

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)



# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

---

Legislative Document

No. 1017

S.P. 358

In Senate, March 19, 2015

### An Act To Update Maine's Family Law

---

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator ROSEN of Hancock.  
Cosponsored by Representative MOONEN of Portland and Senator KATZ of Kennebec,  
Senators: ALFOND of Cumberland, BRAKEY of Androscoggin, CUSHING of Penobscot,  
VALENTINO of York.

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

2 **Sec. 1. 19-A MRSA c. 61** is enacted to read:

3 **CHAPTER 61**

4 **MAINE PARENTAGE ACT**

5 **SUBCHAPTER 1**

6 **SHORT TITLE, SCOPE, DEFINITIONS AND GENERAL PROVISIONS**

7 **§1831. Short title**

8 This chapter may be known and cited as "the Maine Parentage Act."

9 **§1832. Definitions**

10 As used in this chapter, unless the context otherwise indicates, the following terms  
11 have the following meanings.

12 **1. Acknowledged father.** "Acknowledged father" means a man who has established  
13 parentage under subchapter 3.

14 **2. Adjudicated parent.** "Adjudicated parent" means a person who has been  
15 adjudicated by a court of competent jurisdiction to be the parent of a child.

16 **3. Assisted reproduction.** "Assisted reproduction" means a method of causing  
17 pregnancy other than sexual intercourse and includes but is not limited to:

18 A. Intrauterine or vaginal insemination;

19 B. Donation of gametes;

20 C. Donation of embryos;

21 D. In vitro fertilization and transfer of embryos; and

22 E. Intracytoplasmic sperm injection.

23 **4. Child.** "Child" means an individual of any age whose parentage may be  
24 determined under this chapter.

25 **5. Donor.** "Donor" means a person who contributes a gamete or gametes or an  
26 embryo or embryos to another person for assisted reproduction or gestation, whether or  
27 not for consideration.

28 **6. Embryo.** "Embryo" means a cell or group of cells containing a diploid  
29 complement of chromosomes or a group of such cells, not including a gamete, that has  
30 the potential to develop into a live born human being if transferred into the body of a  
31 woman under conditions in which gestation may be reasonably expected to occur.

1            **7. Gamete.** "Gamete" means a cell containing a haploid complement of  
2 deoxyribonucleic acid that has the potential to form an embryo when combined with  
3 another gamete. "Gamete" includes:

4            A. Sperm;

5            B. Eggs; and

6            C. Deoxyribonucleic acid from one human being combined with the cytoplasm,  
7 including without limitation cytoplasmic deoxyribonucleic acid, of another human  
8 being.

9            **8. Genetic population group.** "Genetic population group" means, for purposes of  
10 genetic testing, a recognized group that an individual identifies as all or part of the  
11 individual's ancestry or that is so identified by other information.

12           **9. Genetic testing.** "Genetic testing" means an analysis of genetic markers to  
13 exclude or identify a man as the genetic father or a woman as the genetic mother of a  
14 child. "Genetic testing" includes an analysis of one or a combination of the following:

15           A. Deoxyribonucleic acid;

16           B. Blood group antigens, red cell antigens, human leukocyte antigens, serum  
17 enzymes, serum proteins or red cell enzymes; or

18           C. Genetic markers other than those in paragraphs A and B.

19           **10. Gestational carrier.** "Gestational carrier" means an adult woman who is not an  
20 intended parent and who enters into a gestational carrier agreement to bear a child  
21 conceived using the gametes of other persons and not her own, except that a woman who  
22 carries a child for a family member using her own gametes and who fulfills the  
23 requirements of subchapter 8 is a gestational carrier.

24           **11. Gestational carrier agreement.** "Gestational carrier agreement" means a  
25 contract between an intended parent or parents and a gestational carrier intended to result  
26 in a live birth.

27           **12. Intended parent.** "Intended parent" means a person, married or unmarried, who  
28 manifests the intent to be legally bound as the parent of a child resulting from assisted  
29 reproduction or a gestational carrier agreement. In the case of a married couple, any  
30 reference to an intended parent includes both spouses for all purposes of this chapter.

31           **13. Parent.** "Parent" means an individual who has established parentage that meets  
32 the requirements of this chapter.

33           **14. Parentage.** "Parentage" means the legal relationship between a child and a  
34 parent as established in this chapter.

35           **15. Paternity or maternity index.** "Paternity or maternity index" means, with  
36 respect to a person who has undergone genetic testing, the likelihood of genetic paternity  
37 or maternity calculated by computing the ratio between:

1 A. The likelihood that the tested person is the genetic father or genetic mother based  
2 on the genetic markers of the tested person, birth mother and child and conditioned  
3 on the hypothesis that the tested person is the father or mother of the child; and

4 B. The likelihood that the tested person is not the genetic father or genetic mother  
5 based on the genetic markers of the tested person, birth mother and child and  
6 conditioned on the hypothesis that the tested person is not the genetic father or  
7 genetic mother of the child.

8 **16. Presumed parent.** "Presumed parent" means a person who pursuant to section  
9 1881 is recognized as the parent of a child.

10 **17. Probability of paternity; probability of maternity.** "Probability of paternity"  
11 and "probability of maternity" mean the measure, for the genetic population group to  
12 which the alleged genetic father or genetic mother belongs, of the probability that the  
13 person in question is the genetic father or genetic mother of the child compared with a  
14 random, unrelated person of the same genetic population group and expressed as a  
15 percentage incorporating the paternity or maternity index and a prior probability.

16 **18. Record.** "Record" means information that is inscribed on a tangible medium or  
17 that is stored in an electronic or other medium and is retrievable in perceivable form.

18 **19. Sign.** "Sign" means, with the intent to authenticate or adopt a record, to:

19 A. Execute or adopt a tangible symbol; or

20 B. Attach to or logically associate with the record an electronic symbol, sound or  
21 process.

22 **20. Signatory.** "Signatory" means an individual who signs a record and is bound by  
23 its terms.

24 **§1833. Scope and application**

25 **1. Scope.** This chapter applies to determination of parentage in this State.

26 **2. Choice of law.** The court shall apply the law of this State to adjudicate parentage.  
27 The applicable law does not depend on:

28 A. The place of birth of the child; or

29 B. The past or present residence of the child.

30 **3. Effect on parental rights.** This chapter does not create, enlarge or diminish  
31 parental rights or duties under other laws of this State or the equitable powers of the  
32 courts, except as provided in this chapter.

33 **§1834. Parentage proceeding**

34 **1. Proceeding authorized.** A proceeding to adjudicate the parentage of a child may  
35 be maintained in accordance with this chapter and applicable rules of procedure.

1           **2. Original actions.** Original actions to adjudicate parentage may be commenced  
2 only in District Court.

3           **3. Other proceedings.** The District Court and the Probate Court are authorized to  
4 adjudicate parentage under this chapter when parentage is an issue in any other pending  
5 proceeding.

6           **4. No right to jury.** There is no right to demand a jury trial in an action to  
7 determine parentage.

8           **5. Disclosure of social security numbers.** A person who is a party to a parentage  
9 action shall disclose that person's social security number to the court. The social security  
10 number of a person subject to a parentage adjudication must be placed in the court  
11 records relating to the adjudication. The record of a person's social security number is  
12 confidential and is not open to the public. The court shall disclose a person's social  
13 security number to the department for child support enforcement purposes.

14           **§1835. Standing to maintain proceeding**

15           Subject to other provisions of this chapter, a proceeding to adjudicate parentage may  
16 be maintained by:

17           **1. Child.** The child;

18           **2. Woman giving birth.** The woman who gave birth to the child;

19           **3. Person whose parentage to be adjudicated.** A person whose parentage is to be  
20 adjudicated;

21           **4. Department of Health and Human Services.** The department; or

22           **5. Representative of individual.** A representative authorized by law to act for an  
23 individual who would otherwise be entitled to maintain a proceeding but who is deceased,  
24 incapacitated or a minor.

25           **§1836. Parties to proceeding**

26           In addition to a child whose parentage is to be adjudicated, all parents of the child  
27 must be joined as parties in a proceeding to adjudicate parentage.

28           **§1837. Personal jurisdiction**

29           **1. Personal jurisdiction.** An individual may not be adjudicated to be a parent unless  
30 the court has personal jurisdiction over the individual.

31           **2. Personal jurisdiction over nonresident.** A court of this State having jurisdiction  
32 to adjudicate parentage may exercise personal jurisdiction over a nonresident individual,  
33 or the guardian or conservator of the individual, if the conditions prescribed in section  
34 2961 are fulfilled.

1           **3. Adjudication.** Lack of jurisdiction over one individual does not preclude the  
2 court from making an adjudication of parentage binding on another individual over whom  
3 the court has personal jurisdiction.

4           **§1838. Venue**

5           Venue for a proceeding to adjudicate parentage is in the county or division in which:

6           **1. Child.** The child resides or is present or, for purposes of subchapter 7 or 8, is or  
7 will be born;

8           **2. Parent.** The parent or intended parent resides;

9           **3. Respondent.** The respondent resides or is present if the child does not reside in  
10 this State;

11           **4. Estate proceeding.** A proceeding for probate or administration of the parent or  
12 alleged parent's estate has been commenced; or

13           **5. Child protection proceeding.** A child protection proceeding with respect to the  
14 child has been commenced.

15           **§1839. Joinder of proceedings**

16           **1. Joinder permitted.** Except as otherwise provided in subsection 2, a proceeding  
17 to adjudicate parentage may be joined with a proceeding for parental rights and  
18 responsibilities, child support, child protection, termination of parental rights, child  
19 custody or visitation, divorce, annulment, legal separation, guardianship, probate or  
20 administration of an estate or other appropriate proceeding or a challenge or rescission of  
21 acknowledgment of paternity.

22           **2. Joinder not permitted.** A respondent may not join a proceeding described in  
23 subsection 1 with a proceeding to adjudicate parentage brought as part of an interstate  
24 child support enforcement action under chapter 67.

25           **§1840. Orders**

26           **1. Interim order for support.** In a proceeding under this subchapter, the court may  
27 issue an interim order for support of a child in accordance with the child support  
28 guidelines under chapter 63 with respect to a person who is:

29           A. A presumed, acknowledged or adjudicated parent of the child;

30           B. Petitioning to have parentage adjudicated;

31           C. Identified as the genetic parent through genetic testing under subchapter 6;

32           D. An alleged parent who has declined to submit to genetic testing; or

33           E. The woman who gave birth to the child.

34           **2. Interim order for parental rights and responsibilities.** In a proceeding under  
35 this subchapter, the court may order an initial allocation of parental rights and

1 responsibilities. The order of the court must provide notice that if either party objects to  
2 the allocation, that party may file a complaint pursuant to section 1654 and that an order  
3 from that action supersedes this initial allocation of parental rights and responsibilities.  
4 In resolving parental rights and responsibilities issues, the court may not delay entering a  
5 determination of parentage and an initial order concerning child support.

6 **3. Final orders.** Final orders concerning child support or parental rights and  
7 responsibilities are governed by chapters 51 and 55, respectively.

8 **§1841. Admission of parentage authorized**

9 **1. Admission of parentage.** A respondent in a proceeding to adjudicate parentage  
10 may admit to the parentage of a child by filing a pleading to that effect or by admitting  
11 parentage under penalty of perjury when making an appearance or during a hearing.

12 **2. Order adjudicating parentage.** If the court finds that an admission of parentage  
13 satisfies the requirements of this section and finds that there is no reason to question the  
14 admission, and no other party contests it, the court may issue an order adjudicating the  
15 child to be the child of the person admitting parentage.

16 **§1842. Order on default**

17 The court may issue an order adjudicating the parentage of a person who is in default,  
18 as long as:

19 **1. Served with notice.** The person was served with notice of the proceeding; and

20 **2. Found to be parent.** The person is found by the court to be the parent of the  
21 child.

22 **§1843. Order adjudicating parentage**

23 **1. Issuance of order.** In a proceeding under this subchapter, the court shall issue a  
24 final order adjudicating whether a person alleged or claiming to be a parent is the parent  
25 of a child.

26 **2. Identify child.** A final order under subsection 1 must identify the child by name  
27 and date of birth.

28 **3. Change of name.** On request of a party and for good cause shown, the court may  
29 order that the name of the child be changed.

30 **4. Amended birth registration.** If the final order under subsection 1 is at variance  
31 with the child's birth certificate, the State Registrar of Vital Statistics shall issue an  
32 amended birth registration.

33 **§1844. Binding effect of determination of parentage**

34 **1. Determination binding; signatories and parties.** Except as otherwise provided  
35 in subsection 2, a determination of parentage is binding on:



1 A. All signatories to an acknowledgment of paternity or denial of parentage as  
2 provided in subchapter 3; and

3 B. All parties to an adjudication by a court acting under circumstances that satisfy  
4 the jurisdictional requirements of section 2961.

5 **2. Adjudication in proceeding to dissolve marriage.** In a proceeding to dissolve a  
6 marriage, the court is deemed to have made an adjudication of the parentage of a child if  
7 the court acts under circumstances that satisfy the jurisdictional requirements of section  
8 2961 and the final order:

9 A. Expressly identifies a child as a "child of the marriage" or "issue of the marriage"  
10 or by similar words indicates that the parties are the parents of the child; or

11 B. Provides for support of the child by the parent or parents.

12 **3. Determination a defense.** Except as otherwise provided in this chapter, a  
13 determination of parentage may be a defense in a subsequent proceeding seeking to  
14 adjudicate parentage by an individual who was not a party to the earlier proceeding.

15 **4. Challenge to adjudication.** A party to an adjudication of parentage may  
16 challenge the adjudication only by appeal or in a manner otherwise consistent with the  
17 Maine Rules of Civil Procedure.

18 **§1845. Full faith and credit**

19 A court of this State shall give full faith and credit to a determination of parentage,  
20 including but not limited to an acknowledgment of paternity, from another state if the  
21 determination is valid and effective in accordance with the law of the other state.

22 **SUBCHAPTER 2**

23 **ESTABLISHMENT OF PARENTAGE**

24 **§1851. Establishment of parentage**

25 Parentage may be established by:

26 **1. Birth.** Giving birth to the child, except as otherwise provided in subchapter 8;

27 **2. Adoption.** Adoption of the child pursuant to Title 18-A, Article 9;

28 **3. Acknowledgment.** An effective voluntary acknowledgment of paternity under  
29 subchapter 3;

30 **4. Presumption.** An un rebutted presumption of parentage under subchapter 4;

31 **5. De facto parentage.** An adjudication of de facto parentage, under subchapter 5;

32 **6. Genetic parentage.** An adjudication of genetic parentage under subchapter 6;

33 **7. Assisted reproduction.** Consent to assisted reproduction under subchapter 7; and

1           **8. Gestational carrier agreement.** Consent to a gestational carrier agreement under  
2 subchapter 8 by the intended parent or parents.

3           **§1852. Nondiscrimination**

4           Every child has the same rights under law as any other child without regard to the  
5 marital status or gender of the parents or the circumstances of the child's birth.

6           **§1853. Consequences of establishment of parentage**

7           **1. All purposes.** Unless parental rights are terminated, parentage established under  
8 this chapter applies for all purposes, except as otherwise specifically provided by other  
9 law of this State.

10           **2. Preservation of parent-child relationship.** Consistent with the establishment of  
11 parentage under this chapter, a court may determine that a child has more than 2 parents.

12           **§1854. Determination of maternity**

13           Provisions of this chapter relating to determination of paternity may apply to  
14 determination of maternity as needed to determine parentage consistent with this chapter.

15           **§1855. No limitation on child**

16           Nothing in this subchapter limits the right of a child to bring an action to adjudicate  
17 parentage.

18   **SUBCHAPTER 3**

19   **VOLUNTARY ACKNOWLEDGMENT OF PATERNITY**

20           **§1861. Acknowledgment of paternity**

21           The woman who gives birth to a child and a man, not her spouse, claiming to be the  
22 genetic father of the child may sign an acknowledgment of paternity with intent to  
23 establish paternity.

24           **§1862. Execution of acknowledgment of paternity**

25           **1. Requirements.** An acknowledgment of paternity under section 1861 must:

26           A. Be in a record;

27           B. Be signed, or otherwise authenticated, under penalty of perjury by the woman  
28 giving birth and by the man seeking to establish his paternity;

29           C. State that:

30                     (1) There is no other presumed parent of the child or, if there is another  
31 presumed parent, state that parent's full name; and

32                     (2) There is no other acknowledged father and no adjudicated parent of the child  
33 other than the woman giving birth;

1 D. State whether there has been genetic testing and, if so, that the acknowledging  
2 man's claim of paternity is consistent with the results of the testing;

3 E. State that the man signing the acknowledgement believes himself to be the  
4 biological father; and

5 F. State that the signatories understand that the acknowledgment is the equivalent of  
6 a court determination of paternity of the child and that a challenge to the  
7 acknowledgment is permitted only under limited circumstances and is barred after 2  
8 years.

9 **2. Notice.** Before the woman giving birth or alleged father may sign an  
10 acknowledgment of paternity under section 1861, the woman giving birth and the  
11 putative father must be given oral and written notice of the alternatives to, the legal  
12 consequences of and the rights and responsibilities that arise from signing the  
13 acknowledgment.

14 **3. Acknowledgment voidable.** An acknowledgment of paternity under section 1861  
15 is voidable if it:

16 A. States that another person is a presumed parent, unless a denial of parentage  
17 signed or otherwise authenticated by the presumed parent is filed with the State  
18 Registrar of Vital Statistics;

19 B. States that another person is an acknowledged father or adjudicated parent; or

20 C. Falsely denies the existence of a presumed parent, acknowledged father or  
21 adjudicated parent of the child.

22 **4. Presumed parent.** A man who is a presumed parent under section 1881,  
23 subsection 3 may sign or otherwise authenticate an acknowledgment of paternity in  
24 accordance with the requirements of this subchapter.

25 **§1863. Denial of parentage**

26 A person presumed to be a parent under section 1881 may execute a denial of  
27 parentage only in the limited circumstances set forth in this section. A denial of parentage  
28 is valid only if:

29 **1. Acknowledgment.** An acknowledgment of paternity signed or otherwise  
30 authenticated by another man is filed pursuant to this subchapter;

31 **2. Under penalty of perjury.** The denial is in a record and is signed or otherwise  
32 authenticated under penalty of perjury; and

33 **3. Person executing.** The person executing the denial has not previously:

34 A. Acknowledged paternity, unless the previous acknowledgment has been rescinded  
35 pursuant to section 1867 or successfully challenged pursuant to section 1868; or

36 B. Been adjudicated to be the parent of the child.

1           **§1864. Filing of an acknowledgment of paternity and related denial of parentage**

2           **1. Acknowledgment and denial.** An acknowledgment of paternity and related  
3 denial of parentage under this subchapter must be filed with the State Registrar of Vital  
4 Statistics and may be contained in a single document or may be signed in counterparts  
5 and may be filed separately or simultaneously. If the acknowledgment and denial are both  
6 necessary, neither is valid until both are filed.

7           **2. Effective date.** Subject to subsection 1, an acknowledgment of paternity or denial  
8 of parentage takes effect on the filing of the document with the State Registrar of Vital  
9 Statistics, whichever occurs later.

10          **3. Signed by minor.** An acknowledgment of paternity or denial of parentage signed  
11 by a minor is valid if it is otherwise in compliance with this chapter.

12           **§1865. Equivalent to adjudication**

13          **1. Acknowledgment.** Except as otherwise provided in sections 1867 and 1868, a  
14 valid acknowledgment of paternity under section 1861 filed with the State Registrar of  
15 Vital Statistics is equivalent to an adjudication of parentage of a child and confers upon  
16 the acknowledged father all of the rights and duties of a parent.

17          **2. Denial.** Except as otherwise provided in section 1867 and section 1868,  
18 subsection 1, a valid denial of parentage under section 1863 filed with the State Registrar  
19 of Vital Statistics in conjunction with a valid acknowledgment of paternity under section  
20 1861 is equivalent to an adjudication of the nonparentage of the presumed parent and  
21 discharges the presumed parent from all rights and duties of a parent.

22           **§1866. No filing fee**

23          The State Registrar of Vital Statistics may not charge a fee for filing an  
24 acknowledgment of paternity or denial of parentage under section 1864.

25           **§1867. Proceeding for rescission**

26          A signatory may rescind an acknowledgment of paternity or denial of parentage  
27 under this subchapter by commencing a proceeding to rescind before the earlier of:

28          **1. Sixty days after effective date.** Sixty days after the effective date of the  
29 acknowledgment or denial, as provided in section 1864; and

30          **2. Date of first hearing.** The date of the first hearing, in a proceeding to which the  
31 signatory is a party, before a court to adjudicate an issue relating to the child, including a  
32 proceeding seeking child support.

33           **§1868. Challenge to acknowledgment**

34          **1. Challenge by signatory.** After the period for rescission under section 1867 has  
35 expired, a signatory of an acknowledgment of paternity or denial of parentage may  
36 commence a proceeding to challenge the acknowledgment or denial only:

- 1           A. On the basis of fraud, duress or material mistake of fact; and  
2           B. Within 2 years after the acknowledgment or denial is filed with the State Registrar  
3           of Vital Statistics.

4           **2. Challenge by person not a signatory.** If an acknowledgment of paternity has  
5           been made in accordance with this subchapter, an individual who is neither the child nor a  
6           signatory to the acknowledgment of paternity and who seeks to challenge the validity of  
7           the acknowledgment and adjudicate parentage must commence a proceeding not later  
8           than 2 years after the effective date of the acknowledgment, as provided in section 1864,  
9           unless the individual did not know and could not reasonably have known of the  
10           individual's potential genetic parentage on account of material misrepresentation or  
11           concealment, in which case the proceeding must be commenced no later than 2 years  
12           after discovery.

13           **3. Burden of proof.** A party challenging an acknowledgment of paternity or denial  
14           of parentage pursuant to this section has the burden of proof.

15           **§1869. Procedure for rescission or challenge**

16           **1. Every signatory party.** Every signatory to an acknowledgment of paternity and  
17           any related denial of parentage under this subchapter must be made a party to a  
18           proceeding under section 1867 or 1868 to rescind or challenge the acknowledgment or  
19           denial.

20           **2. Submission to personal jurisdiction.** For the purpose of rescission of or  
21           challenge to an acknowledgment of paternity or denial of parentage, a signatory submits  
22           to personal jurisdiction of this State by signing the acknowledgment or denial, effective  
23           upon the filing of the document with the State Registrar of Vital Statistics pursuant to  
24           section 1864.

25           **3. Suspension of legal responsibilities.** Except for good cause shown, during the  
26           pendency of a proceeding under section 1867 or 1868 to rescind or challenge an  
27           acknowledgment of paternity or denial of parentage, the court may not suspend the legal  
28           responsibilities of a signatory arising from the acknowledgment, including the duty to pay  
29           child support.

30           **4. Proceeding to rescind or challenge.** A proceeding under section 1867 or 1868 to  
31           rescind or challenge an acknowledgment of paternity or denial of parentage must be  
32           conducted as a proceeding to adjudicate parentage under subchapter 1.

33           **5. Amendment to birth record.** At the conclusion of a proceeding under section  
34           1867 or 1868 to rescind or challenge an acknowledgment of paternity or denial of  
35           parentage, the court shall order the State Registrar of Vital Statistics to amend the birth  
36           record of the child, if appropriate.

37           **§1870. Ratification not permitted**

38           A court or administrative agency conducting a judicial or administrative proceeding  
39           may not ratify an unchallenged acknowledgment of paternity under section 1861.

1           **§1871. Forms for acknowledgment and denial of paternity**

2           To facilitate compliance with this subchapter, the State Registrar of Vital Statistics  
3 shall prescribe forms for the acknowledgment of paternity and the denial of parentage. A  
4 valid acknowledgment of paternity or denial of parentage is not affected by a later  
5 modification of the prescribed form.

6           **§1872. Release of information**

7           The State Registrar of Vital Statistics may release information relating to an  
8 acknowledgment of paternity under section 1861 as provided in Title 22, section 2706.

9           **§1873. Adoption of rules**

10           The State Registrar of Vital Statistics may adopt rules to implement this subchapter.  
11 Rules adopted pursuant to this section are routine technical rules for the purposes of Title  
12 5, chapter 375, subchapter 2-A.

13   **SUBCHAPTER 4**

14   **PRESUMED PARENTAGE**

15           **§1881. Presumption of parentage**

16           **1. Marital presumption established.** A person is presumed to be the parent of a  
17 child if:

18           A. The person and the woman giving birth to the child are married to each other and  
19 the child is born during the marriage;

20           B. The person and the woman giving birth to the child were married to each other  
21 and the child is born within 300 days after the marriage is terminated by death,  
22 annulment, divorce or declaration of invalidity or after a decree of separation; or

23           C. Before the birth of the child, the person and the woman giving birth to the child  
24 married each other in apparent compliance with law, even if the attempted marriage  
25 is or could be declared invalid, and the child is born during the invalid marriage or  
26 within 300 days after its termination by death, annulment, divorce or declaration of  
27 invalidity or after a decree of separation.

28           **2. Equivalent status in other jurisdictions.** The marital presumption in subsection  
29 1 applies to a legal relationship that provides substantially the same rights, benefits and  
30 responsibilities as marriage and is recognized as valid in the state or jurisdiction in which  
31 it was entered.

32           **3. Nonmarital presumption established.** A person is presumed to be a parent of a  
33 child if the person resided in the same household with the child and openly held out the  
34 child as that person's own from the time the child was born or adopted and for a period of  
35 at least 2 years thereafter and assumed personal, financial or custodial responsibilities for  
36 the child.

1           **4. Rebuttal of presumption.** A presumption established under this subchapter may  
2           be rebutted only by a court determination.

3           **§1882. Challenge to presumed parent**

4           **1. Two-year limitation.** Except as provided in subsection 2, a proceeding to  
5           challenge the parentage of an individual whose parentage is presumed under section 1881  
6           must be commenced not later than 2 years after the birth of the child; otherwise the  
7           presumption cannot be rebutted.

8           **2. Later than 2 years.** A proceeding to challenge the parentage of an individual  
9           whose parentage is presumed under section 1881 may be commenced more than 2 years  
10           after the birth of the child in the following situations.

11           A. A presumed parent under section 1881, subsection 1 who is not the genetic parent  
12           of a child and who could not reasonably have known about the birth of the child may  
13           commence a proceeding under this subsection within 2 years after learning of the  
14           child's birth.

15           B. An alleged genetic parent who did not know of the potential genetic parentage of  
16           a child, and who could not reasonably have known on account of material  
17           misrepresentation or concealment, may commence a proceeding under this subsection  
18           within 2 years after discovering the potential genetic parentage. If the individual is  
19           adjudicated to be the genetic parent of the child, the court may not disestablish a  
20           presumed parent and, consistent with section 1853, subsection 2, the court shall  
21           determine parental rights and responsibilities of the parents in accordance with  
22           section 1653.

23           C. A mother or a presumed parent under section 1881, subsection 3 disputing the  
24           validity of the presumption may commence a proceeding under this subsection at any  
25           time.

26           **§1883. Multiple presumptions**

27           If 2 or more conflicting presumptions arise under this subchapter, the court shall  
28           adjudicate parentage and determine parental rights and responsibilities in accordance with  
29           section 1653.

30   **SUBCHAPTER 5**

31   **DE FACTO PARENTAGE**

32           **§1891. De facto parentage**

33           **1. De facto parentage.** The court may adjudicate a person to be a de facto parent.

34           **2. Standing to seek de facto parentage.** A person seeking to be adjudicated a de  
35           facto parent of a child under this subchapter must establish standing to maintain the  
36           action in accordance with the following.

37           A. A person seeking to be adjudicated a de facto parent of a child shall file with the  
38           initial pleadings an affidavit alleging under oath specific facts to support the

1 existence of a de facto parent relationship with the child as set forth in subsection 3.  
2 The pleadings and affidavit must be served upon all parents and legal guardians of  
3 the child and any other party to the proceeding.

4 B. An adverse party, parent or legal guardian who files a pleading in response to the  
5 pleadings in paragraph A shall also file an affidavit in response, serving all parties to  
6 the proceeding with a copy.

7 C. The court shall determine on the basis of the pleadings and affidavits under  
8 paragraphs A and B whether the person seeking to be adjudicated a de facto parent  
9 has presented prima facie evidence of the requirements set forth in subsection 3. The  
10 court may in its sole discretion, if necessary and on an expedited basis, hold a hearing  
11 to determine disputed facts that are necessary and material to the issue of standing.

12 D. If the court's determination under paragraph C is in the affirmative, the party  
13 claiming de facto parentage has standing to proceed to adjudication under subsection  
14 3.

15 **3. Adjudication of de facto parent status.** The court shall adjudicate a person to be  
16 a de facto parent if the court finds by clear and convincing evidence that the person has  
17 fully and completely undertaken a permanent, unequivocal, committed and responsible  
18 parental role in the child's life. Such a finding requires a determination by the court that:

19 A. The person has resided with the child for a significant period of time;

20 B. The person has engaged in consistent caretaking of the child;

21 C. A bonded and dependent relationship has been established between the child and  
22 the person, the relationship was fostered or supported by another parent of the child  
23 and the person and the other parent have understood, acknowledged or accepted that  
24 or behaved as though the person is a parent of the child;

25 D. The person has accepted full and permanent responsibilities as a parent of the  
26 child without expectation of financial compensation; and

27 E. The continuing relationship between the person and the child is in the best interest  
28 of the child.

29 **4. Orders.** The court may enter the following orders as appropriate.

30 A. The court may enter an interim order concerning contact between a person with  
31 standing seeking adjudication under this subchapter as a de facto parent and the child.

32 B. Adjudication of a person under this subchapter as a de facto parent establishes  
33 parentage, and the court shall determine parental rights and responsibilities in  
34 accordance with section 1653. The court shall make appropriate orders for the  
35 financial support for the child in accordance with the child support guidelines under  
36 chapter 63. An order requiring the payment of support to or from a de facto parent  
37 does not relieve any other parent of the obligation to pay child support unless  
38 otherwise ordered by a court.

39 **5. Other parents.** The adjudication of a person under this subchapter as a de facto  
40 parent does not disestablish the parentage of any other parent.



1 SUBCHAPTER 6

2 GENETIC PARENTAGE

3 §1901. Scope of subchapter

4 This subchapter governs procedures and requirements of genetic testing and genetic  
5 testing results of an individual to determine parentage and adjudication of parentage  
6 based on genetic testing, whether the individual voluntarily submits to testing or is tested  
7 pursuant to an order of the court or the department.

8 §1902. Requirements for genetic testing

9 1. Type of genetic testing. Genetic testing must be of a type reasonably relied upon  
10 by experts in the field of genetic testing and performed in a testing laboratory accredited  
11 by:

12 A. A national association of blood banks approved by the department; or

13 B. An accrediting body designated by the federal Secretary of Health and Human  
14 Services.

15 2. Specimen. A specimen used in genetic testing may consist of one or more  
16 samples, or a combination of samples, of blood, buccal cells, bone, hair or other body  
17 tissue or fluid. The specimen used in the testing need not be of the same kind for each  
18 individual undergoing genetic testing.

19 3. Selection of databases; objections. Based on the genetic population group of an  
20 individual, a testing laboratory shall determine the databases from which to select  
21 frequencies for use in calculation of the probability of genetic parentage. If there is  
22 disagreement as to the testing laboratory's choice, the following provisions apply.

23 A. The court, upon motion, may require the testing laboratory, prior to adjudication,  
24 to recalculate the test results using a different database for genetic population groups  
25 from that used by the laboratory.

26 B. The individual objecting to the testing laboratory's initial choice shall:

27 (1) If the frequencies are not available to the testing laboratory for the genetic  
28 population groups requested, provide the requested frequencies compiled in a  
29 manner recognized by an accrediting body under subsection 1; or

30 (2) Engage another accredited testing laboratory to perform the calculations.

31 C. The testing laboratory may use its own statistical estimate if there is a question  
32 regarding which database for genetic population groups is appropriate. The testing  
33 laboratory shall calculate the frequencies using statistics, if available, for any other  
34 database requested.

35 4. Additional genetic testing. If, after recalculation under subsection 3 using a  
36 different database for genetic population groups, genetic testing does not rebuttably  
37 identify the genetic parent of a child under section 1904, an individual who has been  
38 tested may be required to submit to additional genetic testing.

1           **§1903. Report of genetic testing**

2           **1. Report; self-authenticating.** A report of genetic testing must be in a record and  
3           signed under penalty of perjury by a designee of the testing laboratory. A report made  
4           under the requirements of this subchapter is self-authenticating.

5           **2. Documentation.** Documentation from the testing laboratory of the following  
6           information is sufficient to establish a reliable chain of custody that allows the results of  
7           genetic testing to be admissible without testimony:

8           A. The names and photographs of the individuals whose specimens have been taken;

9           B. The names of the individuals who collected the specimens;

10          C. The places and dates the specimens were collected;

11          D. The names of the individuals who received the specimens in the testing  
12          laboratory; and

13          E. The dates the specimens were received.

14           **§1904. Genetic testing results**

15           **1. Results identify as genetic parent.** Under this chapter, a person is rebuttably  
16           identified as the genetic parent of a child if the genetic testing of the person complies with  
17           this subchapter and the results disclose:

18           A. In the case of paternity:

19                   (1) That the man has at least a 99% probability of paternity, using a prior  
20                   probability of 0.50, as calculated by using the paternity index obtained in the  
21                   testing; and

22                   (2) A paternity index of at least 100 to 1; and

23           B. In the case of maternity:

24                   (1) That the woman has at least a 99% probability of maternity, using a prior  
25                   probability of at least 0.50, as calculated by using the maternity index obtained in  
26                   the testing; and

27                   (2) A maternity index of at least 100 to 1.

28           **2. Identification of genetic parent.** Identification of a genetic parent through  
29           genetic testing does not establish parentage absent adjudication under this chapter.

30           **3. Rebuttal.** A person identified under subsection 1 as the genetic father or genetic  
31           mother of the child may rebut the genetic testing results only by other genetic testing  
32           satisfying the requirements of this subchapter that:

33           A. Excludes the person as a genetic father or genetic mother of the child; or

34           B. In the case of a genetic father, identifies another man as the possible genetic  
35           father of the child or, in the case of a genetic mother, identifies another woman as the  
36           possible genetic mother of the child.

1            **4. Further genetic testing.** Except as otherwise provided in section 1909, if more  
2 than one person is identified by genetic testing as the possible genetic father or genetic  
3 mother of the child, the court shall order them to submit to further genetic testing to  
4 identify the sole genetic father or genetic mother.

5            **§1905. Costs of genetic testing**

6            **1. Payment for the costs advanced.** The payment for the costs, if any, of initial  
7 genetic testing must be advanced:

8            A. By the department in a proceeding in which the department is providing services;

9            B. By the individual who made the request;

10           C. As agreed by the parties; or

11           D. As ordered by the court.

12           **2. Reimbursement.** In cases in which the payment for the costs of initial genetic  
13 testing is advanced pursuant to subsection 1, paragraph A, the department may seek  
14 reimbursement from a person who is rebuttably identified through the genetic testing as  
15 the genetic father or genetic mother.

16           **§1906. Additional genetic testing**

17           The court shall order additional genetic testing upon the request of a party who  
18 contests the result of the initial testing. If the initial genetic testing identified a person as  
19 the genetic father or genetic mother of the child under section 1904, the court or agency  
20 may not order additional testing unless the party provides advance payment for the  
21 testing.

22           **§1907. Genetic testing when specimens not available**

23           **1. Specimen not available; submission of specimens.** Subject to subsection 2, if a  
24 genetic testing specimen is not available from a person who may be the genetic father or  
25 genetic mother of a child, for good cause and under circumstances the court considers to  
26 be just, the court may order the following individuals to submit specimens for genetic  
27 testing:

28           A. The parents of the person;

29           B. Brothers and sisters of the person;

30           C. Other children of the person and their mothers; and

31           D. Relatives of the person necessary to complete genetic testing.

32           **2. Finding required.** Issuance of an order under this section requires a finding that  
33 a need for genetic testing outweighs the legitimate interests of the individual sought to be  
34 tested.

35           **§1908. Deceased person**

36           For good cause shown, the court may order genetic testing of a deceased person.

1           **§1909. Identical sibling**

2           **1. Genetic testing of sibling.** The court may order genetic testing of a sibling of a  
3 person if the person is commonly believed to have an identical sibling and evidence  
4 suggests that the sibling may be the genetic father or genetic mother of the child.

5           **2. Nongenetic evidence.** If a person and a sibling of the person tested pursuant to  
6 subsection 1 satisfy the requirements as the identified genetic father or genetic mother of  
7 the child under section 1904 without consideration of another identical sibling being  
8 identified as the genetic father or genetic mother of the child, the court may rely on  
9 nongenetic evidence to adjudicate parentage under this chapter.

10           **§1910. Confidentiality of genetic testing**

11           **1. Release of report.** A report of genetic testing for parentage is confidential and  
12 may not be released except as provided in this subchapter.

13           **2. Intentional release of identifiable specimen.** An individual who intentionally  
14 releases an identifiable specimen of another individual for any purpose other than that  
15 relevant to a proceeding regarding parentage without a court order or the written  
16 permission of the individual who furnished the specimen commits a Class E crime.

17           **§1911. Court order for testing**

18           **1. Order to submit to genetic testing.** Except as provided in section 1912 or as  
19 otherwise provided in this chapter, the court may order a child and other designated  
20 individuals to submit to genetic testing if the request for testing is supported by the sworn  
21 statement of a party to a proceeding setting forth a reasonable, good faith basis for  
22 alleging or denying genetic parentage.

23           **2. Presumption of genetic maternity.** Genetic testing of the woman who gave birth  
24 to a child is not required and may not be ordered to prove that she is the genetic mother,  
25 unless there is a reasonable, good faith basis to dispute genetic maternity.

26           **3. No presumed, acknowledged or adjudicated parent.** The department may seek  
27 an order for genetic testing only if there is no presumed parent, acknowledged father,  
28 adjudicated parent or intended parent who consented to assisted reproduction pursuant to  
29 this chapter. Genetic testing may not be ordered if the person who is the subject of the  
30 request for order is a donor.

31           **4. In utero testing.** If a request for genetic testing of a child is made before birth,  
32 the court may not order in utero testing.

33           **5. Concurrent or sequential testing.** If 2 or more individuals are subject to court-  
34 ordered genetic testing, the testing may be ordered concurrently or sequentially.

1           **§1912. Authority to deny requested order for genetic testing or admission of test**  
2                                   **results**

3           **1. Grounds for denial.** In a proceeding to adjudicate parentage, the court may deny  
4 a motion seeking an order for genetic testing or deny admissibility of the test results at  
5 trial if the court determines that:

- 6           A. The conduct of the parties estops a party from denying parentage; or
- 7           B. It would be an inequitable interference to the relationship between the child and a  
8 parent or otherwise contrary to the best interest of the child.

9           **2. Factors.** In determining whether to deny a motion seeking an order for genetic  
10 testing under this chapter or a request for admission of such test results at trial, the court  
11 shall consider the best interest of the child, including the following factors, if relevant:

- 12           A. The length of time between the proceeding to adjudicate parentage and the time  
13 that a parent was placed on notice that genetic parentage is at issue;
- 14           B. The length of time during which the parent has assumed a parental role for the  
15 child;
- 16           C. The facts surrounding discovery that genetic parentage is at issue;
- 17           D. The nature of the relationship between the child and the parent;
- 18           E. The age of the child;
- 19           F. Any adverse effect on the child that may result if parentage is successfully  
20 disproved;
- 21           G. The nature of the relationship between the child and any alleged parent;
- 22           H. The extent to which the passage of time reduces the chances of establishing the  
23 parentage of another person and a child support obligation in favor of the child; and
- 24           I. Factors in addition to those in paragraphs A to H that may affect the equities  
25 arising from the disruption of the relationship between the child and the parent or the  
26 chance of other adverse effect to the child.

27           **3. Guardian ad litem.** In a proceeding involving the application of this section, a  
28 minor or incapacitated child may be represented by a guardian ad litem.

29           **4. Order.** In cases involving an acknowledged or presumed parent, if the court  
30 denies a motion seeking an order for genetic testing, the court shall issue an order  
31 adjudicating the acknowledged or presumed parent to be the parent of the child.

32           **§1913. Admissibility of results of genetic testing; expenses**

33           **1. Record admissible; objection.** Except as otherwise provided in subsection 3, a  
34 record of a genetic testing expert is admissible as evidence of the truth of the facts  
35 asserted in the report unless a party objects to its admission within 14 days after its  
36 receipt by the objecting party and cites specific grounds for exclusion. The admissibility  
37 of the report is not affected by whether the testing was performed:

1           A. Voluntarily or pursuant to an order of the court; or

2           B. Before or after the commencement of the proceeding.

3           **2. Testimony of experts.** A party objecting to the results of genetic testing may call  
4 one or more genetic testing experts to testify in person or by telephone, videoconference,  
5 deposition or another method approved by the court. Unless otherwise ordered by the  
6 court, the party offering the testimony bears the expense for the expert's testifying.

7           **3. Results inadmissible; exceptions.** If a child has a presumed parent,  
8 acknowledged father or adjudicated parent, the results of genetic testing are admissible to  
9 adjudicate parentage only:

10           A. With the consent of each person who is a parent of the child under this chapter,  
11 unless the court otherwise orders under section 1912; or

12           B. Pursuant to an order of the court under section 1911.

13           **4. Copies of bills and records as evidence.** Copies of bills and records of expenses  
14 paid for prenatal care, childbirth, postnatal care and genetic testing are admissible as  
15 evidence without requiring 3rd-party foundation testimony and are prima facie evidence  
16 of amounts incurred for those expenses or testing on behalf of the child.

17           **§1914. Consequences of declining genetic testing**

18           **1. Adjudication contrary to position.** If an individual whose paternity is being  
19 determined under this chapter declines to submit to genetic testing ordered by the court,  
20 the court for that reason may adjudicate parentage contrary to the position of that  
21 individual.

22           **2. Testing of woman giving birth; unavailable or declines.** Genetic testing of the  
23 woman who gave birth to a child is not a condition precedent to testing the child and a  
24 man whose paternity is being determined under this chapter. If the woman who gave  
25 birth is unavailable or declines to submit to genetic testing, the court may order the  
26 testing of the child and every person whose genetic parentage is being adjudicated.

27           **§1915. Adjudication of parentage based on genetic testing**

28           **1. Parentage based on genetic testing.** If the court adjudicates parentage based on  
29 genetic testing, the following apply.

30           A. Unless the results of genetic testing are admitted to rebut other results of genetic  
31 testing:

32                   (1) If genetic testing results pursuant to section 1904 exclude a person as the  
33 genetic parent of a child, the court shall find that person is not a genetic parent of  
34 the child and may not adjudicate the person as the child's parent on the basis of  
35 genetic testing; and

36                   (2) If genetic testing results pursuant to section 1904 identify a person as the  
37 genetic parent of a child, the court shall find that person to be the genetic parent

1 and may adjudicate the person as the child's parent, unless otherwise provided by  
2 this chapter.

3 B. If the court finds that genetic testing under section 1904 neither identifies nor  
4 excludes a person as the genetic parent of a child, the court may not dismiss the  
5 proceeding. In that event, the results of genetic testing and other evidence are  
6 admissible to adjudicate the issue of parentage.

7 **2. Inadmissible evidence.** Testimony relating to sexual relations or possible sexual  
8 relations of the woman giving birth at a time other than the probable time of conception  
9 of the child is inadmissible in evidence.

10 **3. Adjudication consistent with this chapter.** An adjudication of parentage based  
11 on genetic testing is subject to the requirements and limitations of this chapter.

## 12 SUBCHAPTER 7

### 13 PARENTAGE BY ASSISTED REPRODUCTION

#### 14 §1921. Scope of subchapter

15 This subchapter does not apply to the birth of a child conceived by means other than  
16 assisted reproduction.

#### 17 §1922. Parental status of donor

18 **1. Donor not a parent.** A donor is not a parent of a child conceived through  
19 assisted reproduction.

#### 20 **2. Exceptions.** Notwithstanding subsection 1:

21 A. A person who provides a gamete or gametes or an embryo or embryos to be used  
22 for assisted reproduction for the person's spouse is a parent of the resulting child; and

23 B. A person who provides a gamete or gametes or an embryo or embryos for assisted  
24 reproduction is a parent of the resulting child if the person has a written agreement or  
25 agreements with the person giving birth and any intended parent that the person will  
26 be a parent.

#### 27 §1923. Parentage of child of assisted reproduction

28 A person who provides gametes for and consents to or a person who consents to  
29 assisted reproduction by a woman as provided in section 1924 with the intent to be the  
30 parent of a resulting child is a parent of the resulting child.

#### 31 §1924. Consent to assisted reproduction

32 **1. Written consent.** Consent by a person who intends to be a parent of a child born  
33 through assisted reproduction must be set forth in a signed record that is executed by each  
34 intended parent and provides that the signatories consent to use of assisted reproduction  
35 to conceive a child with the intent to parent the child.

1           **2. Lack of written consent; parentage.** Failure of a person to sign a consent  
2 required by subsection 1 before or after birth of the child does not preclude a finding of  
3 parentage:

4           A. If consent can be proved by other means and the consenting individual resided  
5 with the child after birth and undertook to develop a parental relationship with the  
6 child; or

7           B. As provided in this chapter.

8           **3. Consent form.** Consent under subsection 1 executed via a consent form adopted  
9 by the Office of Data, Research and Vital Statistics must be accepted and relied upon for  
10 purposes of issuing a birth record.

11           **§1925. Challenge by spouse to consent**

12           **1. Challenge by spouse to consent.** The spouse of a person who gives birth to a  
13 child through assisted reproduction may challenge the spouse's own parentage of the child  
14 only if:

15           A. The spouse did not provide gametes or embryos for the assisted reproduction;

16           B. The spouse did not before or after the birth of the child consent to the assisted  
17 reproduction by the person who gave birth;

18           C. The spouse and the person who gave birth to the child have not cohabitated since  
19 the time of the child's birth; and

20           D. The spouse did not openly hold out the child as the spouse's own.

21           **§1926. Effect of dissolution of marriage or withdrawal of consent**

22           **1. Dissolution of marriage prior to transfer or implantation.** If a marriage is  
23 dissolved before transfer or implantation of gametes or embryos, the former spouse is not  
24 a parent of the resulting child unless the former spouse consented in a signed record with  
25 notice to the other spouse and the woman giving birth that, if assisted reproduction were  
26 to occur after a divorce, the former spouse would be a parent of the child.

27           **2. Withdrawal of consent prior to transfer or implantation.** The consent of a  
28 person to assisted reproduction under section 1924 may be withdrawn by that person in a  
29 signed record with notice to the person giving birth and any other intended parent before  
30 transfer or implantation of gametes or embryos. A person who withdraws consent under  
31 this subsection is not a parent of the resulting child.

32           **§1927. Parent status of deceased person**

33           If a person who consented in a signed record under section 1924 to be a parent by  
34 assisted reproduction dies before transfer or implantation of gametes or embryos, the  
35 deceased person is not a parent of the resulting child unless the deceased person  
36 consented in a signed record that, if assisted reproduction were to occur after death, the  
37 deceased person would be a parent of the child.



1 **§1928. Birth orders**

2 **1. Proceeding for birth order.** Before or after the birth of the resulting child, a  
3 party consenting to assisted reproduction, a person who has a written agreement to be a  
4 parent pursuant to section 1922, subsection 2, paragraph B, the intended parent or parents  
5 or the person giving birth may commence a proceeding in District Court to obtain an  
6 order:

7 A. Declaring that the intended parent or parents are the parent or parents of the  
8 resulting child and ordering that parental rights and responsibilities vest exclusively  
9 in the intended parent or parents immediately upon the birth of the child;

10 B. Sealing the record from the public to protect the privacy of the child and the  
11 parties; or

12 C. For any relief that the court determines necessary and proper.

13 **2. State not a necessary party.** Neither this State nor the State Registrar of Vital  
14 Statistics is a necessary party to a proceeding under subsection 1.

15 **§1929. Laboratory error**

16 If due to a laboratory error the resulting child is not genetically related to either of the  
17 intended parents, the intended parents are the parents of the child unless otherwise  
18 determined by the court.

19 **SUBCHAPTER 8**

20 **GESTATIONAL CARRIER AGREEMENT**

21 **§1931. Eligibility to enter gestational carrier agreement**

22 **1. Eligibility of gestational carrier.** In order to execute an agreement to act as a  
23 gestational carrier, a woman must:

24 A. Be at least 21 years of age;

25 B. Have previously given birth to at least one child;

26 C. Have completed a medical evaluation that includes a mental health consultation;

27 D. Have had independent legal representation of her own choosing and paid for by  
28 the intended parent or parents regarding the terms of the gestational carrier agreement  
29 and have been advised of the potential legal consequences of the gestational carrier  
30 agreement; and

31 E. Not have contributed gametes that will ultimately result in an embryo that she will  
32 attempt to carry to term, unless the gestational carrier is entering into an agreement  
33 with a family member.

34 **2. Eligibility of intended parent or parents.** Prior to executing a gestational carrier  
35 agreement, a person or persons intending to become a parent or parents, whether  
36 genetically related to the child or not, must:

- 1           A. Complete a medical evaluation and mental health consultation; and
- 2           B. Retain independent legal representation regarding the terms of the gestational
- 3           carrier agreement and have been advised of the potential legal consequences of the
- 4           gestational carrier agreement.

5           **§1932. Gestational carrier agreement authorized**

6           **1. Written agreement.** A prospective gestational carrier who is eligible pursuant to

7           section 1931, her spouse if she is married and the intended parent or parents may enter

8           into a written agreement that:

- 9           A. The prospective gestational carrier agrees to pregnancy by means of assisted
- 10          reproduction;
- 11          B. The prospective gestational carrier and her spouse, if she is married, have no
- 12          rights and duties as the parents of a child conceived through assisted reproduction;
- 13          and
- 14          C. The intended parent or parents will be the parents of any resulting child.

15          **2. Intended parents.** The intended parent or parents must be parties to a gestational

16          carrier agreement.

17          **3. Enforceable.** A gestational carrier agreement is enforceable only if it meets the

18          following requirements.

- 19          A. The agreement must be in writing and signed by all parties.
- 20          B. The agreement must require no more than a one-year term to achieve pregnancy.
- 21          C. At least one of the parties must be a legal resident of the State.
- 22          D. The agreement must be executed before the commencement of any medical
- 23          procedures other than the medical evaluations required by section 1931 and, in every
- 24          instance, before transfer of embryos.
- 25          E. The gestational carrier and the intended parent or parents must meet the eligibility
- 26          requirements of section 1931.
- 27          F. If any party is married, the party's spouse also must be required to execute the
- 28          agreement.
- 29          G. The gestational carrier and the intended parent or parents must be represented by
- 30          independent legal counsel in all matters concerning the agreement and each counsel
- 31          shall affirmatively so state in a written declaration attached to the agreement. The
- 32          declarations must state that the agreement meets the requirements of this chapter and
- 33          must be solely relied upon by health care providers and staff at the time of birth and
- 34          by the Office of Data, Research and Vital Statistics for birth registration and
- 35          certification purposes.
- 36          H. The gestational carrier and each intended parent must sign a written
- 37          acknowledgment of having received a copy of the agreement.

1 I. The signature of each party to the agreement must be notarized, acknowledged or  
2 attested by a person authorized to take oaths in accordance with the laws of the  
3 jurisdiction where it is executed.

4 J. The agreement must expressly provide that:

5 (1) The gestational carrier:

6 (a) Must undergo assisted reproduction and attempt to carry and give birth to  
7 any resulting child;

8 (b) Has no claim to parentage of all resulting children to the intended parent  
9 or parents immediately upon the birth of the child or children regardless of  
10 whether a court order has been issued at the time of birth; and

11 (c) Must acknowledge the exclusive parentage of the intended parent or  
12 parents of all resulting children;

13 (2) If the gestational carrier is married, her spouse:

14 (a) Must acknowledge and agree to abide by the obligations imposed on the  
15 gestational carrier by the terms of the gestational carrier agreement;

16 (b) Has no claim to parentage of any resulting children to the intended parent  
17 or parents immediately upon the birth of the children regardless of whether a  
18 court order has been issued at the time of birth; and

19 (c) Must acknowledge the exclusive parentage of the intended parent or  
20 parents of all resulting children;

21 (3) The gestational carrier has the right to use the services of a health care  
22 provider of her choosing to provide her care during her pregnancy;

23 (4) The intended parent or parents must:

24 (a) Be the exclusive parent or parents and accept parental rights and  
25 responsibilities of all resulting children immediately upon birth regardless of  
26 the number, gender or mental or physical condition of the child or children;  
27 and

28 (b) Assume responsibility for the financial support of all resulting children  
29 immediately upon the birth of the children; and

30 (5) All parties must provide records related to the medical evaluations conducted  
31 pursuant to section 1931, subsection 2, paragraph A.

32 **4. Reasonable expenses.** A gestational carrier agreement may provide for payment  
33 of reasonable expenses, which, if paid to a prospective gestational carrier, must be  
34 negotiated in good faith between the parties.

35 **5. Decision of gestational carrier.** A gestational carrier agreement may not limit  
36 the right of the gestational carrier to make decisions to safeguard her health.

37 **§1933. Parentage; parental rights and responsibilities**

38 If a gestational carrier agreement satisfies the requirements of this chapter:

1           **1. Parentage.** The intended parent or parents are by operation of law the parent or  
2 parents of the resulting child immediately upon the birth of the child, and the resulting  
3 child is considered the child of the intended parent or parents immediately upon the birth  
4 of the child.

5           A. Neither the gestational carrier nor her spouse, if any, is the parent of the resulting  
6 child.

7           B. A person who is determined to be a parent of the resulting child is obligated to  
8 support the child. The breach of the gestational carrier agreement by the intended  
9 parent or parents does not relieve the intended parent or parents of the obligation to  
10 support the resulting child;

11           **2. Parental rights and responsibilities.** Parental rights and responsibilities vest  
12 exclusively in the intended parent or parents immediately upon the birth of the resulting  
13 child; and

14           **3. Laboratory error.** If due to a laboratory error the resulting child is not  
15 genetically related to either the intended parent or parents or any donor who donated to  
16 the intended parent or parents, the intended parent or parents are considered the parent or  
17 parents of the child.

18           **§1934. Birth orders**

19           **1. Action for birth order.** Pursuant to a valid gestational carrier agreement under  
20 this subchapter, before or after the birth of the resulting child a party to the gestational  
21 carrier agreement may commence a proceeding in District Court to obtain an order:

22           A. Designating the contents of the birth certificate in accordance with Title 22,  
23 section 2761 and directing the Office of Data, Research and Vital Statistics to  
24 designate the intended parent or parents as the parent or parents of the child. The  
25 State Registrar of Vital Statistics may charge a reasonable fee for the issuance of a  
26 birth certificate;

27           B. Declaring that the intended parent or parents are the parent or parents of the  
28 resulting child and ordering that parental rights and responsibilities vest exclusively  
29 in the intended parent or parents immediately upon the birth of the child;

30           C. Sealing the record from the public to protect the privacy of the child and the  
31 parties; or

32           D. For any relief that the court determines necessary and proper.

33           **2. State not a necessary party.** Neither this State nor the State Registrar of Vital  
34 Statistics is a necessary party to a proceeding under subsection 1.

35           **§1935. Exclusive, continuing jurisdiction**

36           Subject to the jurisdictional standards of section 1745, the court conducting a  
37 proceeding under this subchapter has exclusive, continuing jurisdiction of all matters  
38 arising out of the gestational carrier agreement until a child born to the gestational carrier  
39 during the period governed by the agreement attains the age of 180 days.

1           **§1936. Termination of gestational carrier agreement**

2           **1. Termination of agreement; parties.** A party to a gestational carrier agreement  
3           may withdraw consent to any medical procedure and may terminate the gestational carrier  
4           agreement at any time prior to any embryo transfer or implantation by giving written  
5           notice of termination to all other parties.

6           **2. Obligations upon termination; no liability to gestational carrier.** Upon  
7           termination of the gestational carrier agreement under subsection 1, the parties are  
8           released from all obligations recited in the agreement except that the intended parent or  
9           parents remain responsible for all expenses that are reimbursable under the agreement  
10           incurred by the gestational carrier through the date of termination. The gestational carrier  
11           is entitled to keep all payments she has received and obtain all payments to which she is  
12           entitled. Neither a prospective gestational carrier nor her spouse, if any, is liable to the  
13           intended parent or parents for terminating a gestational carrier agreement.

14           **§1937. Effect of subsequent marriage**

15           **1. Agreement valid.** The subsequent marriage of the gestational carrier does not  
16           affect the validity of a gestational carrier agreement.

17           **2. Subsequent consent not required.** The consent of the subsequent spouse of the  
18           gestational carrier to the agreement is not required.

19           **3. No marital presumption.** The subsequent spouse of the gestational carrier is not  
20           presumed to be a parent of the resulting child.

21           **§1938. Effect of noncompliance; standard of review; remedies**

22           **1. Not enforceable.** Except as otherwise provided, a gestational carrier agreement  
23           that does not meet the requirements of this subchapter is not enforceable.

24           **2. Standard of review.** In the event of noncompliance with the requirements of this  
25           subchapter or with a gestational carrier agreement, a court shall determine the respective  
26           rights and obligations of the parties to the gestational carrier agreement, including  
27           evidence of the intent of the parties at the time of execution.

28           **3. Remedies.** Except as expressly provided in a gestational carrier agreement and in  
29           subsection 4, in the event of a breach of the gestational carrier agreement by the  
30           gestational carrier or the intended parent or parents, the gestational carrier or the intended  
31           parent or parents are entitled to all remedies available at law or in equity.

32           **4. Genetic testing.** If the parentage of a child born to a gestational carrier is alleged  
33           to not be the result of assisted reproduction, and this question is relevant to the  
34           determination of parentage, the court may order genetic testing.

35           **5. Specific performance.** Specific performance is not an available remedy for a  
36           breach by the gestational carrier of any term in a gestational carrier agreement that  
37           requires the gestational carrier to be impregnated or to terminate a pregnancy. Specific  
38           performance is an available remedy for a breach by the gestational carrier of any term

1 that prevents the intended parent or parents from exercising the full rights of parentage  
2 immediately upon birth of the child.

3 **Sec. 2. Effective date.** This Act takes effect July 1, 2016.

#### 4 **SUMMARY**

5 This bill offers an updated, comprehensive statutory framework for determining a  
6 child's legal parentage. It is patterned after, and follows in part, the Uniform Parentage  
7 Act, a uniform law initially developed in 1973 and most recently updated in 2002 by the  
8 Uniform Law Commission. Even though the bill adopts portions of the Uniform  
9 Parentage Act, it is sufficiently different from the Uniform Parentage Act overall that the  
10 chapter of statute the bill enacts merits its own, distinct title, "the Maine Parentage Act."

11 The Maine Parentage Act is organized into 8 subchapters. Subchapter 1 provides  
12 definitions of key terms. It authorizes actions to adjudicate legal parentage and  
13 establishes the parameters for such actions. Subchapter 2 is the hub of the bill. It  
14 organizes and lists in one place the grounds upon which legal parentage may be based.  
15 They are: birth, adoption, voluntary acknowledgment of paternity, un rebutted  
16 presumption of parentage, de facto parentage, genetic parentage, consent to assisted  
17 reproduction and consent through a valid gestational carrier agreement. The six  
18 subchapters that follow address individual grounds for parentage.

19 The bill confirms a number of grounds for parentage under current law and in several  
20 instances proposes amendments to clarify and update the law with respect to these  
21 grounds. For example, it updates the standards applicable to genetic testing to reflect  
22 current science and practice; provides more detailed procedures for use of the voluntary  
23 acknowledgment of paternity process in suitable cases; and codifies a traditional  
24 presumption of parentage in the legal spouse of the mother, which is only found now in a  
25 rule of evidence. The bill also codifies the de facto parent doctrine, now firmly  
26 established by case law, to require an explicit determination of standing as a prerequisite  
27 for maintaining an action, recognize the elevated burden of proof that a person claiming  
28 such status must satisfy and clarify the elements of proof so as to address some practical  
29 problems encountered by practitioners and courts under the case law.

30 The bill recognizes and clarifies the legal parentage of children born to parents who  
31 use medical assisted reproduction as well as children born by means of assisted  
32 reproduction in conjunction with a gestational carrier. Clear statutory guidelines and  
33 requirements serve to regulate usage, protect the rights of parties and reduce reliance on  
34 judicial actions in this area.

35 Finally, consistent with the Uniform Parentage Act and legislation in a number of  
36 other states, the bill recognizes the presumption of parentage in an unmarried partner of  
37 the mother who lives with the mother at the time of birth and holds out the child as that  
38 person's own for 2 years from birth.

39 A more detailed summary of the bill is provided in Appendix B to the Family Law  
40 Advisory Commission Report to Maine Legislature Joint Standing Committee on

1       Judiciary, pursuant to Resolve 2014, c. 83 on Proposed "Maine Parentage Act" dated  
2       December 15, 2014.

3             The effective date is July 1, 2016.