medical, legal, or other professional or necessary expenses) related to the Surrogacy Arrangement and to the Surrogacy Agreement.

SECTION 704. TERMINATION OF SURROGACY AGREEMENT

A. Prior to Pregnancy

1. Before a Gestational or Genetic Surrogate undergoes the Assisted Reproduction procedure(s) to attempt pregnancy, and subject to the terms of the Surrogacy Agreement, any party may terminate the Surrogacy Agreement by giving written notice of termination to all other parties.

2. No party may terminate the Surrogacy Agreement after an Embryo Transfer procedure and prior to a pregnancy test at a time to be determined by a qualified Physician.

3. Any party who terminates a Genetic Surrogacy Agreement after the appropriate Court issues an order validating a Genetic Surrogacy Agreement under Section 706 but before the Genetic Surrogate becomes pregnant by means of Assisted
Reproduction shall also file notice of the termination with the appropriate Court. On receipt of the notice, the appropriate Court shall order a stay on all medical procedures contemplated under the terms of the Genetic Surrogacy Agreement.

4. Except as otherwise agreed to among the parties in the Surrogacy Agreement, no party shall be liable to any other party for terminating the Surrogacy Agreement before the Gestational or Genetic Surrogate becomes pregnant by means of Assisted Reproduction.

B. After Pregnancy is confirmed.

1. Subject to the provisions of Section 714(C), no party may terminate a Surrogacy Agreement once a successful pregnancy is confirmed.

SECTION 705. ESTABLISHMENT OF PARENT CHILD RELATIONSHIP IN GESTATIONAL SURROGACY

A. RIGHTS OF PARENTAGE

1. Except as provided in this Act, a woman who gives birth to a Child is a Parent of that Child for purposes of State law.

2. The parties to a Gestational Surrogacy Agreement shall assume the rights and obligations of this Article if:

   (a) The Gestational Surrogate satisfies the eligibility requirements set forth in Section 702(A);

   (b) The Intended Parent(s) satisfy the eligibility requirements set forth in Section 702(B); and

   (c) The Gestational Surrogacy Agreement complies with the requirements of Section 703.

3. In the case of a Gestational Surrogacy Agreement satisfying the requirements set forth in this Article:

   (a) The Intended Parent(s) shall be the Parents of the Child for purposes of State law immediately upon the birth of the Child;

   (b) The Child shall be considered the Child of the Intended Parent(s) for purposes of State law immediately upon the birth of the Child;

   (c) Parental rights shall vest in the Intended Parent(s) immediately upon the birth of the Child;
(d) Sole custody of the Child shall rest with the Intended Parent(s) immediately upon the birth of the Child; and

(e) Neither the Gestational Surrogate nor the Gestational Surrogate’s Legal Spouse, if any, shall be the Parent of the Child for purposes of State law immediately upon the birth of the Child.

4. If the parentage of a Child born to a Gestational Surrogate is alleged not to be the result of the Assisted Reproduction procedure(s), the appropriate Court shall order genetic testing to determine the parentage of the Child. If the Child was not conceived as result of the Assisted Reproduction procedure(s), the Parent-Child Relationship shall be determined as provided under other applicable State law.

5. In the case of a Gestational Surrogacy Arrangement meeting the requirements set forth in this Section 705, in the event of a laboratory error in which the laboratory transfers Embryo(s) not legally belonging to the Intended Parent(s), the Intended Parents will be the Parents of the Child for purposes of State law unless otherwise determined by a Court in an action which can only be brought by one or more of the parties to the Surrogacy Agreement or the genetic contributors within two (2) years of the date of the Child’s birth.

B. ADMINISTRATIVE ESTABLISHMENT OF THE PARENT-CHILD RELATIONSHIP.

If an applicable State law provides for the administrative establishment of the Parent-Child Relationship, that process may be utilized by the parties for purposes of establishing a Parent-Child Relationship.

SECTION 706. ESTABLISHMENT OF PARENT CHILD RELATIONSHIP IN GENETIC SURROGACY

A. RIGHTS OF PARENTAGE

1. The parties to a Genetic Surrogacy Agreement shall assume the rights and obligations of paragraphs 2 and 3 of this Section 706(A) if:

(a) The Genetic Surrogate satisfies the eligibility requirements set forth in Section 702(A);

(b) The Intended Parent(s) satisfy the eligibility requirements set forth in Section 702(B); and

(c) The Genetic Surrogacy Agreement complies with the requirements of Section 703 and has been judicially pre-approved prior to the
commencement of any medical procedures in furtherance of the Surrogacy Arrangement (other than Medical Evaluations, Consultation or Mental Health Evaluations necessary to determine eligibility of the parties pursuant to Section 702 of this Act) as set forth in this Section 706.

2. In the case of a Genetic Surrogacy Agreement satisfying the requirements set forth in paragraph 1 of this Section 706(A):

(a) The Intended Parent(s) shall be the Parents of the Child for purposes of State law immediately upon the birth of the Child;

(b) The Child shall be considered the Child of the Intended Parent(s) for purposes of State law immediately upon the birth of the Child;

(c) Parental rights shall vest in the Intended Parent(s) immediately upon the birth of the Child;

(d) Sole custody of the Child shall rest with the Intended Parent(s) immediately upon the birth of the Child; and

(e) Neither the Genetic Surrogate nor the Genetic Surrogate’s Legal Spouse, if any, shall be the Parent of the Child for purposes of State law immediately upon the birth of the Child.

3. In the case of a Genetic Surrogacy Arrangement meeting the requirements set forth in this Section 706, in the event of a laboratory error in which the laboratory transfers Embryo(s) not legally belonging to the Intended Parent(s), the Intended Parents will be the Parents of the Child for purposes of State law unless otherwise determined by a Court in an action which can only be brought by one or more of the parties to the Surrogacy Agreement or the genetic contributors within two (2) years of the date of the Child’s birth.

B. JUDICIAL PRE-APPROVAL OF GENETIC SURROGACY AGREEMENT

1. Prior to the commencement of any medical procedures in furtherance of the Genetic Surrogacy Arrangement (other than Medical Evaluations, Consultation or Mental Health Evaluations necessary to determine eligibility of the parties pursuant to Section 702 of this Act), the Intended Parent(s), the Genetic Surrogate, and Genetic Surrogate’s Legal Spouse, if any, shall commence a proceeding to obtain judicial pre-approval of a Genetic Surrogacy Agreement by filing a petition in the appropriate Court. A proceeding to obtain judicial pre-approval of a Genetic Surrogacy Agreement may not be maintained unless all parties to the Genetic Surrogacy Agreement join in the petition. A copy of the fully-executed Genetic Surrogacy Agreement must be filed with the petition.
2. If the requirements of paragraph 1 of this Section 706(B) are satisfied, the appropriate Court shall issue an order validating the Genetic Surrogacy Agreement and declaring that the Intended Parent(s) will, subject to the issuance of a final post birth order, be the sole Parent(s) of a Child born during the term of the Genetic Surrogacy Agreement.

3. The Court shall issue an order under this Section 706(B) only on finding that:

   (a) The requirements of Section 702 have been satisfied;

   (b) The requirements of Section 706(B) have been satisfied;

   (c) All parties have voluntarily entered into the Genetic Surrogacy Agreement meeting the requirements of Section 703 and understand its terms;

   (d) Adequate provision has been made for all reasonable health-care expenses associated with the Genetic Surrogacy Agreement, including responsibility for those expenses if the Genetic Surrogacy Agreement is terminated, as set forth in Section703(C)(6); and

   (e) The consideration, if any, to be paid to the Genetic Surrogate is reasonable.

C. PARENTAGE UNDER A JUDICIALLY PRE-APPROVED GENETIC SURROGACY AGREEMENT

1. Upon birth of a Child pursuant to a judicially pre-approved Genetic Surrogacy Agreement, all parties shall jointly file a notice with the appropriate Court that a Child has been born as a result of the Assisted Reproduction procedure(s). Thereupon, the appropriate Court shall issue an order:

   (a) Confirming that the Intended Parent(s) are the Parent(s) of the Child;

   (b) If necessary, ordering that the Child be surrendered to the Intended Parent(s); and

   (c) Directing the agency maintaining birth records to issue a birth certificate naming the Intended Parent(s) as Parent(s) of the Child on an expedited basis.

2. If the parentage of a Child born to a Genetic Surrogate is alleged not to be the result of the Assisted Reproduction procedure(s), the appropriate Court shall order genetic testing to determine the parentage of the Child. If the Child was not conceived as result of the Assisted Reproduction procedure(s), the Parent-
Child Relationship shall be determined as provided under other applicable State law.

3. If the parties fail to comply with paragraph 1 of this Section 706(C), the appropriate State agency may, upon request of any party, file notice with the appropriate Court that a Child has been born to the Genetic Surrogate as a result of Assisted Reproduction. Upon proof of a Court order issued pursuant to Section 706(B) validating the Genetic Surrogacy Agreement, the appropriate Court shall order that the Intended Parent(s) are the sole legal Parent(s) of the Child and are financially responsible for the Child.

4. If a birth results under a Genetic Surrogacy Agreement that is not judicially pre-approved as provided in this Section 706, the Parent-Child Relationship shall be determined as provided under other applicable State law specifically taking into consideration the intent of the parties at the time of the execution of the Genetic Surrogacy Agreement and the best interests of the Child. An Intended Parent has standing to request and be awarded legal parentage of the Child for the purposes of this provisions and any parentage proceeding hereunder.

SECTION 707. FULL FAITH AND CREDIT

An establishment of parentage pursuant to an order of Court under Section 705 (A) or 706 of this Act shall be given full faith and credit in another State if the establishment was in a signed Record and otherwise complies with the law of the other State.

SECTION 708. DUTY TO SUPPORT

A. Any individual who is considered to be the Parent of the Child pursuant to Section 705 or Section 706 of this Act shall be obligated to support the Child.

B. Intended Parents who are parties to a non-compliant Gestational Surrogacy Arrangement or an unapproved Genetic Surrogacy Agreement may be held liable for support of the resulting Child under other law.

C. Breach of the Surrogacy Agreement by the Intended Parent(s) shall not relieve such Intended Parent(s) of the support obligations imposed by this Act.

SECTION 709. EFFECT OF SURROGATE’S SUBSEQUENT MARRIAGE

A. Gestational Surrogacy

Subsequent marriage of the Gestational Surrogate after execution of a Surrogacy Agreement under this article does not affect the validity of the Surrogacy Agreement, consent to the Surrogacy Agreement from the Gestational Surrogate’s Legal Spouse is not required, and the Gestational Surrogate’s Legal Spouse is not a presumed Parent of the resulting Child.
B. Genetic Surrogacy

After the issuance of an order validating a Surrogacy Agreement between Intended Parents and a Genetic Surrogate under this article, subsequent marriage of the Genetic Surrogate does not affect the validity of a Surrogacy Agreement, consent to the Surrogacy Agreement from the Genetic Surrogate’s Legal Spouse is not required, and the Genetic Surrogate’s Legal Spouse is not a presumed Parent of the resulting Child.

SECTION 710. IRREVOCABILITY

No action to challenge the rights of parentage established pursuant to Section 705 or Section 706 of this Act or the relevant State parentage act provisions shall be commenced after twelve (12) months from the date of birth of the Child.

SECTION 711. NONCOMPLIANCE

Noncompliance occurs when a Gestational or Genetic Surrogate, and, if married, the Gestational or Genetic Surrogate’s Legal Spouse, or the Intended Parent(s) breach a provision of the Surrogacy Agreement or any party to or agreement for a Surrogacy Arrangement fails to meet any of the requirements of this Act.

SECTION 712. EFFECT OF NONCOMPLIANCE

In the event of noncompliance with this Article, the appropriate Court of competent jurisdiction shall determine the respective rights and obligations of the parties to any Surrogacy Arrangement based solely on evidence of the parties’ original intent.

SECTION 713. IMMUNITIES

Except as provided in this Act, no individual shall be civilly or criminally liable under State law for non-negligent actions taken pursuant to the requirements of this Act. This provision shall not prevent liability or actions between or among the parties, including actions brought by or on behalf of the Child, based on negligent, reckless, willful, or intentional acts that result in damages to any party.

SECTION 714. DAMAGES

A. Except as expressly provided in the Surrogacy Agreement, the Intended Parent(s) shall be entitled to all remedies available at law or equity in the event of a breach of the Surrogacy Agreement.

B. Except as expressly provided in the Surrogacy Agreement, a Gestational or Genetic Surrogate shall be entitled to all remedies available at law or equity in the event of a breach of the Surrogacy Agreement.
C. There shall be no specific performance remedy available for a breach by a
Gestational or Genetic Surrogate of a Surrogacy Agreement that:

   1. Limits the right of the Gestational or Genetic Surrogate to make decisions
      regarding the Gestational or Genetic Surrogate’s own health or pregnancy;
   2. Forces the Gestational or Genetic Surrogate to undergo Assisted Reproduction
      for the purposes of becoming pregnant; or
   3. Requires or prevents a Gestational or Genetic Surrogate from terminating the
      pregnancy.

SECTION 715. INSPECTION OF RECORDS

The proceedings, records, and identities of the individual parties to a Surrogacy
Agreement under this Article are subject to inspection by the parties and their attorneys
of record under the standards of confidentiality applicable to adoptions as provided under
other law of this State.

SECTION 716. EXCLUSIVE, CONTINUING JURISDICTION

During the period governed by the Surrogacy Agreement, the Court conducting a
proceeding under this Act has exclusive, continuing jurisdiction of all matters arising out
of the Surrogacy Agreement until the Child, delivered by the Gestational or Genetic
Surrogate during the term of the Surrogacy Agreement, attains the age of ninety (90)
days; however, nothing in this provision gives the Court jurisdiction over a child custody
or a child support action where such jurisdiction is not otherwise authorized.

ARTICLE 8. PAYMENT TO DONORS AND GESTATIONAL OR GENETIC
SURROGATES

SECTION 801. REIMBURSEMENT

1. A Donor may receive reimbursement for economic losses resulting from the Retrieval
   or storage of Gametes or Embryos and incurred after the Donor has entered into a valid
   agreement in a Record to be a Donor.

2. Economic losses occurring before a Donor, Gestational Surrogate or Genetic
   Surrogate has entered into valid agreement in a Record may not be reimbursed unless
   subsequently agreed upon in the agreement, except as provided for in paragraph 3 of this
   Section.

3. Premiums paid for insurance against economic losses directly resulting from the
   Retrieval or storage of Gametes or Embryos for donation may be reimbursed, even if
   such premiums have been paid before the Donor has entered into a valid agreement in a
Record, so long as such agreement becomes valid and effective before the Gametes or Embryos are used in Assisted Reproduction in accordance with the agreement.

SECTION 802. COMPENSATION

1. The Compensation, if any, paid to a Donor, Gestational Surrogate, or Genetic Surrogate must be reasonable according to industry standards and negotiated in good faith between the parties.

2. Compensation may not be conditioned upon the quantity, purported quality or genome-related traits of the Gametes or Embryos.

3. Compensation may not be conditioned on actual genotypic or phenotypic characteristics of the Donor or of the Child.

ARTICLE 9. HEALTH INSURANCE

SECTION 901. INFERTILITY AND EXPERIMENTAL PROCEDURES

1. The ASRM or other appropriate governmental regulatory authority may designate, from time to time, a list of ART procedures and treatments considered to be experimental.

SECTION 902. REQUIRED NOTICE

1. Each group health benefit plan that offers assisted reproductive health services shall provide notice in a Record to each enrollee in the plan of the specific coverage provided for those services.

2. The notice required under this Section must be prominently positioned in any literature, insurance application, or insurance policy plan description made available or distributed by the group health benefits plan to enrollees.

SECTION 903. QUALIFICATION OF PROVIDERS

A health insurer may require that any licensed Physician participating in the treatment of Infertility must be:

(a) Board certified in Obstetrics and Gynecology by the American Board of Obstetrics and Gynecology and have a practice comprised substantially of Infertility cases; or

(b) Board certified in both Obstetrics and Gynecology and in Reproductive Endocrinology by the American Board of Obstetrics and Gynecology, with a practice comprised substantially of Infertility cases; or
(c) Board certified in both Andrology and Urology by the American Board of Urology.

ARTICLE 10. QUALITY ASSURANCE

SECTION 1001. QUALIFICATIONS OF PROVIDERS

1. ART Providers and ART Storage Facilities (hereafter “Program”) shall assure the quality of their services by developing and complying with at least the following quality assurance measures:

(a) Personnel. The Program shall document that senior and supervisory staff are adequately trained, including formal training in genetics. Documentation shall also include staff participation in laboratory training programs and regular updating of staff skills and knowledge.

(b) Equipment. The Program shall develop, implement, and test regularly backup and contingency plans for cryopreservation systems, computer systems, and records.

(c) Testing. The Program shall use a laboratory that participates in proficiency testing and on-site inspection, in compliance with the requirements for certification promulgated by the State Department of Health, if any. If genetic diagnostic services are provided, the Program or the laboratory shall comply with the applicable guidelines of organizations otherwise recognized by ASRM, such as the College of American Pathologists and the American College of Medical Genetics.

SECTION 1002. COLLABORATIVE REPRODUCTION REGISTRIES

1. Collaborative Reproduction registries (or equivalent) created for the purpose of maintaining contact, medical, and psychosocial information about Donors, Gestational or Genetic Surrogates, and Children born as a result of ART, or to benefit the public health, operating within this jurisdiction shall incorporate, at a minimum, the following elements:

(a) Establish procedures to allow the disclosure of non-identifying information, while protecting the anonymity of Donors;

(b) Establish procedures to allow the disclosure of identifying information about Participants only if mutual consent of all parties affected is obtained prior to the release of such information;

(c) Maintain medical and genetic information and updated current health information, including change in health status, about the Donor; Donors or Providers are not required to update such information unless required by written agreement;
(d) Establish procedures to allow disclosure of non-identifying medical and psychosocial information to the resulting Child;

(e) Establish whether a resulting Child is authorized to contact a program; and

(f) Retain all records involving third party reproduction until the resulting Child has reached the age of 40.

2. Health care Providers in this jurisdiction shall not utilize registries that fail to comply with the requirements of paragraph 1 of this Section, except as may be otherwise required or permitted by federal or State law.

SECTION 1003. HEALTH INFORMATION MANAGEMENT

1. The Program shall maintain all records in compliance with State and Federal law.

2. The Provider:

   (a) Shall attempt to maintain, contact information, including an address, of the Participants for contact by Patients, resulting Children, and Participants;

   (b) Shall participate in a national Donor and Collaborative Reproduction registry, if established as described in Section 1002 of this Act, so that Intended Parents and Donors can provide the program with address information;

   (c) Shall participate in a national Donor and Collaborative Reproduction registry, if established as described in Section 1002 of this Act, by collecting medical and genetic information and updated current health information, including change in health status of the Donor; and

   (d) Shall maintain an accurate record of the disposition of all Gametes and Embryos.

3. The Program shall transfer all records involving Collaborative Reproduction to a national Donor and Collaborative Reproduction registry in compliance with its requirements, if established as described in Section 1002 of this Act.

4. Disclosure of Medical Information.

   (a) Medical Information may be disclosed to an interested party or resulting Child only if an authorization is provided in accordance with applicable law;

   (b) The Program may disclose aggregate, non-identifiable data for quality assurance and reporting requirements, for the limited purpose of:
(i) Ensuring a standard for the maintenance of records on laboratory tests and procedures performed, including safe sample disposal;

(ii) Maintaining records on personnel and facilities, schedules of preventive maintenance; and

(iii) Ensuring minimum qualification standards for personnel.

SECTION 1004. PATIENT SAFETY

The program shall:

1. Conduct medical testing for sexually transmitted diseases in Gamete Providers, whether Donors or Intended Parents, and Gestational and Genetic Surrogates in compliance with the laws and regulations of or applying to appropriate governmental regulatory authorities; and

2. Conduct medical screening and genetic testing of Gamete and Embryo Donors for genetic disorders. The extent of such screening shall be in conformity with guidelines established by the ASRM. In the event that no such guidelines have been developed, the screening shall be in accordance with accepted standards of medical practice for ART Providers.

3. Establish procedures for the proper labeling of Embryos and Gametes in compliance with the laws and regulations of or applying to appropriate governmental regulatory authorities.

ARTICLE 11. ENFORCEMENT

SECTION 1101. DAMAGES

1. The failure of a Provider to comply with this Act shall constitute unprofessional conduct and may be reported to any controlling licensing authority.

2. In addition to other remedies available at law, including but not limited to causes of action under HIPAA, a Participant whose confidential information has been used or disclosed in violation of this Act and who has sustained economic loss or personal or emotional injury therefrom may recover compensatory damages, reasonable attorney's fees, and the costs of litigation.

3. Failure to account for all Embryos, misuse of Embryos, theft of Embryos, or unauthorized disposition of Embryos may subject a Provider or ART Storage Facility to criminal and civil penalties, including punitive damages, and reasonable legal fees to the prevailing party.
4. Any individual or entity not acting in accordance with this Act may be subject to civil and/or criminal liability.

ARTICLE 12. MISCELLANEOUS PROVISIONS

SECTION 1201. LIMITATION OF MEDICAL PROFESSIONAL LIABILITY

1. Licensed Providers rendering services in compliance with practice and ethical guidelines (contemporaneous to the time of alleged breach of the standard of care) or applicable State or federal regulations or statutes are presumed to have rendered care within accepted standards of care.

SECTION 1202. SEVERABILITY

The invalidation of any part of this Act by a court of competent jurisdiction shall not result in the invalidation of any other part.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

2. **Summary of the Issue that the Resolution Addresses**
The Section of Family proposes the Model Act [2019] to replace the Model Act Governing Assisted Reproductive Technology [2008] ("Model Act [2008]") previously approved by the House of Delegates. First, social, legal, and medical advancements in the area of assisted reproductive technologies ("ART") require modernization of the Model Act [2008]. These include making the language neutral as to gender- and sexual-orientation to insure equal treatment of those children born through assisted reproduction to same-sex couples. Second, the Model Act [2008] aimed to be consistent with and to track the corresponding provisions of the Uniform Parentage Act ("UPA") (2000), as amended in 2002. The UPA (2002) provisions regulating surrogacy arrangements and ART-parentage have recently been updated by the UPA (2017) for consistency with current practice; so too have the Model Act provisions. Finally, the proposed revisions address the issue of the resulting children’s right to access information about their gamete (sperm or egg) donor.

3. **Please Explain How the Proposed Policy Position will address the issue**
The Model Act [2019] includes new defined terms and updated definitions throughout to allow for gender-neutral terminology, updates provisions regulating surrogacy arrangements and Assisted Reproduction-parentage for consistency with current practice and addresses children’s right to access information about their gamete (sperm or egg) donor. The Model Act [2019] brings current parentage law up to speed with social, legal, and medical advancements and is a necessary step in the right direction in preparing for the future of parentage law.

4. **Summary of Minority Views**
Concerns raised by the Sections of Health Law, Science and Technology and Real Property, Trusts and Estates as well as the ABA Commission on Sexual Orientation and Gender Identity, the National Center for Lesbian Rights, the National LGBT Bar Association and the Uniform Law Commission were addressed in substantive working group meetings. Otherwise, the sponsors are aware of no other minority views, opposition or concerns with the Resolution.
RESOLVED, That the American Bar Association urges Congress and the United States Department of Defense to direct the Armed Forces and its Public Private Venture housing contractors to enact uniform breed-neutral pet policies for families living in military housing.
EXECUTIVE SUMMARY

1. Summary of the Recommendation

This resolution urges Congress and the United States Department of Defense to direct the Armed Forces and its Public Private Venture housing contractors to enact uniform breed-neutral pet policies for families living in military housing.

2. Summary of the Issue that the Recommendation Addresses

The challenges of being a military family, who are often transferred between duty stations, produces stress and anxiety for all involved, with children being the most vulnerable. Military housing can be a very complex system to navigate. For military families with pets, this system is even more difficult to decipher given the inconsistent breed-bans adopted by military bases throughout the world. Military families may be forced to give up their pet merely because of the way the dog looks. Alternatively, transferred families must move into private housing that is less convenient and may be more expensive in order to retain their family pet, an option which can be wholly unavailable in some areas of the country. Thus, instead of having the loved pet to help them through the transfer process, the families often experience the emotional trauma of leaving the pet behind.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Adopting uniform breed-neutral pet policies for families living in military housing will resolve the difficulty for military families with well-behaved pets of all breeds and allow them to move freely within military housing without having to give up their pet.

4. Summary of Minority Views or Opposition Which Have Been Identified

None.
RESOLVED, That the American Bar Association opposes laws, regulations, and rules or practices that discriminate against LGBT individuals in the exercise of the fundamental right to parent;

FURTHER RESOLVED, That the American Bar Association urges lawmakers in jurisdictions where such discriminatory laws, regulations, and practices exist to promptly repeal them and ensure the equal protection of all LGBT individuals under the law; and

FURTHER RESOLVED, That the American Bar Association urges bar associations and attorneys to defend victims of anti-LGBT discrimination, and to recognize and support their colleagues taking on this work.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution states the ABA’s opposition to legalized discrimination against LGBT people who are parents or are desiring to be parents, and sets forth the ABA’s call to action to legislators to repeal such laws and regulations as well as its call to bar associations and lawyers to defend against anti-LGBT discrimination.

2. Summary of the Issue that the Resolution Addresses

Despite significantly increased recognition of LGBT rights, in recent years, state and federal lawmakers have attempted and often succeeded in restricting LGBT individuals’ fundamental right to parent. For example, ten states permit state-licensed child welfare agencies to refuse to place and provide services to children and families if doing so conflicts with the agency’s religious or moral beliefs. These policies have acutely affected LGBT individuals, who are disproportionately more likely to adopt or foster children.

In its reasoning in Obergefell v. Hodges, the Supreme Court acknowledged that LGBT individuals are parents to millions of children around the country and that these families deserve the same recognition and protection as any other family. Going further, in Pavan v. Smith, the Supreme Court ruled that states are categorically prohibited from abridging parental recognition offered to different-sex married couples. Any discriminatory law which restricts an LGBT individual’s right to parent not only disregards these precedents, but also contradicts longstanding research. Decades of medical, psychological, sociological, and developmental research overwhelmingly conclude that sexual orientation has no bearing on an individual’s ability to be a fit parent. This Resolution therefore reaffirms the equal parenting rights of LGBT individuals.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Adoption of this Resolution would ensure that the American Bar Association, representing the American legal community at large, stands with LGBT individuals and their families against the increased threat to their ability to raise children. This ABA policy position would enable further advocacy in this area by providing authority for other organizations, legislatures, and courts to consult when confronted by LGBT parenting issues. The policy would also allow the ABA to directly advocate on behalf of LGBT families and make clear its stance that laws which permit discrimination against LGBT individuals are unconstitutional.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

To date, none have been identified.
RESOLVED, That the American Bar Association urges Congress to enact the federal Equality Act, H.R. 2282 (115th Congress), or similar legislation which explicitly affirms that: (1) discrimination because of sexual orientation or gender identity is sex discrimination prohibited by the Civil Rights Act of 1964 and certain other federal statutes; and (2) federal statutory protections for religious freedom do not authorize violation of nondiscrimination laws; and

FURTHER RESOLVED, That the American Bar Association urges all courts within the United States to recognize that religiously neutral laws of general applicability prohibiting discrimination based on sexual orientation or gender identity do not improperly burden the religious free exercise rights of those operating places of public accommodation.
1. **Summary of the Resolution**

The Resolution will establish policy that sex discrimination in employment prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et. seq., includes discrimination on the bases of (1) sexual orientation and (2) gender identity.

2. **Summary of the Issue that the Resolution Addresses**

The Resolution addresses a split of interpretations on the application of Title VII’s prohibition of sex discrimination to claims of discrimination by (1) lesbian, gay, and bisexual individuals challenging discrimination on the basis of their sexual orientation and (2) transgender individuals challenging discrimination on the basis of their gender identity.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

The Resolution clarifies and emphasizes the ABA’s position on employment discrimination on the bases of sexual orientation and/or gender identity and more fully enables the ABA Governmental Affairs Office, the ABA President, and the Standing Committee on Amicus Curiae Briefs to act.

4. **Summary of Minority Views**

No opposing views have been expressed by other ABA entities or organizations as of the preparation of this summary. The Section will work with other ABA entities, as necessary, on wording and scope of this Resolution.
RESOLUTION

RESOLVED, That the American Bar Association opposes the imposition upon sexual assault victims of a legal burden of resistance before legal protection attaches; and

FURTHER RESOLVED, That the American Bar Association opposes, and urges federal, state, local, territorial, and tribal jurisdictions to oppose, laws or rules that allow consent to sexual activity to be inferred in whole or in part from inaction or lack of verbal or physical resistance.
EXECUTIVE SUMMARY

1. Summary of the Resolution
The resolution opposes the imposition upon sexual assault victims of a legal burden of resistance before legal protection attaches, and calls upon all jurisdictions to oppose any laws or rules that allow consent to sexual activity to be inferred in whole or in part from inaction or lack of verbal or physical resistance.

2. Summary of the Issue that the Resolution Addresses
The resolution opposes the imposition upon sexual assault victims of a legal burden of resistance before legal protection attaches, and calls upon all jurisdictions to oppose any laws or rules that allow consent to sexual activity to be inferred in whole or in part from inaction or lack of verbal or physical resistance.

3. Please Explain How the Proposed Policy Position Will Address the Issue
The ABA’s adoption of the proposed policy will provide the proper policy rule regarding consent to sexual conduct, and the platform to seek change to or rejection of conflicting policy.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified
None.
RESOLVED, That the American Bar Association urges States and entities working to implement the *Global Compact on Refugees (December 2018)* and the *Global Compact for Safe, Orderly and Regular Migration* (July 2018) (collectively, the “Compacts”) to fully implement the Compacts and also act to:

1) Address the root causes of internal displacement and forced migration, including by providing support to transitional justice mechanisms and justice institutions that address widespread repression, persecution and violence in fragile communities;

2) Develop policies that discourage the criminal prosecution of migrants and refugees, especially asylum seekers, for unauthorized entry, and further encourage the accountable use of prosecutorial discretion in the exercise of enforcement measures;

3) Support and promote the establishment of a system of robust and equitable global responsibility-sharing to foster solutions to protracted displacement;

4) Promote the dignity and self-reliance of displaced persons, and recognize and emphasize the protection of their rights, particularly those of internally displaced persons (IDPs);

5) Protect refugees, migrants, and IDPs from bias and discrimination, including by (a) promoting specific legislative or other measures to provide protections against discrimination on the basis of gender, race, ethnicity, national origin, religion, disability, age, sexual orientation, and gender identity; and (b) ensuring a right to protection from discrimination and pervasive bias, through the promotion of evidence-based and inclusive conversation and decision making around the issues of migration and displacement.
Executive Summary

1. Summary of Resolution.
   This resolution encourages states and entities working to implement the Global Compact on Refugees and the Global Compact for Migration to address root causes of displacement and forced migration, develop policies that discourage the criminal prosecution of migrants and refugees but encourage the accountable use of prosecutorial discretion, and protect migrants and refugees from bias and discrimination on the basis of gender, race, sexual orientation, sexual identity, national origin, and religion.

2. Summary of the issue which the Resolution addresses.
   Although more public policy attention has been given to migrants and refugees through the Global Compacts and other international law standards, many individuals who are forced to leave their homes due to conflict, persecution and human rights violations still endure harsh and inhumane treatment in country of origin, in transit, and in countries of destination. Those forced to flee are often victims of xenophobic hate crimes, and many countries do not recognize rights and protections for LGBTI and internally displaced persons. In addition, asylum seekers are still being persecuted while seeking safety. Given the scale of the crisis and the implications these policies would have on migration and refugee policies, it is imperative that states and entities working to implement the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration support and encourage reforms that protect all refugees and migrants.

3. An explanation of how the proposed policy position will address the issue.
   This resolution would have the ABA encourage states and entities working to implement the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration to better protect refugees and migrants. Specifically, the recommendation calls for states to address the root causes of displacement and forced migration by supporting transitional justice mechanisms which would address the drivers of violence in fragile communities. Policies should be developed to discourage the criminal prosecution of asylum seekers, and prosecutorial discretion should be encouraged as an enforcement tool. This policy also seeks to ensure that internally displaced persons and LGBTI people are given rights and protections consistent with internationally recognized human rights treaties. Finally, this policy would help call attention to xenophobic rhetoric that has surrounded conversation concerning migrants and refugees. Evidence-based conversation and decision making should be promoted to counter hateful rhetoric.

4. A summary of any minority views or opposition internal and/or external to the ABA which have been identified.
   We are unaware of any minority views or opposition to this Resolution.