

# MAINE STATE LEGISLATURE

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**Report to Maine Legislature**  
**Joint Standing Committee on Judiciary**  
**On**  
**Resolve Directing the Family Law Advisory Commission to**  
**Study and Report on the Uniform Parentage Act**  
**And Other Similar Laws and Proposals**

In the First Regular Session of the 126<sup>th</sup> Legislature, the Joint Standing Committee on Judiciary, through passage of a Resolve, directed the Family Law Advisory Commission (FLAC) to conduct a study of Maine law, the Uniform Parentage Act as recommended for enactment by the National Conference of Commissioners on Uniform State Laws and other similar laws and proposals. FLAC was further directed to submit a report no later than December 1, 2013. Resolve 2013, c. 12, §2. We are pleased to submit this report.

A bill (LD 726) was introduced into the First Regular Session of the 126<sup>th</sup> Legislature as a concept draft proposing adoption of the Uniform Parentage Act (UPA).<sup>1</sup> The UPA is a complicated, technical Act that has undergone a number of changes over the years. While FLAC supports enactment of a comprehensive statute to modernize the law of parentage determination in Maine, we have concerns about using the UPA template as an “off-the-shelf” solution. In March 2013, FLAC submitted a proposal to study the UPA as well as related laws. The Committee passed the instant Resolve.

To carry out the study directed by the Resolve, FLAC has undertaken the following:

1. We organized two work groups consisting of between six and eight people each. As the Committee is aware, FLAC is a volunteer board without staff or resources. Thus, we invited participation from outside our ranks, and were very fortunate to recruit a number of dedicated individuals with relevant expertise to assist us, including attorneys from private practice or interested organizations; a representative from DHHS's Division of Support Enforcement and Recovery; an Assistant Attorney General with expertise in this area; and a professor from Maine Law School.

2. Each work group was assigned particular subject areas and deadlines for reporting out. The work groups began their assignments in the spring and worked through the summer and fall, sometimes meeting two to three times per month. The work groups reported periodically to FLAC, which has met seven times since May to review and work on this project.

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<sup>1</sup> The Uniform Parentage Act is a uniform law drafted by the Uniform Law Commission (formerly the National Conference of Commissioners on Uniform Laws). The current version was adopted in 2002.

3. Substantively we have studied the following:

- The 2002 UPA;
- Variations of the 2002 UPA as modified and adopted in various states;
- A variety of statutes from other states that have not adopted the UPA;
- A 2005 bill developed by our predecessors, with particular attention to changes in law and technology since 2005 that warrant reexamination;
- Other applicable model acts, including the American Bar Association Model Act Governing Assisted Reproductive Technology and the Model Third-Party Child Custody and Visitation Act developed by a committee of the American Bar Association Section of Family Law;
- Case law from Maine and other jurisdictions relevant to the subject areas in question; and
- A substantial body of literature on the relevant subject areas.

Based on our study to date, we believe that Maine would benefit from legislation comprehensively defining and addressing the determination of legal parentage. Not only would such legislation support the interests of children and families, but it would also provide much-needed guidance to practitioners, courts and the public and thereby serve to reduce potential confusion, conflict and litigation.

Although we have made significant headway toward developing a bill to submit to the Committee for consideration, more work is needed. We are continuing to refine the drafting to make the bill's complex subject matter more accessible and its language more user-friendly. We are still in the process of assessing the impact of a comprehensive bill on existing law and the changes that would be needed to existing statutes. For example, a new, comprehensive law would likely affect provisions of the Uniform Paternity Act currently codified in Title 19-A; other parts of Title 19-A, such as, for example, provisions dealing with child support and child support enforcement; and provisions in Title 18-A (Maine's Probate Code) as well. We are cognizant of the Probate Law Advisory Commission's (PATLAC) continuing efforts toward proposing wide-ranging revisions to Maine's Probate Code and believe it would be prudent to confer with PATLAC as we move forward in order to ensure consistency between statutory schemes. We would want any bill submitted to include a catalogue of specific changes to existing law that would result from enactment of the bill. Finally, additional time would permit development of supporting comments to guide practitioners, legislators, courts and members of the public using the law in future.

Therefore, we are seeking an extension of time to complete this work, and have attached for the Committee's consideration a proposed amendment to the instant Resolve that would designate this report as an interim report and set December 15, 2014 as the deadline for a final report.

Thank you.

Dated: November 25, 2013

Respectfully submitted:

Maine Family Law Advisory Commission

Judge Wayne R. Douglas, Maine District Court, Chair  
Justice Andrew M. Horton, Maine Superior Court  
Judge James E. Mitchell, Kennebec County Probate Court  
Magistrate Paul D. Matthews, Maine District Court  
Franklin Brooks, Ph.D., LCSW, Public Member  
Edward S. David, Esq., MSBA Family Law Section  
Juliet Holmes-Smith, Esq., Volunteer Lawyers Project  
Diane E. Kenty, Esq., CADRES Director, Judicial Branch  
Margaret Lavoie, Esq., MSBA Family Law Section  
Peg Libby, Public Member  
Kevin Wells, Esq., Counsel to Maine DHHS

**Resolve, Directing the Family Law Advisory Commission To Report on the Uniform Parentage Act and Other Similar Laws and Proposals**

**Preamble.** Whereas, Maine law may require clarification and updating with regard to issues relating to parental rights and responsibilities, ethics, inheritance and property rights when genetic, biological and factual parentage cannot be determined in traditional ways; and

**Whereas,** Maine courts are in need of legislative guidance respecting the determination of parentage in such cases; and

**Whereas,** the Legislature is desirous of protecting children in such nontraditional circumstances from unnecessary litigation, uncertainty and insecurity; and

**Whereas,** the Family Law Advisory Commission is authorized to review and make recommendations on family law issues generally under the Maine Revised Statutes, Title 19-A, chapter 5; and

**Whereas,** the Family Law Advisory Commission began its study of the Uniform Parentage Act pursuant to Resolve 2013, chapter 12 and needs additional time to prepare legislation to carry out its recommendations; now, therefore, be it

**Sec. 1. Resolve 2013, c. 12, §2, amended. Resolved:** That Resolve 2013, c. 12, §2 is amended to read:

That the Family Law Advisory Commission shall submit a report to the Joint Standing Committee on Judiciary an interim report no later than December 1, 2013, and a final report no later than December 15, 2014, together with any necessary implementing legislation, for presentation to the Second First Regular Session of the 126th 127th Legislature. The Family Law Advisory Commission is authorized to submit legislation related to its report to the Second First Regular Session of the 126th 127th Legislature.

**Sec. 2. Retroactive effective date. Resolved:** That this Resolve applies retroactively to December 1, 2013.

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STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND THIRTEEN

H.P. 291 - L.D. 419

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Whereas, the Legislature is desirous of protecting children in such nontraditional circumstances from unnecessary litigation, uncertainty and insecurity; and

Whereas, the Family Law Advisory Commission is authorized to review and make recommendations on family law issues generally under the Maine Revised Statutes, Title 19-A, chapter 5; now, therefore, be it

**Sec. 1. Study. Resolved:** That the Family Law Advisory Commission established under the Maine Revised Statutes, Title 5, section 12004-I, subsection 52-A is directed to conduct a comprehensive study of current Maine law, the Uniform Parentage Act as recommended for enactment by the National Conference of Commissioners on Uniform State Laws and other similar laws and proposals; and be it further

**Sec. 2. Report. Resolved:** That the Family Law Advisory Commission shall submit a report to the Joint Standing Committee on Judiciary no later than December 1, 2013, together with any necessary implementing legislation, for presentation to the Second Regular Session of the 126th Legislature. The Family Law Advisory Commission is authorized to submit legislation related to its report to the Second Regular Session of the 126th Legislature.