

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

—
S.P. 358 - L.D. 1017

An Act To Update Maine's Family Law

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

PART A

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

CHAPTER 61

MAINE PARENTAGE ACT

SUBCHAPTER 1

SHORT TITLE, SCOPE, DEFINITIONS AND GENERAL PROVISIONS

§1831. Short 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.

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

A. Intrauterine or vaginal insemination;

B. Donation of gametes;

C. Donation of embryos;

D. In vitro fertilization and transfer of embryos; and

E. Intracytoplasmic sperm injection.

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

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

6. 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.

7. 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. "Gamete" includes:

A. Sperm;

B. Eggs; and

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

8. 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.

9. 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:

A. Deoxyribonucleic acid;

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

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

10. 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, except that 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.

11. 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.

12. Intended parent. "Intended parent" means a 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 includes both spouses for all purposes of this chapter.

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

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

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

A. 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

B. 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.

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

17. Probability of paternity; probability of maternity. "Probability of paternity" and "probability of maternity" mean 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.

18. 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.

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

A. Execute or adopt a tangible symbol; or

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

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

§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:

- A. The place of birth of the child; or
- B. 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 provided in this chapter.

§1834. Parentage proceeding

1. Proceeding authorized. A proceeding 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 be commenced only 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 adjudication. The record of a person's social security number is confidential and is not open to the public. The court shall disclose a person's social security number to the department 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 is to be adjudicated. A person whose parentage is to be adjudicated;
- 4. Department of Health and Human Services. The department; 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 a child 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 is in 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 with respect to the child 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. 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 adjudicated parent of the child;
- B. Petitioning to have parentage adjudicated;
- C. Identified as the genetic parent through genetic testing under subchapter 6;
- 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. In a proceeding under this subchapter, 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.

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

§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 an 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, as long as:

- 1. Served with notice.** The person was served with notice of the proceeding; and
- 2. Found to be parent.** 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 under subsection 1 must 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 final order under subsection 1 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 and 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 in a manner 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 the determination is 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, Article 9;
3. **Acknowledgment.** An effective voluntary acknowledgment of paternity under subchapter 3;
4. **Presumption.** An un rebutted 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; and
8. **Gestational carrier agreement.** Consent to a gestational carrier agreement under subchapter 8 by the intended parent or parents.

§1852. Nondiscrimination

Every child has the same rights under law as any other child without regard to the marital status or gender of the parents or the circumstances of the child's 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 2 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 subchapter limits 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 under section 1861 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, state that parent's full name; 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 under section 1861, 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 under section 1861 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, subsection 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 set forth in this section. 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 under this subchapter must 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 under section 1861 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 section 1867 and section 1868, subsection 1, a valid denial of parentage under section 1863 filed with the State Registrar of Vital Statistics in conjunction with a valid acknowledgment of paternity under section 1861 is equivalent to an adjudication of the nonparentage 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 a fee for filing an acknowledgment of paternity or denial of parentage under section 1864.

§1867. Proceeding for rescission

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

3. **Burden of proof.** A party challenging an acknowledgment of paternity or denial of parentage pursuant to this section 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 under this subchapter must be made a party to a proceeding under section 1867 or 1868 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 pursuant to section 1864.

3. **Suspension of legal responsibilities.** Except for good cause shown, during the pendency of a proceeding under section 1867 or 1868 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 under section 1867 or 1868 to rescind or challenge an acknowledgment of paternity or denial of parentage must be conducted as a proceeding to adjudicate parentage under subchapter 1.

5. Amendment to birth record. At the conclusion of a proceeding under section 1867 or 1868 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 permitted

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

§1871. Forms for acknowledgment and denial of paternity

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

§1872. Release of information

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

§1873. 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; or

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 subsection 1 applies 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. Nonmarital presumption established. A person is presumed to be a parent of a child 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 2 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 in subsection 2, a proceeding to challenge the parentage of an individual whose parentage is presumed under section 1881 must be commenced not later than 2 years after the birth of the child; otherwise the presumption cannot be rebutted.

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

A. A presumed parent under section 1881, subsection 1 who is not the genetic parent of a child and who could not reasonably have known about the birth of the child may commence a proceeding under this subsection within 2 years after 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 a proceeding under this subsection within 2 years after discovering the potential genetic parentage. If the individual is adjudicated to be the genetic parent of the child, the court may not disestablish a presumed parent and, consistent with section 1853, subsection 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, subsection 3 disputing the validity of the presumption may commence a proceeding under this subsection at any time.

§1883. Multiple presumptions

If 2 or more conflicting presumptions arise under this subchapter, 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 under this subchapter must establish standing to maintain the action in accordance with the following.

A. A person seeking to be adjudicated a de facto parent of a child shall 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. The pleadings and affidavit must be served upon all parents and legal guardians of the child and any other party to the proceeding.

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

C. The court shall determine on the basis of the pleadings and affidavits under paragraphs A and B whether the person seeking to be adjudicated a de facto parent has presented prima facie evidence of the requirements set forth in subsection 3. 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, the party claiming de facto parentage has standing to proceed to adjudication under subsection 3.

3. Adjudication of de facto parent status. The court shall adjudicate a 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, the relationship was fostered or supported by another parent of the child and the person and the other parent have understood, acknowledged or accepted that 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. The court may enter the following orders as appropriate.

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

B. Adjudication of a person under this subchapter 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. An order requiring the payment of support to or from a de facto parent does 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 under this subchapter 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 testing 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 the department.

§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. A national association of blood banks approved by the department; 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, a 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 an accrediting body under subsection 1; 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 population groups is appropriate. The testing laboratory shall calculate the frequencies using statistics, if available, for any other database requested.

4. Additional genetic testing. If, after recalculation under subsection 3 using a different database for genetic population 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 of the person 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 paternity index obtained in the testing; and

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

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 maternity index obtained in the testing; and

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

2. Identification of genetic parent. Identification of a genetic parent through genetic testing 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 a genetic father, identifies another man as the possible genetic father of the child or, in the case of a genetic mother, 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. Payment for the costs advanced. The payment for the costs, if any, of initial genetic testing must be advanced:

A. By the department in a proceeding in which the department 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 payment for the costs of initial genetic testing is advanced pursuant to subsection 1, paragraph A, the department may seek reimbursement from a person who is rebuttably identified through the genetic testing 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 initial testing. If the initial 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. 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. **Nongenetic evidence.** If a person and a sibling of the person tested pursuant to subsection 1 satisfy 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 nongenetic evidence to adjudicate parentage under this chapter.

§1910. Confidentiality of genetic testing

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

2. **Intentional release of identifiable specimen.** An individual who intentionally releases an identifiable specimen of another individual for any purpose other than that relevant to a 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 a 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 a 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 may 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. The department may seek an order for genetic testing only if there is no presumed parent, acknowledged father, adjudicated parent or 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 the test 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 or a request for admission of such test 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 effect on the child that may result 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. Factors in addition to those in paragraphs A to H that may affect the equities arising from the disruption of the relationship between the child and the parent or the chance of other adverse effect 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

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's 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, childbirth, postnatal care and genetic testing are admissible as evidence without requiring 3rd-party foundation testimony and are prima facie evidence of amounts incurred for those expenses or testing on behalf of the child.

§1914. Consequences of declining genetic testing

1. **Adjudication contrary to position.** If an individual whose paternity is being determined under this chapter 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 under this chapter. 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. If the court adjudicates parentage based on genetic testing, the following apply.

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

(1) If 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 the person as the child's parent on the basis of genetic testing; and

(2) If genetic testing results pursuant to section 1904 identify a person as the genetic parent of a child, the court shall find that person to be the genetic parent and may adjudicate the person as the child's parent, unless otherwise provided by this chapter.

B. 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. An adjudication of parentage based on genetic testing is subject to the requirements and limitations of this chapter.

SUBCHAPTER 7

PARENTAGE BY ASSISTED REPRODUCTION

§1921. Scope of subchapter

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

§1922. 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 the person's spouse is a parent of the resulting child; and

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 the person will be a parent.

§1923. 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 1924 with the intent to be the parent of a resulting child is a parent of the resulting child.

§1924. Consent to assisted reproduction

1. Written consent. Consent by a person who intends to be a parent of a child born through assisted reproduction must be set forth in a signed record that 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:

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

B. As provided in this chapter.

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

§1925. Challenge by spouse to consent

1. Challenge by spouse to consent. The spouse of a person who gives birth to a child through assisted reproduction may challenge the spouse's 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;

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 the spouse's own.

§1926. 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 under section 1924 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 subsection is not a parent of the resulting child.

§1927. Parent status of deceased person

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

§1928. Birth orders

1. Proceeding 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 1922, subsection 2, paragraph 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 or 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. For any relief that the court determines necessary and proper.

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

§1929. Laboratory error

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

SUBCHAPTER 8

GESTATIONAL CARRIER AGREEMENT

§1931. Eligibility to enter gestational carrier agreement

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

- A. Be at least 21 years of age;
- B. Have previously given birth to at least one child;
- C. Have completed a medical evaluation that includes a mental health consultation;
- D. Have 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 have been advised of the potential legal consequences of the gestational carrier agreement; and
- E. Not have contributed 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 carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement.

§1932. Gestational carrier agreement authorized

1. Written agreement. A prospective gestational carrier who is eligible pursuant to section 1931, 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, have no rights and duties as the parents of a child conceived through assisted reproduction; and
- C. The intended parent or parents will be the parents of any resulting child.

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

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

- A. The agreement must be in writing and signed by all parties.
- B. The agreement must require no more than a one-year term to achieve pregnancy.
- C. At least one of the parties must be a legal resident of the State.
- D. The agreement must be executed before the commencement of any medical procedures other than the medical evaluations required by section 1931 and, in every instance, before transfer of embryos.

E. The gestational carrier and the intended parent or parents must meet the eligibility requirements of section 1931.

F. If any party is married, the party's spouse also must be required to execute the agreement.

G. The gestational carrier and the intended parent or parents must 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 must state that the agreement meets the requirements of this chapter and must be solely relied upon by health care providers and staff at the time of birth and by the Office of Data, Research and Vital Statistics for birth registration and certification purposes.

H. The gestational carrier and each intended parent must sign a written acknowledgment of having received a copy of the agreement.

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

J. The agreement must expressly provide that:

(1) The gestational carrier:

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

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

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

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

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

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

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

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

(4) The intended parent or parents must:

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

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

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

§1933. Parentage; parental rights and responsibilities

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

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

B. A person who is determined to be a 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; and

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

§1934. Birth orders

1. Action for birth order. Pursuant to a valid gestational carrier agreement under this subchapter, 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 Title 22, section 2761 and directing the 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. For any relief that the court determines necessary and proper.

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

§1935. Exclusive, continuing jurisdiction

Subject to the jurisdictional standards of section 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.

§1936. Termination of gestational carrier agreement

1. Termination of agreement; parties. A party to a gestational carrier agreement 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 under subsection 1, the parties are released from all obligations recited in the agreement except that the intended parent or parents remain responsible for all expenses that are reimbursable under the agreement incurred by the gestational carrier through the date of termination. The gestational carrier is 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, is liable to the intended parent or parents for terminating a gestational carrier agreement.

§1937. 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.

§1938. 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 a 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 a gestational carrier agreement and in subsection 4, in the event of a breach of the gestational carrier agreement by the gestational carrier or the intended parent or parents, the gestational carrier or the intended parent or parents are 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 to 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 a 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.

PART B

Sec. B-1. 19-A MRSA §1551, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. B-2. 19-A MRSA §1552, as amended by PL 2005, c. 323, §10, is further amended to read:

§1552. Obligations of father

The father of a child ~~who is or may be born out of wedlock~~ is liable to the same extent as the father of a child born in wedlock, ~~whether or not the child is born alive,~~ for the reasonable expense of the mother's pregnancy and confinement and for the education, support and funeral expenses of the child.

Sec. B-3. 19-A MRSA §1553, first ¶, as amended by PL 1997, c. 537, §16 and affected by §62, is further amended to read:

~~Paternity may be determined upon the complaint of the mother, the alleged father, the child or the public authority chargeable by law with the support of the child.~~ If paternity has been determined or has been acknowledged according to the laws of this State, the liabilities of the father may be enforced in the same or other proceedings by the mother, the child or the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support or funeral expenses, and by other persons, including private agencies, to the extent that they have furnished the reasonable expenses of pregnancy, confinement, education, support or funeral expenses. Bills and records of expenses paid for pregnancy, ~~child birth~~ childbirth and genetic testing are admissible as evidence without requiring 3rd-party foundation testimony and are prima facie evidence

of amounts incurred for those services or for testing on behalf of the child. Chapter 63 applies to an award of past support, which is calculated by applying the current child support guidelines to the period for which past support is owed.

Sec. B-4. 19-A MRSA §1556, as repealed and replaced by PL 2001, c. 471, Pt. A, §23, is amended to read:

§1556. Remedies

~~The District Court has jurisdiction over an action to determine parentage. There is no right to demand a jury trial in an action to determine parentage.~~ The District Court has jurisdiction for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, support or funeral expenses for legitimate children and all remedies for the enforcement of these judgments apply. The court has continuing jurisdiction to modify or revoke a judgment for future education and support. All remedies under the Uniform Interstate Family Support Act are available for enforcement of duties of support under this subchapter.

Sec. B-5. 19-A MRSA §1558, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. B-6. 19-A MRSA §1559, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§1559. Selection of experts

The tests required by the court order under ~~section 1558~~ chapter 61, subchapter 6 must be made by experts qualified as examiners of blood or tissue types who are appointed by the court. The experts may be called by the court as witnesses to testify to their findings and may be subject to cross-examination by the parties. A party or person at whose suggestion the tests have been ordered may demand that other experts, qualified as examiners of blood or tissue types, perform independent tests under order of court, the results of which may be offered in evidence. The court shall determine the number and qualifications of those experts.

Sec. B-7. 19-A MRSA §1560, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. B-8. 19-A MRSA §1561, as amended by PL 1997, c. 537, §18 and affected by §62, is further amended to read:

§1561. Effect of test results

1. Effect of results. The results of the tests required pursuant to ~~section 1558~~ chapter 61, subchapter 6 are evidence to be used in determining paternity as follows.

~~A. If the court finds that the conclusion of all the experts, as disclosed by the evidence based upon the tests, is that the alleged father is not the parent of the child, the question of paternity must be resolved accordingly.~~

B. If the experts disagree in their findings or conclusions, the question must be submitted upon all the evidence.

~~C. If the experts conclude that the blood or tissue tests show that the alleged father is not excluded and that the probability of the alleged father's paternity is less than 97%, this evidence must be admitted by the court and weighed with other competent evidence of paternity.~~

~~D. If the experts conclude that the blood or tissue tests show that the alleged father is not excluded and that the probability of the alleged father's paternity is 97% or higher, the alleged father is presumed to be the father, and this evidence must be admitted.~~

~~The court shall admit as evidence the results of any genetic test that is of a type generally acknowledged as reliable by accreditation bodies designated by the federal Secretary of the Department of Health and Human Services and performed by a laboratory approved by such an accredited body.~~

~~2. **Chain of custody; evidence.** Notarized documentation of the chain of custody of the blood and tissue samples is competent evidence to establish the chain of custody.~~

3. Notarized reports; challenges. A notarized report of the blood and tissue tests, prepared by the appointed experts, must be admitted at trial, unless a written challenge to the testing procedure or the results of the blood and tissue tests has been filed with the court and delivered to opposing counsel at least 30 days before a hearing set to determine the issue of paternity. Failure to make that timely challenge constitutes a waiver of the right to have the experts appear in person and is not grounds for a continuance of the hearing to determine paternity.

Sec. B-9. 19-A MRSA §1562, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. B-10. 19-A MRSA §1563, sub-§2, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. B-11. 19-A MRSA §1564, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. B-12. 19-A MRSA §1565, as amended by PL 2007, c. 164, §1, is further amended to read:

§1565. Judgment

1. Support. Judgments under this subchapter may be for periodic payments that may vary in amount. The court may order payments to be made to the person to whom the support is owed or to the person, corporation or agency designated to administer payments under the supervision of the court.

~~**2. 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. It is within the court's discretion to award or allocate parental rights and responsibilities under this subchapter and the department is not a party to this issue. In resolving parental rights and responsibilities issues, the court may not delay entering a determination of paternity and an initial order concerning child support. After a final paternity order has been entered, the department may file a motion to withdraw. Whether or not the department has withdrawn, a party or a parent may file a motion to modify pursuant to section 1653 or section 2009. A copy of the motion must be served in accordance with the Maine Rules of Civil Procedure on the other parent and the department, if the department has not withdrawn. A showing of substantial change in circumstances is not required if the moving party has not previously appeared in the action.~~

~~**3. Temporary support order.** Upon motion by a party to a contested paternity action, the court shall issue a temporary child support order if the alleged father is presumed to be the father as a result of genetic testing, as provided by Title 19-A, section 1561, subsection 1, paragraph D. The order must be determined according to the child support guidelines as provided under chapter 63.~~

~~**4. Disclosure and recording of social security numbers.** A person who is a party to a paternity action shall disclose that person's social security number to the court. The social security number of a person who is subject to a judgment of paternity must be placed in the court records relating to the judgment of paternity. The record of a person's social security number is confidential and is not open to the public. The court shall disclose a person's social security number to the department for child support enforcement purposes.~~

Sec. B-13. 19-A MRSA §1568, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. B-14. 19-A MRSA §1570, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§1570. Dismissals

~~**1. Procedure.** The rules of civil procedure apply to this subchapter in all cases of birth out of wedlock when the birth occurs after October 7, 1967.~~

2. Dismissal without prejudice. Dismissals of paternity actions must be without prejudice in all cases except:

- A. When an adjudication on the merits has occurred; or
- B. When the department is a party to the action and the department consents to the dismissal with prejudice.

Sec. B-15. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 19-A, chapter 53, subchapter 1, in the subchapter headnote, the words "uniform act on paternity" are amended to read "paternity" and the

Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

PART C

Sec. C-1. 4 MRSA §183, sub-§1, ¶D, as amended by PL 2005, c. 384, §1, is further amended to read:

D. Family law magistrates shall employ appropriate case management techniques and have jurisdiction to hear and dispose of the following matters:

(1) Interim orders in actions involving the establishment, modification or enforcement of child support;

(2) Interim orders in actions involving divorce, legal separation, ~~paternity~~ parentage or parental rights, including interim orders in postjudgment proceedings arising out of these actions, except that a contested motion concerning interim parental rights and responsibilities, excluding interim child support orders, may be determined by the family law magistrate only if both parties consent to determination of the issue or issues in dispute by the family law magistrate;

(2-A) Parental rights and responsibilities and parent-child contact orders entered pursuant to Title 19-A, section 4006, subsection 5 and section 4007, subsection 1, paragraph G to make such orders consistent with subsequently entered orders in matters included in subparagraphs (1), (2) and (3);

(3) Final orders in any of the matters included in subparagraphs (1) and (2) when the proceeding is uncontested;

(4) Final orders in a contested proceeding when child support is the only contested issue;

(4-A) Applications for writs of habeas corpus to facilitate the attendance of proceedings by and return of a party who is incarcerated;

(4-B) Requests for access to confidential Department of Health and Human Services child protective records in accordance with Title 22, section 4008. The family law magistrate may review records in camera to determine whether to grant access; and

(5) Other actions assigned by the Chief Judge of the District Court.

Sec. C-2. 14 MRSA §704-A, sub-§2, ¶E, as amended by PL 1995, c. 694, Pt. D, §14 and affected by Pt. E, §2, is further amended to read:

E. Conception resulting in ~~paternity~~ parentage within the meaning of Title 19-A, chapter ~~53~~, ~~subchapter I~~ 61;

Sec. C-3. 18-A MRSA §2-109, sub-§(2), as amended by PL 1987, c. 736, §37, is further amended to read:

~~(2). In cases not covered by paragraph subsection (1), a person born out of wedlock is a child of the mother; that person is also a child of the father if: legal parentage of a child is determined under Title 19-A, chapter 61.~~

~~(i). The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or~~

~~(ii). The father adopts the child into his family; or~~

~~(iii). The father acknowledges in writing before a notary public that he is the father of the child, or the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, but the paternity established under this subparagraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.~~

Sec. C-4. 18-A MRSA §5-101, sub-§(1-D) is enacted to read:

(1-D). "Parent" means a person who has established a parent-child relationship with the child under Title 19-A, chapter 61.

Sec. C-5. 18-A MRSA §9-102, sub-§(h), as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

(h). "Parent" means ~~the legal parent or the legal guardian when no legal parent exists:~~ a person who:

(1). Has established a parent-child relationship with the child under Title 19-A, chapter 61; or

(2). When no person described in paragraph (1) exists, is the legal guardian of the child.

Sec. C-6. 19-A MRSA §251, sub-§2, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

2. Required mediation. Except as provided in paragraph B, prior to a contested hearing under chapter 27, chapter 29, chapter 55, chapter 61 or chapter 63 when there are minor children of the parties, the court shall refer the parties to mediation.

A. For good cause shown, the court, prior to referring the parties to mediation, may hear motions for temporary relief, pending final judgment on an issue or combination of issues for which good cause for temporary relief has been shown.

B. Upon motion supported by affidavit, the court may, for extraordinary cause shown, waive the mediation requirement under this subsection.

Sec. C-7. 19-A MRSA §606, first ¶, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

Except as otherwise provided in this section, an effective premarital agreement is void 18 months after the parties to the agreement become ~~biological or adoptive~~ parents or guardians of a minor. The premarital agreement is not void if, within the 18-month

period, the parties sign a written amendment to the agreement either stating that the agreement remains in effect or altering the agreement. Sections 607 and 608 apply to any amendment under this section.

Sec. C-8. 19-A MRSA §1503, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. C-9. 19-A MRSA §1601, sub-§1, ¶B, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

B. A man who is presumed to be a child's father under ~~the Maine Rules of Evidence, Rule 302~~ chapter 61.

Sec. C-10. 19-A MRSA §1605, sub-§2, ¶G, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

G. An allegation that the alleged father engaged in sexual intercourse with the child's mother during a possible time of conception of the child or is a man who is presumed to be the child's father under state law, and that the alleged father is or may be the ~~biological~~ genetic father of the child;

Sec. C-11. 19-A MRSA §1605, sub-§2, ¶J, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

J. A statement that if the alleged father files a written denial of paternity:

(1) The department will provide an expert examiner of blood or tissue types to conduct blood or tissue-typing tests on the mother, child and alleged father and the tests will be conducted as follows.

(a) The alleged father is required to submit to tests, which may include, but are not limited to, tests of red cell antigens, red cell isoenzymes, human leukocyte antigens and serum proteins.

(b) The department will pay the initial cost of the tests.

(c) An indigent alleged father is not liable for reimbursement of the cost of the tests;

(2) If the alleged father refuses to submit to tests under subparagraph (1), the proceeding will be filed in a court as a paternity proceeding;

(3) If the alleged father is not excluded by the test results and he does not, within 15 days of the ordinary mailing to him of a report and copy of the blood or tissue-typing results, execute and deliver to the department an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, the proceeding will be filed in a court as a paternity proceeding; and

(4) If the alleged father is excluded by the test results as the ~~biological~~ genetic father of the child, the proceeding will be filed in a court ~~as a paternity proceeding~~ for disposition under ~~section 1561, subsection 1, paragraph A~~ chapter 61;

Sec. C-12. 19-A MRSA §1606, sub-§1, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

1. Establish as genetic father. Establish the alleged father as the ~~biological~~ genetic father of the child;

Sec. C-13. 19-A MRSA §1606, sub-§8, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

8. Other relief. Grant such other relief as the court determines just and proper, including an initial allocation of parental rights and responsibilities as allowed by section ~~4565~~ 1840.

Sec. C-14. 19-A MRSA §1611, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§1611. Refusal of alleged father to submit to blood or tissue-typing tests

1. Filing of record in court. If the alleged father denies paternity and subsequently fails to submit to blood or tissue-typing testing, the record may be filed in court as a paternity action and the department may seek an adjudication of paternity pursuant to section ~~4558~~ 1914. The alleged father's refusal to submit to a blood or tissue-typing test constitutes a refusal to submit under section ~~4558~~ 1914. The filing of the record, along with proof of service pursuant to section 1604, constitutes compliance with the Maine Rules of Civil Procedure, Rule 3(1).

2. Notice of filing. The department shall send to the alleged father by ordinary mail notice of the filing of the paternity proceeding and a request under section ~~4558~~ 1911. Within 20 days of the mailing of this notice, the alleged father may assert any defense, in law or fact.

3. Request for default judgment or order. The department shall forward to the alleged father by ordinary mail a copy of any request for a default judgment or an order pursuant to section ~~4558~~ 1911 or 1914. If the alleged father does not notify the court in writing within 20 days of the date the department's request was mailed that he opposes the relief requested by the department, the court may grant the relief requested without a hearing. Any notice mailed must contain the substance of this section.

Sec. C-15. 19-A MRSA §1612, sub-§§2 and 3, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

2. Exclusion of alleged father. If the alleged father is excluded by the test results as the ~~biological~~ genetic father of the child, the department may file the record of the proceeding in a court as a ~~paternity proceeding~~ for disposition under section ~~4561, subsection 1, paragraph A~~ 1915.

3. Nonexclusion of alleged father. If the alleged father is not excluded by the test results and he does not, within 15 days of the mailing to him of a copy of the blood or tissue-typing test results and report, execute and deliver to the department by ordinary mail an acknowledgment of paternity of the child in accordance with the laws of the state

in which the child was born, the department may file the record of the proceeding, including the blood or tissue-typing test results, in a court as a paternity proceeding. ~~Section 1561 applies~~ Sections 1903, 1904 and 1913 apply to the action even though the tests were performed and the results prepared as part of an administrative proceeding. The alleged father's participation in the tests may not prejudice any application by the alleged father under section ~~1559~~ 1906 for an order appointing an additional examiner of blood or tissue types.

Sec. C-16. 19-A MRSA §1616, as reallocated by RR 1997, c. 1, §15, is repealed.

Sec. C-17. 19-A MRSA §1651, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§1651. Parents joint natural guardians of children

The ~~father and mother~~ parents are the joint natural guardians of their minor children and are jointly entitled to the care, custody, control, services and earnings of their children. Neither parent has any rights paramount to the rights of the other with reference to any matter affecting their children.

Sec. C-18. 19-A MRSA §1654, first ¶, as amended by PL 1999, c. 731, Pt. ZZZ, §34 and affected by §42, is further amended to read:

If the ~~father and mother~~ parents of a minor child are living apart, the Probate Court or District Court in the county or division where either resides, upon complaint of either and after notice to the other as the court may order, may make an order awarding parental rights and responsibilities with respect to the child in accordance with this chapter.

Sec. C-19. 19-A MRSA §1802, sub-§1, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

1. Grandparent. "Grandparent" is a ~~biological or adoptive~~ biological or adoptive parent of a child's ~~biological or adoptive~~ biological or adoptive parent. "Grandparent" includes a ~~biological or adoptive~~ biological or adoptive parent of a child's ~~biological or adoptive~~ biological or adoptive parent whose parental rights have been terminated pursuant to Title 18-A, section 9-204 or Title 22, chapter 1071, subchapter ~~VI~~ 6, but only until the child's adoption.

Sec. C-20. 19-A MRSA §2101, sub-§§3 and 12, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

3. Custodial parent. "Custodial parent" means a ~~natural or adoptive~~ natural or adoptive parent, caretaker relative or legal custodian of a dependent child who is the child's primary residential care provider.

12. Responsible parent. "Responsible parent" means the ~~natural or adoptive~~ natural or adoptive parent of a dependent child.

Sec. C-21. 19-A MRSA §2202, sub-§1, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

1. Purpose. The Legislature finds and declares that child support is a basic legal right of the State's parents and children, that ~~mothers and fathers~~ parents have a legal obligation to provide financial support for their children and that child support payments can have a substantial impact on child poverty and state welfare expenditures. It is therefore the Legislature's intent to encourage payment of child support to decrease overall costs to the State's taxpayers while increasing the amount of financial support collected for the State's children. The department is authorized to initiate action under this section against individuals who are not in compliance with an order of support.

Sec. C-22. 19-A MRSA §2253, sub-§2, ¶B, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

B. Conception resulting in ~~paternity~~ parentage within the meaning of chapter ~~53-~~
~~subchapter 1~~ 61.

Sec. C-23. 19-A MRSA §3051, sub-§2, ¶F, as enacted by PL 2003, c. 436, §28, is amended to read:

F. An acknowledged father of the child as provided in Title 19-A, ~~section 1616~~
~~chapter 61, subchapter 3~~;

Sec. C-24. 19-A MRSA §4002, sub-§4, as amended by PL 2013, c. 478, §7, is further amended to read:

4. Family or household members. "Family or household members" means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living together as spouses, ~~natural~~ parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member when the defendant is an adult household member and, for the purposes of Title 15, section 1023, subsection 4, paragraph B-1 and Title 15, section 1094-B, this chapter and Title 17-A, sections 15, 207-A, 209-A, 210-B, 210-C, 211-A, 1201, 1202 and 1253 only, includes individuals presently or formerly living together and individuals who are or were sexual partners. Holding oneself out to be a spouse is not necessary to constitute "living as spouses." For purposes of this subsection, "domestic partners" means 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

Sec. C-25. 22 MRSA §2761, sub-§3-A, as enacted by PL 1995, c. 260, §6, is amended to read:

3-A. Parentage. For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child, unless otherwise determined by a court of competent jurisdiction prior to the filing of the birth certificate or unless an attested copy of a gestational carrier agreement as defined in Title 19-A, section 1832, subsection 11 is presented that provides otherwise. If the mother was married at the time of either conception or birth, or between conception and birth, the name of the ~~husband~~ spouse must be entered on the certificate as the ~~father~~ parent of the child, unless ~~paternity~~ parentage has been determined otherwise by a court of competent jurisdiction or unless an attested copy of a gestational carrier agreement is presented that provides otherwise.

Sec. C-26. 22 MRSA §4002, sub-§7, as enacted by PL 1979, c. 733, §18, is amended to read:

7. Parent. "Parent" means a natural or adoptive parent or a parent established under Title 19-A, chapter 61, unless parental rights have been terminated.

Sec. C-27. 22 MRSA §4005-F, first ¶, as enacted by PL 2007, c. 257, §1, is amended to read:

As part of a child protection proceeding, the District Court may determine parentage of the child. Title 19-A, ~~sections 1558 to 1564 apply~~ chapter 61 applies to determinations of parentage in a child protection proceeding.

Sec. C-28. 22 MRSA §4031, sub-§3, as corrected by RR 1999, c. 1, §29, is amended to read:

3. Scope of authority. The court shall consider and act on child protection petitions regardless of other decrees regarding a child's care and custody. The requirements and provisions of Title 19-A, chapter 58 do not apply to child protection proceedings. If custody or parentage is an issue in another pending proceeding, the proceedings may be consolidated in the District Court with respect to the issue of custody issue, parentage or both. In any event, the court shall make an order on the child protection petition in accordance with this chapter. That order takes precedence over any prior order regarding the child's care and custody.

Sec. C-29. 22 MRSA §4036, sub-§2-A is enacted to read:

2-A. Determination of parentage. In a protection order or in a judicial review order, the court may determine the parentage of the child. The court's determination of the child's parentage must be made pursuant to Title 19-A, chapter 61 and has the same legal effect as a determination of parentage made pursuant to that chapter.

PART D

Sec. D-1. Effective date. This Act takes effect July 1, 2016.