

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

**Legislative Document**

**No. 1239**

S. P. 407

In Senate, March 10, 1981

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Gill of Cumberland.

Cosponsor: Representative Nelson of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

**AN ACT to Enact the Uniform Parentage Act.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 19 MRSA c. 5, sub-c. III, as amended, is repealed.

Sec. 2. 19 MRSA c. 17 is enacted to read:

**CHAPTER 17**

**UNIFORM PARENTAGE ACT**

**§ 901. Parent and child relationship defined**

As used in the chapter, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes the mother and child relationship and the father and child relationship.

**§ 902. Relationship not dependent on marriage**

The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

**§ 903. How parent and child relationship established**

The parent and child relationship between a child and:

1. **Natural mother.** The natural mother may be established by proof of her having given birth to the child, or under this chapter;
2. **Natural father.** The natural father may be established under this chapter; and
3. **Adoptive parent.** An adoptive parent may be established by proof of adoption.

**§ 904. Presumption of paternity**

1. **Natural father.** A man is presumed to be the natural father of a child if:
  - A. He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity or divorce, or after a decree of separation is entered by a court;
  - B. Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
    - (1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity or divorce; or
    - (2) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;
  - C. After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
    - (1) He has acknowledged his paternity of the child in writing filed with the Probate Court;
    - (2) With his consent, he is named as the child's father on the child's birth certificate; or
    - (3) He is obligated to support the child under a written voluntary promise or by court order;
  - D. While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or
  - E. He acknowledges his paternity of the child in a writing filed with the Probate Court, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the Probate Court. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

2. **Presumption rebuttable.** A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If 2 or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

§ 905. **Artificial insemination**

1. **Natural father.** If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the Department of Human Services, where it shall be kept confidential and in a sealed file. The physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

2. **Donor.** The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

§ 906. **Determination of father and child relationship; who may bring action; when action may be brought**

1. **Certain parties.** A child, his natural mother or a man presumed to be his father under section 904, subsection 1, paragraph A, B or C, may bring an action:

A. At any time for the purpose of declaring the existence of the father and child relationship presumed under those paragraphs; or

B. For the purpose of declaring the nonexistence of the father and child relationship presumed under those paragraphs only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than 5 years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

2. **Any party.** Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under section 904, subsection 1, paragraphs D and E.

3. **No presumed father.** An action to determine the existence of the father and child relationship, with respect to a child who has no presumed father under section 904, may be brought by the child, the mother or personal representative of the child, the Department of Human Services, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to

be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

4. Agreement. Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 913, subsection 2, between an alleged or presumed father and the mother or child does not bar an action under this section.

5. Action before birth. If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

#### § 907. Statute of limitations

An action to determine the existence of the father and child relationship as to a child who has no presumed father under section 904 may not be brought later than 3 years after the birth of the child, or later than 3 years after the effective date of this chapter, whichever is later. An action brought by or on behalf of a child whose paternity has not been determined is not barred until 3 years after the child reaches the age of majority. Section 906 and this section do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

#### § 908. Jurisdiction; venue

1. Probate Court. The Probate Court has jurisdiction of an action brought under this chapter. The action may be joined with an action for divorce, annulment, separate maintenance or support.

2. Submitting to jurisdiction. A person who has sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by personal service of summons outside this State or by registered mail with proof of actual receipt.

3. Venue. The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

#### § 909. Parties

The child shall be made a party to the action. If he is a minor, he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the Department of Human Services as guardian ad litem for the child. The natural mother, each man presumed to be the father under section 904, and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action

in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

**§ 910. Pretrial proceedings**

1. **Time.** As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. The public shall be barred from the hearing. A record of the proceeding or any portion thereof shall be kept if any party requests, or the court orders. Rules of evidence need not be observed.

2. **Order to testify.** Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.

3. **Physician.** Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

**§ 911. Blood tests**

The court may, and upon request of a party shall, require the child, mother or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

The court, upon reasonable request by the party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

In all cases, the court shall determine the number and qualifications of the experts.

**§ 912. Evidence relating to paternity**

Evidence relating to paternity may include:

1. **Intercourse.** Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

2. **Probability.** An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

3. **Blood test.** Blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

4. **Experts.** Medical or anthropological evidence relating to the alleged

father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother and the man to submit to appropriate tests; and

5. Other evidence. All other evidence relevant to the issue of paternity of the child.

#### § 913. Pretrial recommendations

1. Evaluation. On the basis of the information produced at the pretrial hearing, the judge conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

A. That the action be dismissed with or without prejudice;

B. That the matter be compromised by an agreement among the alleged father, the mother and the child, in which the father and child relationship is not determined, but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge conducting the hearing shall consider the best interest of the child, in the light of the factors enumerated in section 915, subsection 5, discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

C. That the alleged father voluntarily acknowledge his paternity of the child.

2. Acceptance. If the parties accept a recommendation made in accordance with subsection 1, judgment shall be entered accordingly.

3. Refusal. If a party refuses to accept a recommendation made under subsection 1 and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter, the judge shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

4. Guardian. The guardian ad litem may accept or refuse to accept a recommendation under this section.

5. Termination. The informal hearing may be terminated and the action set

for trial if the judge conducting the hearing finds it unlikely that all parties would accept a recommendation he might make under subsection 1 or 3.

**§ 914. Civil action; jury**

1. **Nature of action.** An action under this chapter is a civil action governed by the Maine Rules of Civil Procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Section 910, subsections 2 and 3, and sections 911 and 912 apply.

2. **Inadmissible evidence.** Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

3. **Evidence by father.** In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if he has undergone and made available to the court blood tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

**§ 915. Judgment or order**

1. **Determinative.** The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

2. **Birth certificate.** If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that an amended birth registration be made or a new birth certificate be issued under section 923.

3. **Support.** The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

4. **Periodic payments.** Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

5. **Relevant facts.** In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:



- A. The needs of the child;
- B. The standard of living and circumstances of the parents;
- C. The relative financial means of the parents;
- D. The earning ability of the parents;
- E. The need and capacity of the child for education, including higher education;
- F. The age of the child;
- G. The financial resources and earning ability of the child;
- H. The responsibility of the parents for the support of others; and
- I. The value of services contributed by the custodial parent.

§ 916. Costs

The court may order reasonable fees of counsel, experts and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including blood tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the Department of Human Services.

§ 917. Enforcement of judgment or order

If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this chapter or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the Department of Human Services which has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

The court may order support payments to be made to the mother, the clerk of the court, or a person, corporation or agency designated to administer them for the benefit of the child under the supervision of the court.

Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

§ 918. Modification of judgment or order

The court has continuing jurisdiction to modify or revoke a judgment or order:

1. Future needs. For future education and support; and
2. Other needs. With respect to matters listed in section 915, subsections 3 and 4, and section 917, except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under section 915, subsection 4, may specify that the judgment or order may not be modified or revoked.

**§ 919. Right to counsel; free transcript on appeal**

At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

**§ 920. Hearings and records; confidentiality**

Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this chapter shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the Department of Human Services or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

**§ 921. Action to declare mother and child relationship**

Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this chapter applicable to the father and child relationship apply.

**§ 922. Promise to render support**

Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to section 906, subsection 4.

In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

**§ 923. Birth records**

Upon order of a court of this State or upon request of a court of another state, the Department of Human Services shall prepare an amended birth registration and a new certificate of birth consistent with the findings of the court and shall substitute a new certificate for the original certificate of birth.

The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the amended birth registration or new certificate, but the actual place and date of birth shall be shown.

The evidence upon which the amended birth registration or new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested

persons, or in exceptional cases only upon an order of the court for good cause shown.

**§ 924. When notice of adoption proceeding required**

If a mother relinquishes or proposes to relinquish for adoption a child who has a presumed father under section 904, subsection 1, a father whose relationship to the child has been determined by a court, or a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under chapter 9, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

**§ 925. Proceeding to terminate paternal rights**

1. **Petition.** If a mother relinquishes or proposes to relinquish for adoption a child who does not have a presumed father under section 904, subsection 1, a father whose relationship to the child has been determined by a court, or a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the Probate Court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

2. **Inquiry.** In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following:

- A. Whether the mother was married at the time of conception of the child or at any time thereafter;
- B. Whether the mother was cohabiting with a man at the time of conception or birth of the child;
- C. Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or
- D. Whether any man has formally or informally acknowledged or declared his possible paternity of the child.

3. **Notice after inquiry.** If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subsection 5. If any of them fails to appear or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father, or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.

4. **Unknown father termination order.** If, after the inquiry, the court is unable

to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of an appeal upon the expiration of 6 months after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

5. Notice of proceeding. Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in the manner appropriate under the Maine Rules of Civil Procedure for the service of process in a civil action in this State, or in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.

#### STATEMENT OF FACT

This bill repeals the Uniform Paternity Act and replaces it with the Uniform Parentage Act, drafted by the National Conference of Commissioners on Uniform State Laws and recommended for enactment by them. The bill recognizes the substantive legal equality of children regardless of the marital status of their parents. In doing so, the bill merely fulfills the mandate of a series of United States Supreme Court cases.