Family Law Advisory Commission
Report to Maine Legislature
Joint Standing Committee on Judiciary
Pursuant to Resolve 2014, c. 83
On Proposed "Maine Parentage Act"

Introduction

The Family Law Advisory Commission ("FLAC") is pleased to submit this report pursuant to Resolve 2014, c. 83 of the 126th Legislature. The Resolve directed FLAC to continue its study[1] of family law in Maine and nationally with a particular focus on whether there may be a need for legislation with regard to the law governing determination of a child's legal parentage. We have completed our study, and conclude that Maine would greatly benefit from such legislation—to clarify and bring Maine family law up to date, to support the interests of children and their families, and to provide much-needed guidance to the public, practitioners, and the courts. Appendix A to this report is a copy of proposed legislation that will be offered to the 127th Legislature for its consideration. Appendix B is a summary of the proposed legislation.

Background

Former Justice Sandra Day O'Connor observed nearly 15 years ago that the "demographic changes of the past century make it difficult to speak of an average American family. The composition of family varies greatly from household to household."[2] Since then, the many forces transforming the notion of family, and parenthood, have only accelerated.[3] There is no dispute that families across America—and in Maine—are becoming more diverse and family compositions more complex. Children are born into and raised in a

[1] This Resolve extended, at our request, work that had been begun in early 2013 pursuant to Resolve 2013, c. 12, §12.

[2] *Troxel v. Granville*, 530 US 57, 63 (2000)

[3] *See "The Changing American Family,"* Natalie Angier, 11/25/2013 New York Times

wide array of families, including, for example, families and households of parents who have divorced and remarried; couples who bear or adopt children but choose not to marry; single individuals who elect to have children but parent alone; individuals or couples who cannot conceive on their own and utilize assisted reproduction; individuals or couples who use assisted reproduction in conjunction with a woman who serves as a gestational surrogate or carrier; same-gender parents who are either married or unmarried; and caregivers, whether related or not, who raise a child and are deemed parents by virtue of their relationship with and responsibility for the child.

The law has struggled to keep pace with shifting patterns of family formation and re-formation, changing demographics, and advancements in medical science and technology that have reshaped the composition of families and the contours of parenthood. Increasingly, courts are confronted with cases that raise novel, complicated issues in answering a basic question: Who is, or should be, the legal parent of a child? Without answers to these questions as proposed in the Maine Parentage Act, issues of parentage as well as related issues of parental rights and responsibilities in Maine will be litigated and re-litigated without a legal roadmap, resulting in vulnerable children bearing the brunt of litigation.

Maine courts are handling cases such as these on a regular basis. However, the courts are doing so without the benefit of clear, consistent and current statutory guidance. As it stands, the law in Maine governing determination of a child's legal parentage is a patchwork of statute, case law and evidentiary rule that is not readily accessible, is out of date, and is either inadequate or non-existent when it comes to addressing the complicated parentage issues that now arise regularly.

Two recent cases decided by the Maine Supreme Judicial Court illustrate the need for a comprehensive legislative solution. In one case, the Court grappled with the limitations of the law in deciding that a couple who had used *in vitro* fertilization and a gestational carrier to give birth to their child were the

legal parents of the child.[4] In another case, the Court addressed whether a man who was not the biological father of a child but who had bonded with and raised the child had any ongoing parentage rights.[5] The court invoked the de facto parent doctrine, which it had created over a decade ago,[6] but noted that "[p]arenthood is meant to be defined by the Legislature, steeped as it is in matters of policy requiring the weighing of multiple viewpoints" and stated: "We take this opportunity to again emphasize that, given the evolving compositions of families and the need for a careful approach, this issue would be best addressed by the Legislature."[7]

FLAC agrees, and believes it is time to do so.

The Maine Parentage Act

Over the past 18 months, FLAC has conducted an extensive study of the law of parentage in Maine and nationally. We have closely examined model statutes, such as the Uniform Parentage Act (UPA) and the ABA Model Act Governing Assisted Reproduction. We have reviewed statutes enacted in a number of other jurisdictions, including, for example, Delaware, the District of Columbia, New Mexico, Nevada, Utah, Washington and New Hampshire. Many states—New Hampshire is a recent example—have enacted parentage laws that adopt or borrow from model statutes such as the UPA, as is being proposed here. We have also reviewed case law from the United States Supreme Court, Maine and other jurisdictions, as well as a substantial body of literature on relevant subject areas.

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[4] *Nolan v. LaBree,* 2012 ME 61. Although the Court may have reached the right result, the deficiencies of the current law were spotlighted and the court was clear that its decision has limited precedential value: "We have no occasion to consider here how to analyze a case in which the parties do not agree."

[5] *Pitts v. Moore,* 2014 ME 59.

[6] *See, e.g., Stitham v. Henderson,* 2001 ME 52; C.E.W. v. D.E.W., 2004 ME 43.

[7] *Pitts v. Moore, supra,* at ¶¶18, 19.

The result of our study is the attached proposed bill. It is patterned after, and incorporates parts of, the Uniform Parentage Act. However it borrows substantially from other sources as well and thus, in our view, is sufficiently distinctive to merit its own title, the "Maine Parentage Act."

The Maine Parentage Act, as proposed, makes a number of important changes.

First, it reorganizes and lists in one place (in subchapter 2) the grounds for establishment of legal parentage.

Second, it confirms grounds for legal parentage that exist under Maine law: birth; adoption; genetic parentage; voluntary acknowledgment of paternity; and adjudication as a de facto parent. As to several of these grounds, the bill also makes important amendments to clarify, update or otherwise improve the law. For example, it:

- Updates the standards applicable to genetic testing to reflect current science and practice;
- Provides a clearer, more detailed process for utilizing voluntary acknowledgments of paternity, which are routinely used now as a basis for establishing parentage but for which there is only cursory statutory guidance;[8]
- Codifies, and thereby formally recognizes, the presumption that the spouse of the woman who gives birth to the child is a legal parent of the child,[9] and, consistent with the recent adoption of marriage equality, this would apply equally to married, same-gender couples; and
- Codifies the principle of de facto parentage, which has already been established in Maine through case law; and in so doing, establishes clear standards and procedures to protect the rights of existing

[8] *See* 19-A M.R.S. §§ 1614, 1616

[9] Currently under Maine law there is only a "presumption of legitimacy" under Maine Rule of Evidence 302.

parents, assures that determination of de facto parentage is in the child's best interest, and clarifies the evidentiary requirements so as to address some practical problems that have arisen as a result of the case law.

Third, the bill recognizes and clarifies the legal parentage of a child born to parents who use medically assisted reproduction, ranging from common, long-used techniques such as donor insemination to more modern procedures such as *in vitro* fertilization. The bill would also clarify and recognize parentage in individuals who use assisted reproduction in conjunction with a third-party gestational carrier to carry and deliver a child. As the Maine Law Court has suggested, legislation is needed to provide clarity, consistency and predictability to the law in this area.[10]

The bill establishes clear guidelines and requirements for establishing parentage and protecting the rights of all parties who rely on medically assisted reproduction and/or use gestational carrier agreements. There are specific standards and requirements that must be met to establish the requisite consent, which is the foundation for parentage in the intended parents in these circumstances. There also are specific standards and requirements that must be met in order for a gestational carrier agreement to be valid, and therefore establish parentage in the intended parents. If there is full and complete compliance with all requirements, the intended parents become legal parents of a child without the need for judicial action, although the bill also provides an option for parties to file an action in court for a birth order. The bill establishes protections for a woman who elects to be a gestational carrier, including minimum eligibility requirements and health safeguards.

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[10] According to the CDC, use of medically assisted reproduction doubled in the decade between 2002 and 2012, and yet it is still "relatively rare as compared to the potential demand." See http://www.cdc.gov/ART. Maine has seen a rising demand, too, over the last decade. According to anecdotal reports, Maine attorneys have now represented hundreds of clients who have used assisted reproduction to conceive a child. Many of those have involved the use of third party gestational carriers, such as the couple in the *Nolan v. LaBree* case. Ten years ago there were no fertility clinics in Maine. Today there are several, with more expected to open in the future.

In addition, consistent with the Uniform Parentage Act (and the law of a number of other states, including New Hampshire), the bill extends the same presumption of parentage to unmarried couples as would be available to married couples in circumstances where the mother's partner is in a committed relationship for the first two years of the child's life and holds the child out the community as the partner's own child. This would serve as a more practical alternative in many instances for recognizing legal parentage in a committed caretaker than reliance solely on an adjudication of de facto parentage

The proposed Maine Parentage Act is a comprehensive statutory framework for determining and securing perhaps the most fundamental relationship in life—that of a parent and child. It would improve Maine law to make it accessible and consistent, catch Maine up with real families as they exist in our State today, and promote certainty and stability for all Maine children. We are hopeful that the Maine Legislature will give due consideration to this bill and enact the Maine Parentage Act.

Thank you for the opportunity to conduct this study and make this recommendation.

Dated: December 15, 2014

Respectfully submitted:

Maine Family Law Advisory Commission

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Appendix A
Family Law Advisory Commission
12/15/2014 Report

Maine Parentage Act

Appendix A
Family Law Advisory Commission
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Subchapter 1

TITLE, SCOPE, DEFINITIONS AND GENERAL PROVISIONS

§ 1831. Title

This chapter may be known and cited as the “Maine Parentage Act”.

§ 1832. Definitions

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

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

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

4. Assisted reproduction. "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse, and includes but is not limited to: (i) intrauterine or vaginal insemination; (ii) donation of gametes; (iii) donation of embryos; (iv) in vitro fertilization and transfer of embryos; and (v) intracytoplasmic sperm injection.

5. Child. "Child" means an individual of any age whose parentage may be determined under this chapter.

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

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

8. Gamete. “Gamete” means a cell containing a haploid complement of deoxyribonucleic acid that has the potential to form an embryo when combined with another gamete. The term

includes: (i) sperm; (ii) eggs; (iii) deoxyribonucleic acid from one human being combined with the cytoplasm, including without limitation, cytoplasmic deoxyribonucleic acid of another human being.

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

10. Genetic testing. "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the genetic father or a woman as the genetic mother of a child. "Genetic testing" includes an analysis of one or a combination of the following: (i) deoxyribonucleic acid; (ii) blood group antigens, red cell antigens, human leukocyte antigens, serum enzymes, serum proteins or red cell enzymes; or (iii) other genetic markers.

11. Gestational carrier. "Gestational carrier" means an adult woman who is not an intended parent and who enters into a gestational carrier agreement to bear a child conceived using the gametes of other persons and not her own. A woman who carries a child for a family member using her own gametes and who fulfills the requirements of subchapter 8 is a gestational carrier.

12. Gestational carrier agreement. “Gestational carrier agreement” means a contract between an intended parent or parents and a gestational carrier intended to result in a live birth.

13. Intended parent. “Intended parent” means any person, married or unmarried, who manifests the intent to be legally bound as the parent of a child resulting from assisted reproduction or a gestational carrier agreement. In the case of a married couple, any reference to an intended parent shall include both spouses for all purposes of this chapter.

14. Parent. "Parent" means an individual who has established parentage that meets the requirements of this chapter.

15. Parentage. “Parentage” means the legal relationship between a child and a parent as established in this chapter.

16. Paternity or maternity index. "Paternity or maternity index" means the likelihood of genetic paternity or maternity calculated by computing the ratio between: (i) the likelihood that the tested person is the genetic father or genetic mother based on the genetic markers of the tested person, birth mother and child and conditioned on the hypothesis that the tested person is the father or mother of the child; and (ii) the likelihood that the tested person is not the genetic father or genetic mother based on the genetic markers of the tested person, birth mother and child and conditioned on the hypothesis that the tested person is not the genetic father or genetic mother of the child.

17. Presumed parent. "Presumed parent" means a person who by operation of law under section 1881 is recognized as the parent of a child.

18. Probability of paternity or maternity. "Probability of paternity or maternity" means the measure, for the genetic population group to which the alleged genetic father or genetic mother belongs, of the probability that the person in question is the genetic father or genetic mother of the child compared with a random, unrelated person of the same genetic population group and expressed as a percentage incorporating the paternity or maternity index and a prior probability.

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

20. Sign. “Sign” means, with the intent to authenticate or adopt a record to (i) execute or adopt a tangible symbol or (ii) attach to or logically associate with the record an electronic symbol, sound or process.

21. Signatory. "Signatory" means an individual who signs a record and is bound by its terms.

22. Support enforcement agency. "Support enforcement agency" means a public official or agency authorized to seek: (i) enforcement of support orders or laws relating to the duty of support; (ii) establishment or modification of child support; (iii) determination of parentage; or (iv) location of child support obligors and their income and assets. The support enforcement agency in this State is the Maine Department of Health and Human Services.

§ 1833. Scope and application.

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

2. Choice of law. The court shall apply the law of this State to adjudicate parentage. The applicable law does not depend on: (i) the place of birth of the child; or (ii) the past or present residence of the child.

3. Effect on parental rights. This chapter does not create, enlarge or diminish parental rights or duties under other laws of this State, or the equitable powers of the courts, except as stated herein.

§ 1834. Parentage proceeding

1. Proceeding authorized. An action to adjudicate the parentage of a child may be maintained in accordance with this chapter and applicable rules of procedure.

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

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

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

5. Disclosure of social security numbers. A person who is a party to a parentage action shall disclose that person’s social security number to the court. The social security number of a person subject to a parentage adjudication must be placed in the court records relating to the said adjudication. The record of person’s social security number is confidential and is not open to the public. The court shall disclose a person’s social security to the Maine Department of Health and Human Services for child support enforcement purposes.

§ 1835. Standing to maintain proceeding

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

1. Child. The child;

2. Woman Giving Birth. The woman who gave birth to the child;

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

4. Support enforcement agency. The support enforcement agency; or

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

§ 1836. Parties to proceeding

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

§ 1837. Personal jurisdiction

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

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

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

§ 1838. Venue

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

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

2. Parent. The parent or intended parent resides;

3. Respondent. The respondent resides or is present if the child does not reside in this state;

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

5. Child protection proceeding. A child protection proceeding has been commenced.

§ 1839. Joinder of proceedings

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

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

§ 1840. Interim orders

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

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

B. Petitioning to have parentage adjudicated;

C. Identified as the genetic parent through genetic testing under section 1905;

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

E. The woman who gave birth to the child.

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

§ 1841. Admission of parentage authorized

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

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

§ 1842. Order on default

The court may issue an order adjudicating the parentage of a person who is in default, provided:

A. The person was served with notice of the proceeding; and

B. The person is found by the court to be the parent of the child.

§ 1843. Order adjudicating parentage

1. Issuance of order. In a proceeding under this subchapter, the court shall issue a final order adjudicating

whether a person alleged or claiming to be a parent is the parent of a child.

2. Identify child. A final order adjudicating parentage shall identify the child by name and date of birth.

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

4. Amended birth registration. If the order of the court is at variance with the child's birth certificate, the State Registrar of Vital Statistics shall issue an amended birth registration.

§ 1844. Binding effect of determination of parentage

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

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

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

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

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

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

3. Determination a defense. Except as otherwise provided in this chapter, a determination of parentage may be a defense

in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

4. Challenge to adjudication. A party to an adjudication of parentage may challenge the adjudication only by appeal or otherwise consistent with the Maine Rules of Civil Procedure.

§ 1845. Full faith and credit

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

Subchapter 2

ESTABLISHMENT OF PARENTAGE

§1851. Establishment of parentage

Parentage may be established by:

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

2. Adoption. Adoption of the child pursuant to Title 18-A M.R.S. §§9-101 *et seq.*

3. Acknowledgment. An effective voluntary acknowledgment of paternity under subchapter 3.

4. Presumption. An unrebutted presumption of parentage under subchapter 4.

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

6. Genetic parentage. An adjudication of genetic parentage under subchapter 6.

7. Assisted reproduction. Consent to assisted reproduction under subchapter 7.

8. Gestational carrier agreement. Consent to a gestational carrier agreement under subchapter 8.

§ 1852. Non-Discrimination

Every child shall have the same rights under law as any other child without regard to the marital status or gender of the parents or the circumstances of his or her birth.

§ 1853. Consequences of establishment of parentage

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

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

§ 1854. Determination of maternity.

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

§ 1855. No limitation on child.

Nothing in this article shall limit the right of a child to bring an action to adjudicate parentage.

Subchapter 3

VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

§ 1861. Acknowledgment of paternity

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

§ 1862. Execution of acknowledgment of paternity

1. Requirements. An acknowledgment of paternity must:

A. Be in a record;

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

C. State that:

(1) There is no other presumed parent of the child, or, if there is another presumed parent, that parent’s full name is stated; and

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

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

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

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

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

3. Acknowledgment voidable. An acknowledgment of paternity is voidable if it:

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

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

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

4. Presumed parent. A man who is a presumed parent under section 1881(3) may sign or otherwise authenticate an acknowledgment of paternity in accordance with the requirements of this subchapter.

§ 1863. Denial of parentage

A person presumed to be a parent under section 1881 may execute a denial of parentage only in the limited circumstances below. A denial of parentage is valid only if:

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

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

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

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

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

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

1. Acknowledgment and denial. An acknowledgment of paternity and related denial of parentage shall be filed with the State Registrar of Vital Statistics and may be contained in a single document or may be signed in counterparts and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.

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

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

§ 1865. Equivalent to adjudication.

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

2. Denial. Except as otherwise provided in sections 1867 and 1868(1), a valid denial of parentage pursuant to section 1863 filed with the State Registrar of Vital Statistics in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the non-parentage of the presumed parent and discharges the presumed parent from all rights and duties of a parent.

§ 1866. No filing fee

The State Registrar of Vital Statistics may not charge for filing an acknowledgment of paternity or denial of parentage.

§ 1867. Proceeding for rescission

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

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

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

§ 1868. Challenge to acknowledgment.

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

A. On the basis of fraud, duress or material mistake of fact; and

B. Within 2 years after the acknowledgment or denial is filed with the State Registrar of Vital Statistics.

2. Challenge by non-signatory. If an acknowledgment of paternity has been made in accordance with this subchapter, an individual who is neither the child nor a signatory thereto who seeks to challenge the validity of said acknowledgment and adjudicate parentage must commence a proceeding not later than two years after the effective date of the acknowledgment, unless the non-signatory did not know and could not reasonably have known of his potential genetic parentage on account of material misrepresentation or concealment, in which case the proceeding must be commenced no later than two years after discovery.

3. Burden of proof. A party challenging an acknowledgment of paternity or denial of parentage has the burden of proof.

§ 1869. Procedure for rescission or challenge

1. Every signatory party. Every signatory to an acknowledgment of paternity and any related denial of parentage must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

2. Submission to personal jurisdiction. For the purpose of rescission of, or challenge to, an acknowledgment of paternity or denial of parentage, a signatory submits to personal jurisdiction of this State by signing the acknowledgment or denial, effective upon the filing of the document with the State Registrar of Vital Statistics.

3. Suspension of legal responsibilities. Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment of paternity or denial of parentage, the court may not suspend the legal responsibilities of a

signatory arising from the acknowledgment, including the duty to pay child support.

4. Proceeding to rescind or challenge. A proceeding to rescind or to challenge an acknowledgment of paternity or denial of parentage shall be conducted as a proceeding to adjudicate parentage under subchapter 1.

5. Amendment to birth record. At the conclusion of a proceeding to rescind or challenge an acknowledgment of paternity or denial of parentage, the court shall order the State Registrar of Vital Statistics to amend the birth record of the child, if appropriate.

§ 1870. Ratification not required or permitted.

A court or administrative agency conducting a judicial or administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of paternity.

§ 1872. Forms for acknowledgment and denial of paternity

1. Forms. To facilitate compliance with this subchapter, the State Registrar of Vital Statistics shall prescribe forms for the acknowledgment of paternity and the denial of parentage.

2. Later modification of forms. A valid acknowledgment of paternity or denial of parentage is not affected by a later modification of the prescribed form.

§ 1873. Release of information

The State Registrar of Vital Statistics may release information relating to the acknowledgment of paternity as provided in Title 22, section 2706.

§ 1874. Adoption of rules

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

Subchapter 4

PRESUMED PARENTAGE

§ 1881. Presumption of parentage

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

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

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

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

2. Equivalent status in other jurisdictions. The marital presumption in section 1881(1) shall apply to a legal relationship that provides substantially the same rights, benefits and responsibilities as marriage and is recognized as valid in the state or jurisdiction in which it was entered.

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

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

§ 1882. Challenge to presumed parent.

1. Two-year limitation. Except as provided below, a proceeding to challenge the parentage of an individual whose parentage is presumed under section 1881 must be commenced not later than two years after the birth of the child, otherwise the presumption cannot be rebutted.

2. Later than two years.

A. A presumed parent under section 1881(1) who is not the genetic parent of a child and who could not reasonably have known about the birth of a child may commence such a proceeding within two years of learning of the child's birth.

B. An alleged genetic parent who did not know of the potential genetic parentage of a child, and who could not reasonably have known on account of material misrepresentation or concealment, may commence such a proceeding within two years of discovering such potential genetic parentage. If said individual is adjudicated to be the genetic parent of the child, the court shall not disestablish a presumed parent, and, consistent with section 1853(2) the court shall determine parental rights and responsibilities of the parents in accordance with section 1653.

C. A mother or a presumed parent under section 1881(3) disputing the validity of the presumption may bring such a challenge at any time.

§ 1883. Multiple presumptions.

If two or more conflicting presumptions arise, the court shall adjudicate parentage and determine parental rights and responsibilities in accordance with section 1653.

Subchapter 5

DE FACTO PARENTAGE

§ 1891. De facto parentage

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

2. Standing to seek de facto parentage. A person seeking to be adjudicated a de facto parent of a child must establish standing to maintain the action in accordance with the following.

A. The person seeking to be adjudicated a de facto parent of a child must file with the initial pleadings an affidavit alleging under oath specific facts to support the existence of a de facto parent relationship with the child as set forth in subsection 3(A)–(E). The pleadings and affidavit shall be served upon all parents and/or legal guardians of the child, and any other party to the proceeding.

B. An adverse party, parent, and/or legal guardian who files a responsive pleading shall also file an affidavit in response, serving all parties with a copy.

C. The court shall determine on the basis of the pleadings and affidavits whether the person seeking to be adjudicated a de facto parent has presented prima facie evidence of the requirements set forth in section 1891(3)(A)-(D), below. The court may in its sole discretion, if necessary and on an expedited basis, hold a hearing to determine disputed facts that are necessary and material to the issue of standing

D. If the court’s determination under paragraph C is in the affirmative, then the party claiming de facto parentage has standing to proceed to adjudication.

3. Adjudication of de facto parent status. The court shall adjudicate the person to be a de facto parent if the court finds by clear and convincing evidence that the person has fully and completely undertaken a permanent, unequivocal, committed and

responsible parental role in the child's life. Such a finding requires a determination by the court that:

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

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

C. A bonded and dependent relationship has been established between the child and the person seeking to be adjudicated as a de facto parent, and this relationship was fostered or supported by another parent of the child, and the person and the other parent have understood, acknowledged, accepted, or behaved as though the person is a parent of the child;

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

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

4. Orders

A. Interim Order. The court may enter an interim order concerning contact between a person with standing seeking adjudication as a de facto parent and the child.

B. Order upon adjudication. Adjudication of a person as a de facto parent establishes parentage, and the court shall determine parental rights and responsibilities in accordance with section 1653. The court shall make appropriate orders for the financial support for the child, in accordance with the child support guidelines under chapter 63. Any order requiring the payment of support to or from a de facto parent shall not relieve any other parent of the obligation to pay child support unless otherwise ordered by a court.

5. Other parents. The adjudication of a person as a de facto parent does not disestablish the parentage of any other parent.

Subchapter 6

GENETIC PARENTAGE

§ 1901. Scope of subchapter

This subchapter governs procedures and requirements of genetic testing and genetic test results of an individual to determine parentage and adjudication of parentage based on genetic testing, whether the individual voluntarily submits to testing or is tested pursuant to an order of the court or a support enforcement.

§ 1902. Requirements for genetic testing

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

A. The American Association of Blood Banks, or a successor to its functions; or

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

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

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

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

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

(1) If the frequencies are not available to the testing laboratory for the genetic population groups requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

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

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

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

§ 1903. Report of genetic testing

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

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

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

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

C. The places and dates the specimens were collected;

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

E. The dates the specimens were received.

§ 1904. Genetic testing results

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

A. In the case of paternity:

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

(2) A combined paternity index of at least 100 to 1.

B. In the case of maternity:

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

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

2. Identification of genetic parent. Identification of a genetic parent through test results does not establish parentage absent adjudication under this chapter.

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

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

B. In the case of genetic father, other genetic testing that identifies another man as the possible genetic father of the child, or in the case of a genetic mother, other genetic testing that identifies another woman as the possible genetic mother of the child.

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

§ 1905. Costs of genetic testing

1. Costs advanced. Subject to assessment of costs under subchapter 1, if any, the cost of initial genetic testing must be advanced:

A. By a support enforcement agency in a proceeding in which the support enforcement agency is providing services;

B. By the individual who made the request;

C. As agreed by the parties; or

D. As ordered by the court.

2. Reimbursement. In cases in which the cost is advanced by the support enforcement agency, the agency may seek reimbursement from a person who is rebuttably identified as the genetic father or genetic mother.

§ 1906. Additional genetic testing

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

§ 1907. Genetic testing when specimens not available

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

A. The parents of the person;

B. Brothers and sisters of the person;

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

D. Other relatives of the person necessary to complete genetic testing.

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

§ 1908. Deceased person

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

§ 1909. Identical sibling

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

2. Non-genetic evidence. If each sibling satisfies the requirements as the identified genetic father or genetic mother of the child under section 1904 without consideration of another identical sibling being identified as the genetic father or genetic mother of the child, the court may rely on non-genetic evidence to adjudicate parentage under this chapter.

§ 1910. Confidentiality of genetic testing

1. Release of report. The report of genetic testing for parentage may not be released except as provided in this subchapter.

2. Intentional release of identifiable specimen. An individual or individuals who intentionally releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage

without a court order or the written permission of the individual who furnished the specimen commits a Class E crime.

§ 1911. Court order for testing

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

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

3. No presumed, acknowledged or adjudicated parent. A support enforcement agency may seek an order for genetic testing only if there is no presumed parent, acknowledged father, adjudicated parent, or an intended parent who consented to assisted reproduction pursuant to this chapter. Genetic testing may not be ordered if the person who is the subject of the request for order is a donor.

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

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

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

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

A. The conduct of the parties estops a party from denying parentage; or

B. It would be an inequitable interference to the relationship between the child and a parent or otherwise contrary to the best interest of the child.

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

A. The length of time between the proceeding to adjudicate parentage and the time that a parent was placed on notice that genetic parentage is at issue;

B. The length of time during which the parent has assumed a parental role for the child;

C. The facts surrounding discovery that genetic parentage is at issue;

D. The nature of the relationship between the child and the parent;

E. The age of the child;

F. Any adverse impact that may result to the child if parentage is successfully disproved;

G. The nature of the relationship between the child and any alleged parent;

H. The extent to which the passage of time reduces the chances of establishing the parentage of another person and a child-support obligation in favor of the child; and

I. Other factors that may affect the equities arising from the disruption of the relationship between the child and the parent or the chance of other adverse impact to the child.

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

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

§ 1913. Admissibility of results of genetic testing; expenses

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

A. Voluntarily or pursuant to an order of the court or a support enforcement agency; or

B. Before or after the commencement of the proceeding.

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

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

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

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

4. Copies of bills and records as evidence. Copies of bills and records of expenses paid for prenatal care, child birth, postnatal care and genetic testing are admissible as evidence without requiring third-party foundation testimony and are prima facie evidence of amounts incurred for those expenses or testing on behalf the of the child.

§ 1914. Consequences of declining genetic testing.

1. Adjudication contrary to position. If an individual whose paternity is being determined declines to submit to genetic testing ordered by the court, the court for that reason may adjudicate parentage contrary to the position of that individual.

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

§ 1915. Adjudication of parentage based on genetic testing.

1. Parentage based on genetic testing. When the court adjudicates parentage based on genetic testing consistent with this section, the following shall apply:

A. Test results conclusive. Unless the results of genetic testing are admitted to rebut other results of genetic testing:

(1) When genetic testing results pursuant to section 1904 exclude a person as the genetic parent of a child, the court shall find that person is not a genetic parent of the child and may not adjudicate said person as the child’s parent on the basis of genetic testing.

(2) When genetic testing results pursuant to section 1904 identified a person as the genetic parent of a child, the court must find that person to be the genetic parent and may adjudicate said person as the child’s parent, unless otherwise provided by this chapter.

B. Test results not conclusive. If the court finds that genetic testing under section 1904 neither identifies nor excludes a person as the genetic parent of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, and

other evidence, are admissible to adjudicate the issue of parentage.

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

3. Adjudication consistent with this chapter. Any adjudication of parentage based on genetic testing shall be subject to the requirements and limitations of this chapter.

Subchapter 7

PARENTAGE BY ASSISTED REPRODUCTION

§ 1961. Scope of subchapter

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

§ 1962. Parental status of donor

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

2. Exceptions. Notwithstanding subsection 1:

A. A person who provides a gamete or gametes, or an embryo or embryos, to be used for assisted reproduction for his or her spouse is a parent of the resulting child.

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

§ 1963. Parentage of child of assisted reproduction

A person who provides gametes for and consents to, or a person who consents to, assisted reproduction by a woman as

provided in section 1964 with the intent to be the parent of a child is a parent of the resulting child.

§ 1964. Consent to assisted reproduction

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

2. Lack of written consent; parentage. Failure of a person to sign a consent required by subsection 1, before or after birth of the child, does not preclude a finding of parentage (i) where consent can be proved by other means and where the consenting individual resided with the child after birth and undertook to develop a parental relationship with the child, or (ii) as otherwise provided in this chapter.

3. Consent form. Execution of a consent form adopted by the Bureau of Data, Research, and Vital Statistics shall be accepted and relied upon for purposes of issuing a birth record.

§ 1965. Challenge by spouse to consent.

The spouse of a person who gives birth to a child through assisted reproduction may challenge his or her own parentage of the child only if:

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

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

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

D. The spouse did not openly hold out the child as his or her own.

§ 1966. Effect of dissolution of marriage or withdrawal of consent

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

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

§ 1967. Parent status of deceased person.

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

§ 1968. Birth Orders

1. Action for birth order. Before or after the birth of the resulting child, a party consenting to assisted reproduction, a person who has a written agreement to be a parent pursuant to section 1962(2)(B), the intended parent or parents, or the person giving birth may commence a proceeding in district court to obtain an order:

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

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

C. Any other relief that the court deems necessary and proper.

2. State not a necessary party. Neither the State of Maine nor the Registrar of Vital Statistics is a necessary party to such a proceeding.

§ 1969. Laboratory error.

In the event of a laboratory error in which the resulting child is not genetically related to either of the intended parents, the intended parents shall be the parents of the child unless otherwise determined by the court.

Subchapter 8

GESTATIONAL CARRIER AGREEMENT

§ 1970. Eligibility to enter gestational carrier agreement

1. Eligibility of gestational carrier. Prior to executing an agreement to act as a gestational carrier, a woman must meet the following requirements:

A. She is at least twenty-one (21) years old;

B. She has previously given birth to at least one child;

C. She has completed a medical evaluation that includes a mental health consultation;

D. She has had independent legal representation of her own choosing, and paid for by the intended parent or parents, regarding the terms of the gestational carrier agreement, and has been advised of the potential legal consequences of the gestational carrier arrangement; and

E. She did not contribute gametes that will ultimately result in an embryo that she will attempt to carry to term, unless the gestational carrier is entering into an agreement with a family member.

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

A. Complete a medical evaluation and mental health consultation; and

B. Retain independent legal representation regarding the terms of the gestational agreement and have been advised of the potential legal consequences of the gestational carrier agreement.

§ 1971. Gestational carrier agreement authorized

1. Written agreement. A prospective gestational carrier who is eligible pursuant to section 1970, her spouse if she is married, and the intended parent or parents may enter into a written agreement that:

A. The prospective gestational carrier agrees to pregnancy by means of assisted reproduction;

B. The prospective gestational carrier and her spouse, if she is married, shall have no rights and duties as the parents of a child conceived through assisted reproduction; and

C. The intended parent or parents shall become the parents of any resulting child.

2. Intended parents. The intended parent or parents must be parties to the gestational carrier agreement.

3. Enforceable. A gestational carrier agreement is enforceable only if it meets the following requirements:

A. The agreement shall be in writing and signed by all parties;

B. The agreement shall require no more than a one-year term to achieve pregnancy;

C. At least one of the parties shall be a legal resident of Maine;

D. The agreement shall be executed before the commencement of any medical procedures (other than the medical evaluations required herein) and, in every instance, before transfer of embryos:

E. The gestational carrier and the intended parent or parents shall meet the eligibility requirements of section 1970.

F. If any party is married, his or her spouse also shall be required to execute the agreement.

G. The gestational carrier and the intended parent or parents shall be represented by independent legal counsel in all matters concerning the agreement, and each counsel shall affirmatively so state in a written declaration attached to the agreement. The declarations shall state that the agreement meets the requirements of this chapter and shall be solely relied upon by health care providers and staff at the time of birth and the Maine Bureau of Vital Records for birth registration and certification purposes.

H. The gestational carrier and each intended parent or parents shall sign a written acknowledgment that he or she received a copy of the agreement;

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

J. The agreement shall expressly provide the following:

(1) The gestational carrier shall:

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

(b) have no claim to parentage of all resulting children to the intended parent or parents immediately upon the birth of the child/ren regardless of whether a court

order has been issued at the time of birth; and

(c) acknowledge the exclusive parentage of the intended parent or parents of all resulting children.

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

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

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

(c) acknowledge the exclusive parentage of the intended parent or parents of all resulting children.

(3) The right of the gestational carrier to utilize the services of a health care provider of her choosing to provide her care during her pregnancy; and

(4) The intended parent or parents shall:

(a) be the exclusive parent or parents and to accept parental rights and responsibilities of all resulting children immediately upon birth regardless of the number, gender, or mental or physical condition of such child/ren; and

(b) assume responsibility for the financial support of all resulting children immediately upon the birth of the child/ren.

(5) All parties shall provide records related to the medical evaluations conducted pursuant to § 1970(2)(A).

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

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

§ 1972. Parentage; parental rights and responsibilities.

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

1. Parentage. The intended parent or parents shall be the parent or parents of the resulting child immediately upon the birth of the child by operation of law, and the resulting child shall be considered the child of the intended parent or parents immediately upon the birth of the child.

A. Neither the gestational carrier nor her spouse, if any, shall be the parent of the resulting child.

B. Any person who is deemed to be the parent of the resulting child is obligated to support the child. The breach of the gestational carrier agreement by the intended parent or parents does not relieve the intended parent or parents of the obligation to support the resulting child.

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

3. Laboratory error. If due to a laboratory error, the resulting child is not genetically related to either of the intended parent or parents or any donor who donated to the intended parent or parents, the intended parent or intended parents shall be considered the parent or parents of the child.

§ 1973. Birth orders

1. Action for birth order. Pursuant to a valid gestational carrier agreement as defined in this chapter, before or after the birth of the resulting child a party to the gestational carrier agreement may commence a proceeding in district court to obtain an order:

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

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

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

D. Any other relief that the court deems necessary and proper.

2. State not a necessary party. Neither the State of Maine nor the Registrar of Vital Statistics is a necessary party to such a proceeding.

§ 1975. Exclusive, continuing jurisdiction

Subject to the jurisdictional standards of chapter 58, subchapter 2, 19-A MRS § 1745, the court conducting a proceeding under this subchapter has exclusive, continuing jurisdiction of all matters arising out of the gestational carrier agreement until a child born to the gestational carrier during the period governed by the agreement attains the age of 180 days.

§ 1976. Termination of gestational carrier agreement

1. Termination of agreement; parties. Any party may withdraw consent to any medical procedure and may terminate the

gestational carrier agreement at any time prior to any embryo transfer or implantation by giving written notice of termination to all other parties.

2. Obligations upon termination; no liability to gestational carrier. Upon termination of the gestational carrier agreement, the parties shall be released from all obligations recited therein except that the intended parent or parents shall remain responsible for all expenses incurred by the gestational carrier that are reimbursable under the agreement incurred through and including the date of termination. The gestational carrier shall be entitled to keep all payments she has received and obtain all payments to which she is entitled. Neither a prospective gestational carrier nor her spouse, if any, shall be liable to the intended parent or parents for terminating a gestational carrier agreement.

§ 1977. Effect of subsequent marriage

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

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

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

§ 1978. Effect of noncompliance; standard of review; remedies.

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

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

3. Remedies. Except as expressly provided in the gestational carrier agreement and in subsection (4) of this

section, in the event of a breach by the gestational carrier or the intended parent(s), the gestational carrier or the intended parent(s) shall be entitled to all remedies available at law or in equity.

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

5. Specific performance. Specific performance is not an available remedy for a breach by the gestational carrier of any term in the gestational carrier agreement that requires the gestational carrier to be impregnated or to terminate a pregnancy. Specific performance is an available remedy for a breach by the gestational carrier of any term that prevents the intended parent or parents from exercising the full rights of parentage immediately upon birth of the child.]

Bill Summary

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

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

The bill confirms a number of grounds for parentage under current law and in several instances proposes amendments to clarify and/or update the law with respect to these grounds.

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

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

Finally, consistent with the Uniform Parentage Act and legislation in a number of other states, the bill recognizes the presumption of parentage in an unmarried partner of the mother who lives with the mother at the time of birth and holds out as the child’s parent for two years from birth.

A more detailed summary of the bill is provided in Appendix B to the Family Law Advisory Commission Report to Maine Legislature Joint Standing Committee on Judiciary, dated December 15, 2014.

Appendix B
Family Law Advisory Commission
12/15/2014 Report

Maine Parentage Act Summary

This bill offers an updated, comprehensive statutory framework for determining a child's legal parentage. In sum, it confirms existing grounds for parentage under Maine law; codifies and clarifies two additional, common law grounds—the presumptive parentage of a spouse and adjudication of de facto parentage; and, consistent with recent scientific and legal developments nationally, defines and recognizes parentage of a child born to intended parents through assisted reproduction or through use of a gestational carrier agreement.

The bill is patterned after, and follows in part, the Uniform Parentage Act (UPA), a uniform law initially developed in 1973 and most recently updated by the Uniform Law Commission in 2002. Even though the bill adopts portions of the UPA, it is sufficiently different from the UPA overall that it merits its own, distinct title, the "Maine Parentage Act." Its similarities to and differences from the UPA are briefly highlighted below.

The bill is organized into 8 subchapters. Subchapter 1 provides definitions of key terms. It authorizes actions to adjudicate legal parentage, and establishes the parameters for such actions. Subchapter 2 establishes the grounds upon which legal parentage of a mother or father of a child may be based. They are: birth, adoption, voluntary acknowledgment of paternity, presumed parentage, de facto parentage, genetic parentage, consent to assisted reproduction and consent through a valid gestational carrier agreement. The six subchapters that follow address individual grounds for parentage covered by the bill. A more detailed summary of each subchapter follows.

Subchapter 1: Title, Definitions and General Provisions

Section 1831 entitles the bill, the "Maine Parentage Act."

Section 1832 defines key terms, including "assisted reproduction" in 1832(4); "donor" in 1832(6); and "intended parent" in 1832(14), a term central to parentage involving assisted reproduction (subchapter 7) and gestational carrier agreements (subchapter 8). "Parent" is defined in section 1832(14) as an "individual who has established parentage that meets the requirements of this chapter", in other words, a child's legal parent. "Parentage" is the term used in this bill,

and defined in section 1832(15), to signify the legally recognized relationship between parent and child that is established under this act. Section 1832 also provides updated definitions of a number of technical terms relating to genetic testing and assisted reproduction.

Section 1833 establishes that this chapter exclusively governs determinations of a child's parentage under Maine law, and that Maine law governs when such actions are brought here.

Sections 1834 to 1839 govern actions to adjudicate parentage and provide procedural requirements applicable to such actions.

Actions to adjudicate parentage are expressly authorized in section 1834. It specifies that original actions to adjudicate parentage must be brought in District Court, which is intended as the principal forum for such adjudications, as is the case under current Maine law. *See* 19-A M.R.S. §1556. The Probate Court, however, is also authorized to adjudicate parentage in a pending proceeding in which the issue is raised. Consistent with current Maine law as well as federal requirements, there is no right to a jury trial in such an action. *See* 19-A M.R.S. §1556. Disclosure of social security numbers under subsection 1834(5) is required under existing law in 19-A M.R.S. §1563(4), consistent with both federal requirements in paternity/child support enforcement actions and current court requirements in family actions. Social security numbers are confidential and not open to public access.

Parties with standing to bring a parentage action are set out in section 1835. This provision confers standing upon those individuals and entities that have an appropriate need to maintain a parentage action, and is consistent with current law, which similarly permits paternity actions to be brought upon complaint of the mother, the alleged father, the child or the Department of Health and Human Services, which is chargeable by law with support of a child. *See* 19-A M.R.S. §1553.

Section 1836 requires all parents of a child to be parties in an action adjudicating parentage. While this requirement may be implicit under current court rules, the statute would reinforce the rights of a parent to be made a party to any action in which a child's parentage is in issue. Where an existing parent cannot be found, compliance with court rules providing alternative service of process for absent parties

would allow an adjudication to proceed even in the absence of a party who is required.

Sections 1837 and 1838, respectively, address jurisdiction and venue. Maine must have jurisdiction over an individual in order to determine his or her parentage. Subsection 1837(2) makes clear that the full jurisdictional reach available under the Uniform Interstate Family Support Act ("UIFSA"), a uniform act governing interstate enforcement of child support and codified at 19-A M.R.S. §2961, applies to parentage determinations. Section 1838 establishes the venue for bringing parentage actions.

Section 1839 delineates the actions that may be joined with a parentage proceeding. Joinder with related actions promotes judicial economy. Subsection 1839(2) is intended to restrict counterclaims in instances in which there is an interstate child support enforcement action under UIFSA. Permitting counterclaims against the "appearing" petitioner could serve as a major deterrent to bringing such petitions. This does not bar a separate parentage action provided there is independent basis for jurisdiction.

Sections 1840 to 1844 address additional procedural aspects of parentage actions. Section 1840 reinforces the court's authority to enter an interim order for child support or other parental rights and responsibilities, if, in its discretion, it would benefit or protect the interests of a child during the pendency of a proceeding. Sections 1842 and 1843, respectively, make clear that a court may issue a final parentage order in certain circumstances without a full hearing based on a party's admission, or by default where a party who has been served fails to appear and the court makes the requisite findings to support parentage under the statute. Section 1844 establishes the final, binding effects of a parentage adjudication. Section 1844(2) recognizes that parentage is routinely determined in divorce proceedings, and makes clear that a divorce judgment itself constitutes an adjudication of parentage so long as the judgment makes an express finding that a child is a "child of the marriage" or so states in "similar words that indicate the parties are the parents of the child."

Section 1845 recognizes valid parentage determinations from other jurisdictions, including voluntary acknowledgments/denials of paternity.

Subchapter 2: Establishment of Parentage

Section 1851 sets out the eight grounds upon which a child's parentage may be based. They are: birth; adoption; voluntary acknowledgement of paternity; presumption (based either on marital status or satisfaction of the "holding out" requirement); adjudication of de facto parentage; adjudication of genetic parentage; consent to assisted reproduction and consent through gestational carrier agreement.

The first two grounds—birth and adoption—are not further delineated in this bill. Birth is self-evident (except with respect to gestational carriers as addressed in subchapter 8). Adoption is governed by Title 18-A, which is cross-referenced.

The remaining grounds for parentage are individually addressed in the six subchapters of the bill that follow. Three of them—the so-called non-marital presumption in section 1881(3) of subchapter 4, consent to assisted reproduction in subchapter 7, and consent through gestational carrier agreement in subchapter 8—would be recognized as statutory grounds for parentage that are consistent with the overall direction of Maine family law.

Section 1852 articulates the fundamental principle that no child should be discriminated against based on marital status or gender of the parents.

Section 1853 establishes two additional, fundamental principles.

Section 1853(1) provides that parentage established under any one of the grounds in section 1851 applies for all purposes unless otherwise specifically provided by other Maine law. An adjudication of parentage, therefore, applies for all legal purposes, including not only caretaking rights and responsibilities but also obligations for financial support and inheritance rights.

Subsection 1853(2) recognizes expressly that there may be limited circumstances in which establishment of parentage under this bill may result in a child having more than two legal parents. This is consistent with current law, which already contemplates the potential for more than two legal parents in certain instances. *See, e.g., Pitts v. Moore,* 2014 ME 59. At

the same time, to protect the integrity of established families, and promote stability and consistency for children, this bill may also limit the opportunities for multi-parent families in instances where a belated action to adjudicate parentage is brought long after a child is born and has been part of an established family. See Subchapter 3, section 1868 and Subchapter 4, section 1882. This is consistent with the principles of the UPA and settled law in many other jurisdictions.

Section 1854 is intended to ensure that principles of gender neutrality are applied consistently and fairly in parentage determinations in conformity with the intent of the act as a whole. This does not mean that the word "maternity" be substituted automatically for the work "paternity" in each and every instance where the word appears in the statute, but only where it is necessary to effectuate the underlying principle of gender neutrality consistent with the bill's overall structure and intent. For example, it is clear in subchapter 3 that the voluntary acknowledgment process applies to determinations of paternity only. Section 1854 is not intended to alter this intent and create a parallel acknowledgment process for maternity determinations.

Subchapter 3: Voluntary Acknowledgment of Paternity

Currently, all states including Maine provide that a man's legal parentage may be established through execution of a valid voluntary acknowledgment of paternity, which attests to his claim of genetic paternity. Subchapter 3 does not materially alter existing Maine law, and remains in compliance with federal requirements. The subchapter is modeled after the UPA, and provides a much more detailed process for acknowledgment than is currently found in Title 19-A, which devotes only two general sections to this mechanism. *See* 19-A M.R.S. §§ 1614, 1616. The bill also clarifies that the acknowledgement process is intended to be available to unmarried men, as a spouse of the mother will be presumed to be a legal parent under subchapter 4 without the need for a separate acknowledgment process.

Section 1862 prescribes the requirements of a valid acknowledgment, including that the acknowledgment be in a signed or authenticated record (a defined term in the bill) and state that the man signing believes himself to be the genetic father, and that there is no other presumed parent. This section also sets out the circumstances in which an acknowledgement may or

may not be voidable. To be effective, the acknowledgment must be filed with the State Registrar of Vital Statistics.

Section 1865 establishes the fundamental principle that a valid acknowledgment is "equivalent to an adjudication of parentage." This is buttressed by section 1870's provision that neither judicial nor administrative ratification is required for an unchallenged acknowledgment.

Sections 1867 and 1869, respectively, provide a time limit as well as a process for rescinding an acknowledgment. Rescission must be made within 60 days under section 1867, unless a proceeding relating to the child has been commenced prior thereto. Proceedings to rescind or challenge an acknowledgment are parentage actions under this chapter.

Section 1868 specifies the timeframes for challenging a valid acknowledgment by either a signatory to the acknowledgment or by third-party non-signatories. After the 60-day rescission period prescribed by section 1867, a signatory to the acknowledgment may only challenge the acknowledgment on the basis of fraud, duress or material mistake of fact, and the challenge must be brought within two years from the date of the acknowledgment. For a non-signatory, the challenge also must be brought within two years from the effective date of the acknowledgment, unless the non-signatory "did not know and could not reasonably have known of his potential genetic parentage on account of material misrepresentation or concealment." If the challenger is adjudicated to be the genetic father, the court may not disestablish the acknowledged father and is authorized to allocate parental rights and responsibilities consistent with the best interest of the child under 19-A M.R.S. §1653.

Thus, unless the above exception involving material misrepresentation or concealment applies, there is effectively a two-year limitation period within which a third-party challenger, typically an individual claiming to be a child's genetic father, may bring an action to challenge an acknowledgment of paternity. Challenges brought within the two-year period are cognizable and may result in the displacement of the acknowledged father in favor of a challenger who is, in fact, the child's genetic father. However, in contrast to the UPA, and consistent with a child's welfare as well as the law of many states, to preserve an existing, significant relationship between a child and the acknowledged father whose status was contested the court may, depending on the circumstances

presented, adjudicate the genetic father's parentage and avoid "disestablishment" of the acknowledged father. A challenge brought after the two-year period is barred unless it comes within the foregoing exception.

Finally, sections 1863 and 1864 authorize a parallel process for "denial of parentage" in instances where a man presumed to be a child's father may formally deny parentage if another man simultaneously acknowledges genetic parentage. For example, if a married woman has a child with a man who is not her husband, the husband may execute and file a "denial of parentage" and the other man, as the genetic father, may execute and file a voluntary acknowledgment of paternity. Section 1863 makes clear that the circumstances in which this device is to be used is limited to instances in which another man is correspondingly executing an acknowledgment of paternity.

Subchapter 4: Presumed Parentage

Maine law recognizes a rebuttable presumption of paternity based on marital status, both at common law and through a rule of evidence. *See Stitham v. Henderson,* 2001 ME 52; *Maine Rule of Evidence* 302. Section 1881(1) codifies a presumption of parentage based on marital status and makes it gender neutral. Section 1881(1) follows its UPA counterpart, in part, and extends the presumption to a woman's spouse with respect to a child born to the woman during the marriage or within 300 days after the marriage is terminated by one of several specified events such as, for example, death or divorce. The presumption is not defeated by the fact that marriage turns out to be invalid, provided there was apparent compliance with the law. The presumption does not apply when the marriage occurs after the child's birth, although the subsequent spouse may have other bases upon which to establish parentage.

Section 1881(2) extends the marital presumption to valid equivalents in other jurisdictions.

Based on the UPA, section 1881(3) endorses a similar presumption as a basis for parentage in situations in which the mother of the child is not married to her partner but where their relationship is the functional equivalent of marriage. The bill endorses the extension of presumed legal parentage to the unmarried partner who resided in the same household with the child, openly held out the child as that person's own for a period of two years from the child's birth or adoption, and

assumed personal, financial or custodial responsibilities for the child. After two years, the presumption is unrebuttable. The presumed parent, by operation of law, has legal parentage. This concept was introduced by the original 1973 UPA. Many states, including New Hampshire, have adopted similar provisions while others have accomplished the same result through case law.

Section 1882 addresses the timeframe within which an action to challenge the status of a presumed parent must be brought, and operates as a statute of limitations with respect to such actions. Generally, a challenge to the status of a presumed parent must be brought within two years from the birth of the child. An action brought within that time period will not be barred, and a successful challenger may seek not only to establish his or her own parentage but also to "disestablish" a presumed parent. A person whose presumed parentage is rebutted in a timely fashion is not foreclosed from seeking to establish parentage on other grounds, such as, for example, de facto parentage under subchapter 5. Of course, the person seeking to establish parentage on that (or any other alternate ground) would have to meet the requirements of that independent ground.

A challenge brought after that two-year period is barred and the presumption becomes unrebuttable, unless one of the three exceptions set out in section 1882(2)applies.

Section 1882(2)(A) permits a spouse who "could not reasonably have known about the birth of a child" (and who is not a genetic parent of the child) to challenge the presumption of his or her parentage after two years from the child's birth, provided the action is filed within two years of discovery. This is a narrow exception, and likely one that will rarely be invoked.

Section 1882(2)(B) permits a third-party action to challenge a presumed parent brought after two years from the child's birth only if the person seeking to maintain the action did not know and could not reasonably have known of genetic parentage on account of material misrepresentation or concealment. Even when a challenger successfully clears the two-year bar, the court may invoke section 1912(1)(B) to deny genetic testing if "it would be an inequitable interference to the relationship between the child and the presumed parent or otherwise contrary to the best interest of the child." If a challenge is allowed and the challenger establishes genetic parentage, the court may not disestablish the presumed parent

and is authorized to allocate parental rights and responsibilities consistent with the best interest of the child under 19-A M.R.S. 1653.

Section 1882(2)(C) permits a mother or a non-marital presumed parent under section 1881(3) to raise the issue of the validity of the presumption in a proceeding brought at any time. Essentially, the issue in such a case is whether the requirements for establishing the presumption of parentage under section 1881(3) in the first instance have been satisfied. If not, then even a belated challenge by either the mother or the presumptive parent is allowed. At the same time, the bill does not endorse attempts by a presumed parent to abandon responsibilities for a child at whim after serving in a parental role. For example, section 1912 imports the "parent by estoppel" doctrine, which enables a court in certain circumstances to deny a request for genetic testing (or the admissibility of genetic test results) and thereby prevent a presumed parent who has been an integral part of a child's life for a period of time from abandoning responsibility. This is based on a similar provision in the UPA.

Circumstances may arise in which there are multiple or competing claims of presumed parentage. In those instances, section 1883 provides that the court should adjudicate parentage with respect to each individual based upon whether the presumption in his or her case is supported by the evidence. If the court adjudicates presumed parentage in more than two individuals, then, consistent with section 1853(2), the court may establish parentage in each. The court would then determine and allocate parental rights and responsibilities with respect to all parents consistent with the best interest of the child pursuant to 19-A M.R.S. §1653.

Subchapter 5: De Facto Parentage

It is now well established in Maine through court decisions that a person may acquire rights of legal parentage as a de facto parent. The Maine Law Court has fashioned the de facto parent doctrine in a line of cases from *Stitham v. Henderson,* 2001 ME 52 to *CEW v. DEW,* 2004 ME 43 and *Young v. Young,* 2004 ME 44 to, most recently, *Pitts v. Moore,* 2014 ME 59. This bill codifies the doctrine as a basis for parentage, and in so doing generally adopts the approach taken by the Maine Law Court, with a couple of important differences as discussed below.

Under the bill, de facto parentage can be established only through adjudication. A person claiming de facto parentage must first make a preliminary, prima facie showing of standing. This is consistent with the Law Court's approach and the underlying constitutional issues at stake. Under section 1891(2), the court would make a prompt standing determination on the pleadings and affidavits filed. In rare instances a hearing may be required, and subsection 2(C) authorizes a hearing provided it is conducted in an expedited manner.

Once standing is established, the person claiming to be a de facto parent must then establish by a higher evidentiary burden—"clear and convincing evidence"—that he or she has undertaken a "permanent, unequivocal, committed and responsible parental role in the child's life," which is the lynchpin of de facto parentage under the Law Court's jurisprudence. Section 1892(3)(A)-(E) sets out the elements of such a showing. These elements track the Law Court's formulation, with two notable exceptions.

First, the bill does not provide a detailed description of "caretaking functions." These may vary in significance from case to case, and the statute leaves it up to the court to make that judgment based on the facts of a case before it. For example, a person may satisfy all of the other requirements in subsections A, C, D and E, but not have engaged on a daily basis in the typical "caretaking functions" (bathing, dressing, feeding etc.) because his or her role in the family was to work out of the home to provide financial support. The intent of the bill is that "consistent caretaking of the child" in subsection B may well encompass that kind of contribution, provided all of the other elements are also satisfied.

Second, the bill does not require a person claiming de facto parentage status to demonstrate that the child's life would be "substantially and negatively affected" by denying the petition. This issue was a matter of significant debate even among the Justices on the Law Court. Rather, the bill requires the more familiar "best interests" analysis—-a showing that maintaining the relationship between the alleged de facto parent and the child is in the child's best interest. The "substantially and negatively affected" showing in *Pitts v. Moore* may present practical problems and complicate issues of proof at trial, including necessitating expert testimony on the question of "harm" and setting up the potential for a battle of experts. The "best interest" standard is a familiar yet equally

germane standard. The concurring opinion in *Pitts v. Moore* presents a solid case that the "harm" standard may not be constitutionally required.

Section 1891(4)(A) clarifies that the court may in its discretion when beneficial for the child issue interim orders regarding contact between a person claiming de facto parentage and the child in question; but only after the claimant has successfully established standing.

Consistent with current law, section 1891(4)(B) provides that an adjudication of de facto parentage establishes a full, legal parent-child relationship with the child for all purposes. However, the court must still determine the extent of parental rights and responsibilities that the de facto parent (as well as other parents of the child) will exercise. In other words, adjudication of de facto parentage establishes a person's status as a legal parent, but does not automatically determine the extent of the person's parental rights and responsibilities. The court makes that determination consistent with the best interest standard in 19-A M.R.S. §1653. Thus, adjudication of de facto parentage, in and of itself, does not dictate the extent of the de facto parent's parental rights. That is a separate determination.

Section 1891(5) complements the foregoing principle by further clarifying that existing parents of the child are not disestablished as a result of an adjudication of de facto parentage in another person. The allocation of parental rights among all parents would be made consistent with the child's best interest, and could conceivably entail a determination that a de facto parent's (or any other parent's) actual rights and responsibilities be limited.

Subchapter 6: Genetic Parentage

Subchapter 6 amends current law to bring it in line with recent improvements in science with regard to genetic testing. It also addresses court orders for genetic testing, use of genetic tests in adjudications, and the standards for adjudicating parentage based on genetic tests.

Sections 1902 to 1910 cover the requirements for genetic testing, interpreting test results, allocation of costs, and reporting of test results.

Section 1911 establishes the baseline requirement for a court-ordered genetic test, namely a sworn statement by the requesting party alleging relevant facts. It also establishes the following limitations on testing: under section 1911(2), DSER, the support enforcement division of DHHS, may not seek an order for genetic testing if there is a presumed, acknowledged adjudicated, or intended parent in addition to the mother or primary parent. In that instance, there is a second legal parent capable of providing financial support to the child. Under section 1902(3), *in utero* genetic testing is not permitted.

The court's discretion to grant or deny requests for genetic testing (or admit test results into evidence) is addressed in section 1912. A court is expressly authorized to deny a request for genetic testing or deny admission of such results at trial if the parties' conduct does not support it or if it would inequitably interfere with the parent-child relationship or would be contrary to the best interest of the child. In part, these limitations recognize the common law doctrine of "parent by estoppel", which serves to prevent individuals from inequitably severing an established relationship, financial or otherwise, with a child when not in that child's interest. However, the reach of section 1912 extends beyond that principle. For example, the second ground in subsection 1912(1)(B) is intended to be broad enough to apply in any action that could potentially adversely affect a child, including a third-party challenge to an established caregiver whose claim to parentage may be based on grounds other than genetic parentage.

Section 1913 addresses evidentiary issues and procedures in connection with genetic testing at trial. Subsection 1913(4) adopts a provision from the current 19-A M.R.S. §1553 that streamlines admission at trial of records of certain expenses.

Consistent with current law, Section 1914 provides express authority for the court to make a finding of parentage against an individual who refuses to submit to a genetic test. It also clarifies that genetic testing of the woman who gave birth to the child is not a condition precedent to testing a child and the individual whose paternity is in issue; even if she declines to be tested the court may still order testing of the child and others whose genetic parentage is in issue.

Section 1915 provides standards applicable to adjudications of parentage based on genetic testing when such issue is

properly before the court. This section is not intended to elevate genetic parentage over parentage based on any other ground in this chapter, which may likely involve an established significant, parental relationship already in existence. Hence, section 1915(1) qualifies that the court may adjudicate parentage based on genetic testing "consistent with this section" and section 1915(5) reinforces that "any adjudication based on genetic testing shall be subject to the requirements and limitations in this chapter." When the issue of parentage does properly hinge upon genetic test results, section 1915 provides the standard for the court in applying the results to the case before it.

Subchapter 7: Assisted Reproduction

The bill establishes legal parentage in a person who intends to be a parent of a child by means of assisted reproduction and who satisfies the requirement of subchapter 7. "Assisted reproduction" is defined in section 1832(4) to mean: "a method of causing pregnancy other than sexual intercourse," and includes but is not limited to: "(i) intrauterine or vaginal insemination; (ii) donation of gametes; (iii) donation of embryos; (iv) in vitro fertilization and transfer of embryos; and (v) intracytoplasmic sperm injection." This comprehensive, medically accurate definition comports with the most recent science.

The touchstone for this parentage ground is set forth in sections 1963 and 1964—intention through consent. A person who provides gametes for and consents to assisted reproduction with the intent to be a parent of the resulting child is a parent; and a person who consents to assisted reproduction (but does not provide gametes) with the intent to be a parent of the resulting child is a parent. Section 1964(1) requires that consent must be express and set forth in a signed record that is executed by all parties who intend to be parents. The absence of written consent, however, does not preclude a finding of parentage under section 1964(2) if consent can be established "by other means" and if the individual intending to be the child's parent "resided with the child and undertook to develop a relationship with the child.

A valid, written consent is sufficient to establish parentage without judicial approval, although the bill provides the option for a court order (called a "birth order") in section 1968. Provision is made in section 1968 for parties to file an

action to obtain a birth order declaring the intended parents to be the legal parents, vesting in them exclusive parental rights and directing that their names be listed on a birth certificate. A court order is optional, not required.

Section 1962(1) establishes that a "donor" of gametes or embryos for use in assisted reproduction is not a parent. This is consistent with a broad consensus reflected among states that have addressed this issue either statutorily or by case law that a donor is not a legal parent of the resulting child. Section 1962(2) does provide two, limited exceptions to this rule. The first exception extends to a person who donates gametes or embryos to a spouse for assisted reproduction, and the second to a donor who has a written agreement with all parties that manifests a clear intention to be a parent of the child resulting from assisted reproduction.

A number of complicating circumstances are addressed in sections 1965 through 1969:

- Challenge by spouse in section 1965: A person whose spouse gives birth to a child by means of assisted reproduction may only challenge his or her parentage of the child if all four of the requirements are met (i.e. did not contribute gametes/embryo; did not consent; did not cohabit with mother after child's birth and did not openly hold child out as own).

- Divorce in section 1966(1): Former spouse not a parent if divorce precedes transfer or implantation of gametes/embryos, unless there is written consent to the contrary.

- Withdrawal of consent in section 1966(2): Must be in a signed record executed prior to transfer/implantation of gametes/embryos.

- Death in section 1967: A person who validly consented to assisted reproduction but who dies before transfer/implantation of gametes/embryos is not a parent, unless the consent expressly states otherwise.

- Laboratory error in section 1969: If the child born is not the genetic child of the intended parent(s) due to a laboratory error, the intended parent or parents are

nonetheless deemed to be the parent(s) of the child. This is intended to protect the child and not to foreclose any civil remedies the parents may have against the lab.

Subchapter 8: Gestational Carrier Agreements

Finally, the bill recognizes as legal parents the parties who intend to be the parents of a child born to a woman who serves as a gestational carrier. The bill adopts an approach to determining parentage that relies primarily on private contracts, rather than litigation. This departs from the approach taken by UPA, which requires judicial approval of the arrangement before parentage is established, but follows the approach taken by a number of other states and the ABA Model Act Governing Assisted Reproduction. Although filing an action to obtain a birth order is permitted in the bill, see section 1973, it is not required to establish parentage.

As a preliminary matter, the bill defines "gestational carrier" in section 1832(11) as an "adult woman who is not an intended parent and who enters into a contract to bear a child [via assisted reproduction] using the gametes of other persons and not her own." The only exception to the latter requirement is that a gestational carrier may carry a child using her own gametes for a family member.

Section 1970 establishes qualifications and requirements for both gestational carriers and intended parents. For example, a gestational carrier must:

- Be at least 21 years of age
- Have previously given birth to a child
- Have completed a medical evaluation with a mental health consultation
- Have independent legal counsel
- Have not contributed gametes to the pregnancy, unless falling within the "family member exception"

An intended parent must:

- Have completed a medical evaluation with a mental health consultation;
- Have independent legal representation

Section 1971 requires that the parties execute a written agreement signed by all eligible parties (and spouses, if applicable). To be valid and enforceable, the agreement must comply with specific criteria including:

- Term of no more than one year
- One party must be a legal resident of Maine
- Execution prior to medical procedures transferring embryos
- Legal representation for gestational carrier and intended parents

An agreement that does not meet these requirements is unenforceable.

Section 1971(4) authorizes payment of reasonable expenses of the gestational carrier.

Section 1971(5) protects a gestational carrier's right to make decisions to safeguard her own health.

If a gestational carrier agreement satisfies the Act's requirements, the intended parents are deemed the legal parents as a matter of law under section 1972(1). As noted, a party to the agreement has the option of filing an action for a birth order under section 1973, before or after the child's birth, in order to declare legal parentage in the intended parents, vest exclusive parental rights and designate the contents of the birth certificate.

Other provisions address the effect of a gestational carrier's subsequent marriage (section 1977); termination of such agreements (section 1976); and the effect of and remedies for noncompliance (section 1978).