

HOUSE No. 139**The Commonwealth of Massachusetts**

PRESENTED BY:

Kay Khan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to parentage to promote children's security.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/15/2019</i>
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	<i>1/30/2019</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>1/22/2019</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>1/30/2019</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/25/2019</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>1/23/2019</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>1/31/2019</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>1/17/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/29/2019</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/1/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>1/24/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/30/2019</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>1/30/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>1/30/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/24/2019</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>1/31/2019</i>
<i>Lenny Mirra</i>	<i>2nd Essex</i>	<i>1/23/2019</i>

<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/29/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/18/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/31/2019</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>1/22/2019</i>

HOUSE No. 139

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 139) of Kay Khan and others relative to the adjudication or determination of parentage. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to parentage to promote children's security.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws is hereby amended by inserting the following new chapter, chapter
2 209E, after chapter 209D:

3 ARTICLE 1

4 GENERAL PROVISIONS

5 SECTION 101. SHORT TITLE. This Act may be cited as the Massachusetts
6 Parentage Act.

7 SECTION 102. DEFINITIONS. In this Act:

8 (1) “Acknowledged parent” means an individual who has established a parent-child
9 relationship under Article 3.

(2) “Adjudicated parent” means an individual who has been adjudicated to be a parent of a child by a court with jurisdiction.

(3) “Alleged genetic parent” means an individual who is alleged to be, or alleges that the individual is, a genetic parent or possible genetic parent of a child whose parentage has not been adjudicated. The term includes an alleged genetic father and alleged genetic mother. The term does not include:

(A) a presumed parent;

(B) an individual whose parental rights have been terminated or declared not to exist; or

(C) a donor.

(4) “Assisted reproduction” means a method of causing pregnancy other than sexual intercourse and includes but is not limited to:

(A) intrauterine, intracervical insemination, or vaginal insemination;

(B) donation of gametes;

(C) donation of embryos;

(D) in-vitro fertilization and transfer of embryos; and

(E) intracytoplasmic sperm injection.

(5) “Birth” includes stillbirth.

(6) “Child” means an individual of any age whose parentage may be determined under this act.

(7) “Child-support agency” means a government entity, public official, or private agency, authorized to provide parentage-establishment services under Title IV-D of the Social Security Act, 42 U.S.C. Sections 651 through 669.

(8) “Combined relationship index” means the product of all tested relationship indices.

(9) “Determination of parentage” means establishment of a parent-child relationship by a judicial or administrative proceeding or signing of a valid acknowledgment of parentage under Article 3.

(10) “Donor” means an individual who provides a gamete or gametes or an embryo or embryos intended for assisted reproduction or gestation, whether or not for consideration. This term does not include:

(A) a person who gives birth to a child conceived by assisted reproduction, except as otherwise provided in Article 7; or

(B) a parent or intended parent under Article 6 or Article 7.

(11) “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 person under conditions in which gestation may be reasonably expected to occur.

(12) “Ethnic or racial group” means, for the purpose of genetic testing, a recognized group that an individual identifies as the individual’s ancestry or part of the ancestry or that is identified by other information.

(13) “Gamete” means sperm, egg, or any part of a sperm or egg.

(14) “Genetic testing” means an analysis of genetic markers to identify or exclude a genetic relationship.

(15) “Hypothesized genetic relationship” means an asserted genetic relationship between an individual and a child.

(16) “Individual” means a natural person of any age.

(17) “Intended parent” means an individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction or a gestational carrier agreement.

(18) “Marriage” includes any 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.

(19) “Parent” means an individual who has established parentage that meets the requirements of this act.

(20) “Parentage” or “parent-child relationship” means the legal relationship between a child and a parent of the child.

(21) “Presumed parent” means an individual who under Section 204 is presumed to be a parent of a child, unless the presumption is overcome in a judicial proceeding, a valid denial of parentage is made under Article 3, or a court adjudicates the individual to be a parent.

(22) “Probability of parentage” means, for the ethnic or racial group to which an individual alleged to be a parent belongs, the probability that a hypothesized genetic relationship is supported, compared to the probability that a genetic relationship is supported between the

child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship, expressed as a percentage incorporating the combined relationship index and a prior probability.

(23) “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.

(24) “Relationship index” means a likelihood ratio that compares the probability of a genetic marker given a hypothesized genetic relationship and the probability of the genetic marker given a genetic relationship between the child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship.

(25) “Sign” means, with 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.

(26) “Signatory” means an individual who signs a record.

(27) “Transfer” means a procedure for assisted reproduction by which an embryo or sperm is placed in the body of the person who will give birth to the child.

(28) “Witnessed” means that at least one individual who is authorized to sign has signed a record to verify that the individual personally observed a signatory sign the record.

SECTION 103. SCOPE.

(1) This act applies to an adjudication or determination of parentage.

(2) This act does not create, affect, enlarge, or diminish parental rights or duties under law of this state other than this act.

SECTION 104. AUTHORIZED COURT. The Probate and Family Court Department may adjudicate parentage under this act.

SECTION 105. APPLICABLE LAW. The court shall apply the law of this state to adjudicate parentage. The applicable law does not depend on:

(1) the place of birth of the child; or

(2) the past or present residence of the child.

SECTION 106. DATA PRIVACY. A proceeding under this act is subject to law of this state other than this act which governs the health, safety, privacy, and liberty of a child or other individual who could be affected by disclosure of information that could identify the child or other individual, including address, telephone number, digital contact information, place of employment, Social Security number, and the child's day-care facility or school.

SECTION 107. ESTABLISHMENT OF PARENTAGE. To the extent practicable, a provision of this act applicable to a father-child relationship applies to a mother-child relationship and a provision of this act applicable to a mother-child relationship applies to a father-child relationship. This act is intended to allow access to establish parentage in a gender neutral manner.

ARTICLE 2

PARENT-CHILD RELATIONSHIP

SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP. A parent-child relationship is established between an individual and a child by any of the following:

(1) Birth: the individual gives birth to the child, except as otherwise provided in Article 7;

(2) Presumption: there is a presumption under Section 204 of the individual's parentage of the child, unless the presumption is overcome in a judicial proceeding or a valid denial of parentage is made under Article 3;

(3) Adjudication: the individual is adjudicated a parent of the child under Article 5;

(4) Adoption: the individual adopts the child pursuant to Chapter 210;

(5) Acknowledgment: the individual acknowledges parentage of the child under Article 3, unless the acknowledgment is rescinded under Section 308 or successfully challenged under Article 3 or 5;

(6) De Facto Parentage: the individual is adjudicated a de facto parent of the child under Section 509;

(7) Assisted reproduction: the individual consents to assisted reproduction under Article 6; or

(8) Gestational or genetic surrogacy agreement: the individual is an intended parent who consents to a gestational or genetic surrogacy agreement under Article 7.

SECTION 202. 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 birth of the child.

SECTION 203. CONSEQUENCES OF ESTABLISHING PARENTAGE. Unless parental rights have been terminated or an exception has been stated explicitly in this act, a parent-child relationship established under this act applies for all purposes, including the rights and duties of parentage.

SECTION 204. PRESUMPTION OF PARENTAGE.

(a) An individual is presumed to be a parent of a child if:

(1) except as otherwise provided under Article 7:

(A) the individual and the person who gave birth to the child are married to each other and the child is born during the marriage, whether the marriage is or could be declared invalid;

(B) the individual and the person who gave birth to the child were married to each other and the child is born not later than 300 days after the marriage is terminated by death, divorce, or annulment, whether the marriage is or could be declared invalid; or

(C) the individual and the person who gave birth to the child married each other after the birth of the child, whether the marriage is or could be declared invalid, the individual at any time asserted parentage of the child, and:

(i) the assertion is in a record filed with the Department of Public Health; or

(ii) the individual agreed to be and is named as a parent of the child on the birth certificate of the child; or

(2) the individual and the person who gave birth are unmarried and the child is born to them and, while the child is under the age of majority, the individual, jointly with the person who gave birth, received the child into their home and openly held out the child as their child.

(b) A presumption of parentage under this section may be overcome, and competing claims to parentage may be resolved, only by an adjudication under Article 5 or a valid denial of parentage under Article 3.

ARTICLE 3

VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

SECTION 301. ACKNOWLEDGMENT OF PARENTAGE. An individual who gave birth to a child and an alleged genetic parent, an intended parent under Article 6, or a presumed parent may sign an acknowledgement of parentage to establish parentage of a child.

SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF PARENTAGE.

(a) An acknowledgment of parentage under Section 301 must:

(1) be in a record signed by the person who gave birth to the child and by the individual seeking to establish a parent-child relationship, and the signatures must be attested by a notarial officer or witnessed;

(2) state that the child whose parentage is being acknowledged:

(A) does not have a presumed parent other than the individuals seeking to establish the parent-child relationship or has a presumed parent whose full name is stated; and

(B) does not have another acknowledged parent, adjudicated parent, or individual who is a parent of the child under Article 6 or 7 other than the person who gave birth to the child; and

(3) state that the signatories understand that the acknowledgment is the equivalent of an adjudication of parentage of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred two years after the effective date of the acknowledgment.

(b) An acknowledgment of parentage is void if, at the time of signing:

(1) an individual other than the individual seeking to establish parentage is a presumed parent, unless a denial of parentage by the presumed parent in a signed record is filed with the Department of Public Health; or

(2) an individual, other than the person who gave birth to the child or the individual seeking to establish parentage, is an acknowledged or adjudicated parent or a parent under Article 6 or 7.

SECTION 303. DENIAL OF PARENTAGE. A presumed parent or alleged genetic parent may sign a denial of parentage in a record only in the limited circumstances set forth in this section. A denial of parentage is valid only if:

(1) an acknowledgment of parentage by another individual has been filed pursuant to this Article;

(2) the signature of the presumed parent or alleged genetic parent is attested by a notary or witnessed; and

(3) the presumed parent or alleged genetic parent has not previously:

(A) completed a valid acknowledgment of parentage, unless the previous acknowledgment was rescinded under Section 308 or challenged successfully under Section 309; or

(B) been adjudicated to be a parent of the child.

SECTION 304. RULES FOR ACKNOWLEDGMENT OR DENIAL OF PARENTAGE.

(a) An acknowledgment of parentage and a denial of parentage may be contained in a single document or may be in counterparts and may be filed with the Department of Public Health separately or simultaneously. If filing of the acknowledgment and denial both are required under this act, neither is effective until both are filed.

(b) An acknowledgment of parentage or denial of parentage may be signed before or after the birth of the child.

(c) Subject to subsection (a), an acknowledgment of parentage or denial of parentage takes effect on the birth of the child or filing of the document with the Department of Public Health whichever occurs later.

(d) An acknowledgment of parentage or denial of parentage signed by a minor is valid if the acknowledgment complies with this act.

SECTION 305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PARENTAGE.

(a) Except as otherwise provided in Sections 308 and 309, an acknowledgment of parentage that complies with this article and is filed with the Department of Public Health is the equivalent of a court adjudication of parentage of the child and confers on the acknowledged parent all rights and duties of a parent.

(b) Except as otherwise provided in Sections 308 and 309, a denial of parentage by a presumed parent or alleged genetic parent which complies with this article and is filed with the Department of Public Health with an acknowledgment of parentage that complies with this article is equivalent to an adjudication of non-parentage of the presumed parent or alleged genetic parent and discharges the presumed parent or alleged genetic parent from all rights and duties of a parent.

SECTION 306. NO FILING FEE. The Department of Public Health may not charge a fee for filing an acknowledgment of parentage or denial of parentage.

SECTION 307. RATIFICATION BARRED. A court conducting a judicial proceeding or an administrative agency conducting an administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of parentage.

SECTION 308. PROCEDURE FOR RESCISSION.

(a) A signatory may rescind an acknowledgment of parentage or denial of parentage by filing with the Department of Public Health a rescission in a signed record which is attested by a notary or witnessed, before the earlier of:

(1) 60 days after the effective date under Section 304 of the acknowledgment or denial;
or

(2) the date of the first hearing before a court in a proceeding, to which the signatory is a party, to adjudicate an issue relating to the child, including a proceeding that establishes support.

(b) If an acknowledgment of parentage is rescinded under subsection (a), an associated denial of parentage is invalid, and the Department of Public Health shall notify the individual

who gave birth to the child and the individual who signed a denial of parentage of the child that the acknowledgment has been rescinded. Failure to give the notice required by this subsection does not affect the validity of the rescission.

SECTION 309. CHALLENGE AFTER EXPIRATION OF PERIOD FOR RESCISSION.

(a) After the period for rescission under Section 308 expires, but not later than two years after the effective date under Section 304 of an acknowledgment of parentage or denial of parentage, a signatory of the acknowledgment or denial may commence a proceeding to challenge the acknowledgment or denial, including a challenge brought under Section 614, only on the basis of fraud, duress, or material mistake of fact.

(b) A challenge to an acknowledgment of parentage or denial of parentage by an individual who was not a signatory to the acknowledgment or denial is governed by Section 610.

SECTION 310. PROCEDURE FOR CHALLENGE BY SIGNATORY.

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

(b) By signing an acknowledgment of parentage or denial of parentage, a signatory submits to personal jurisdiction in this state in a proceeding to challenge the acknowledgment or denial, effective on the filing of the acknowledgment or denial with the Department of Public Health.

(c) The court may not suspend the legal responsibilities arising from an acknowledgment of parentage, including the duty to pay child support, during the pendency of a proceeding to

challenge the acknowledgment or a related denial of parentage, unless the party challenging the acknowledgment or denial shows good cause.

(d) A party challenging an acknowledgment of parentage or denial of parentage has the burden of proof by clear and convincing evidence.

(e) If the court determines that a party has satisfied the burden of proof under subsection (d), the court shall order the Department of Public Health to amend the birth record of the child to reflect the legal parentage of the child.

(f) A proceeding to challenge an acknowledgment of parentage or denial of parentage must be conducted under Article 5.

SECTION 311. FULL FAITH AND CREDIT. This state shall give full faith and credit to an acknowledgment of parentage or denial of parentage effective in another state if the determination, acknowledgment or denial was in a signed record and otherwise complies with law of the other state.

SECTION 312. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF PARENTAGE.

(a) The Department of Public Health shall develop forms for an acknowledgment of parentage and denial of parentage consistent with this act.

(b) A valid acknowledgment of parentage or denial of parentage is not affected by a later modification of the form under subsection (a).

SECTION 313. RELEASE OF INFORMATION. The Department of Public Health may release information relating to an acknowledgment of parentage or denial of parentage to a

273 signatory of the acknowledgment or denial, the child, a court, federal agency, and child-support
274 agency of this or another state.

275 SECTION 314. ADOPTION OF RULES. The Department of Public Health may adopt
276 rules to implement this act.

277 ARTICLE 4

278 GENETIC TESTING

279 SECTION 401. SCOPE OF ARTICLE; LIMITATION ON USE OF GENETIC
280 TESTING.

281 (a) This article governs genetic testing of an individual in a proceeding to adjudicate
282 parentage, whether the individual:

283 (1) voluntarily submits to testing; or

284 (2) is tested under an order of the court or a child-support agency. (b) Genetic testing
285 shall not be used:

286 (A) to challenge the parentage of an individual who is a parent under Article 6 or 7; or

287 (B) to establish the parentage of an individual who is a donor.

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289 SECTION 402. AUTHORITY TO ORDER OR DENY GENETIC TESTING.

(a) Except as otherwise provided in this Article or Article 5, in a proceeding under this act to determine parentage, the court shall order the child and any other individual to submit to genetic testing if a request for testing is supported by the sworn statement of a party:

(1) alleging a reasonable possibility that the individual is the child's genetic parent; or

(2) denying genetic parentage of the child and stating facts establishing a reasonable possibility that the individual is not a genetic parent.

(b) A child-support agency may order genetic testing only if there is no presumed, acknowledged, or adjudicated parent of a child other than the individual who gave birth to the child.

(c) The court or child-support agency may not order in utero genetic testing.

(d) If two or more individuals are subject to court-ordered genetic testing, the court may order that testing be completed concurrently or sequentially.

(e) Genetic testing of an individual who gave birth to a child is not a condition precedent to testing of the child and an individual whose genetic parentage of the child is being determined. If the individual who gave birth is unavailable or declines to submit to genetic testing, the court may order genetic testing of the child and each individual whose genetic parentage of the child is being adjudicated.

(f) In a proceeding to adjudicate the parentage of a child having a presumed parent or an individual who claims to be a parent under Section 509, or to challenge an acknowledgment of parentage, the court may deny a motion for genetic testing of the child and any other individual after considering the factors in Section 513(a) and (b).

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312 (g) If an individual requesting genetic testing is barred under Article 5 from establishing
313 the individual's parentage, the court shall deny the request for genetic testing.

314 (h) An order under this section for genetic testing is enforceable by contempt.

315 SECTION 403. REQUIREMENTS FOR GENETIC TESTING.

316 (a) Genetic testing must be of a type reasonably relied on by experts in the field of
317 genetic testing and performed in a testing laboratory accredited by:

318 (1) the AABB, formerly known as the American Association of Blood Banks, or a
319 successor to its functions; or

320 (2) an accrediting body designated by the Secretary of the United States Department of
321 Health and Human Services.

322 (b) A specimen used in genetic testing may consist of a sample or a combination of
323 samples of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the
324 testing need not be of the same kind for each individual undergoing genetic testing.

325 (c) Based on the ethnic or racial group of an individual undergoing genetic testing, a
326 testing laboratory shall determine the databases from which to select frequencies for use in
327 calculating a relationship index. If an individual or a child-support agency objects to the
328 laboratory's choice, the following rules apply:

(1) Not later than 30 days after receipt of the report of the test, the objecting individual or child-support agency may request the court to require the laboratory to recalculate the relationship index using an ethnic or racial group different from that used by the laboratory.

(2) The individual or the child-support agency objecting to the laboratory's choice under this subsection shall:

(A) if the requested frequencies are not available to the laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

(B) engage another laboratory to perform the calculations.

(3) The laboratory may use its own statistical estimate if there is a question which ethnic or racial group is appropriate. The laboratory shall calculate the frequencies using statistics, if available, for any other ethnic or racial group requested.

(d) If, after recalculation of the relationship index under subsection (c) using a different ethnic or racial group, genetic testing under Section 406 does not identify an individual as a genetic parent of a child, the court may require an individual who has been tested to submit to additional genetic testing to identify a genetic parent.

SECTION 404. REPORT OF GENETIC TESTING.

(a) 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 complying with the requirements of this Article is self-authenticating.

(b) Documentation from a testing laboratory of the following information is sufficient to establish a reliable chain of custody and allow the results of genetic testing to be admissible without testimony:

(1) the name and photograph of each individual whose specimen has been taken;

(2) the name of the individual who collected each specimen;

(3) the place and date each specimen was collected;

(4) the name of the individual who received each specimen in the testing laboratory; and

(5) the date each specimen was received.

SECTION 405. GENETIC TESTING RESULTS; CHALLENGE TO RESULTS.

(a) Subject to a challenge under subsection (b), an individual is identified under this act as a genetic parent of a child if genetic testing complies with this article and the results of the testing disclose:

(1) the individual has at least a 99 percent probability of parentage, using a prior probability of 0.50, as calculated by using the combined relationship index obtained in the testing; and

(2) a combined relationship index of at least 100 to 1.

(b) An individual identified under subsection (a) as a genetic parent of the child may challenge the genetic testing results only by other genetic testing satisfying the requirements of this article which:

(1) excludes the individual as a genetic parent of the child; or

(2) identifies another individual as a possible genetic parent of the child other than:

(A) the individual who gave birth to the child; or

(B) the individual identified under subsection (a).

(c) Except as otherwise provided in Section 410, if more than one individual other than the individual who gave birth is identified by genetic testing as a possible genetic parent of the child, the court shall order each individual to submit to further genetic testing to identify a genetic parent.

SECTION 406. COST OF GENETIC TESTING.

(a) Subject to assessment of fees under Article 5, payment of the cost of initial genetic testing must be made in advance:

(1) by a child-support agency in a proceeding in which the child-support agency is providing services;

(2) by the individual who made the request for genetic testing;

(3) as agreed by the parties; or

(4) as ordered by the court.

(b) If the cost of genetic testing is paid by a child-support agency, the agency may seek reimbursement from the genetic parent whose parent-child relationship is established.

SECTION 407. ADDITIONAL GENETIC TESTING. The court or child-support agency shall order additional genetic testing on request of an individual who contests the result of the initial testing under Section 405. If initial genetic testing under Section 405 identified an individual as a genetic parent of the child, no other court or agency may order additional testing unless the contesting individual pays for the testing in advance.

SECTION 408. GENETIC TESTING WHEN SPECIMEN NOT AVAILABLE.

(a) Subject to subsection (b), if a genetic-testing specimen is not available from an alleged genetic parent of a child, an individual seeking genetic testing demonstrates good cause, and the court finds that the circumstances are just, the court may order any of the following individuals to submit specimens for genetic testing:

- (1) a parent of the alleged genetic parent;
- (2) a sibling of the alleged genetic parent;
- (3) another relative of the alleged genetic parent as the court deems necessary to complete genetic testing.

(b) To issue an order under this section, the court must find that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

SECTION 409. DECEASED INDIVIDUAL. If an individual seeking genetic testing demonstrates good cause, the court may order genetic testing of a deceased individual.

SECTION 410. IDENTICAL SIBLINGS.

(a) If the court finds there is reason to believe that an alleged genetic parent has an identical sibling and evidence that the sibling may be a genetic parent of the child, the court may order genetic testing of the sibling.

(b) If more than one sibling is identified under Section 405 as a genetic parent of the child, the court may rely on nongenetic evidence to adjudicate which sibling is a genetic parent of the child.

SECTION 411. CONFIDENTIALITY OF GENETIC TESTING.

(a) A report of genetic testing for parentage is exempt from public inspection and copying, shall not be a public record as defined in section seven of chapter four, and shall be kept confidential and released only as provided in this act.

(b) A person shall not intentionally release a report of genetic testing or the genetic material of another person for a purpose not relevant to a parentage proceeding without the written permission of the person who furnished the genetic material or a court order. A person who violates this section shall be punished by imprisonment in a jail or house of correction for not more than six months or by a fine of not more than one thousand dollars.

ARTICLE 5

PROCEEDING TO ADJUDICATE PARENTAGE

SECTION 501. PROCEEDING AUTHORIZED.

(a) A proceeding may be commenced to adjudicate the parentage of a child. Except as otherwise provided in this act, the proceeding is governed by the Massachusetts Rules of Domestic Relations Procedure.

(b) A proceeding to adjudicate the parentage of a child born under a surrogacy agreement is governed by Article 7.

SECTION 502. STANDING TO MAINTAIN PROCEEDING.

Except as otherwise provided in Article 3 and Sections 508 through 511, a proceeding to adjudicate parentage may be maintained by:

(1) the child;

(2) the individual who gave birth to the child, unless a court has adjudicated that the individual is not a parent;

(3) an individual who is a parent under this act;

(4) an individual whose parentage of the child is to be adjudicated;

(5) if the child is or was a recipient of any type of public assistance, by the IV–D agency as set forth in chapter 119A on behalf of the department of transitional assistance, the department of children and families, the division of medical assistance or any other public assistance program of the commonwealth;

(6) by the authorized agent of the department of children and families or any agency licensed under chapter 15D provided that the child is in their custody; or,

(7) a representative authorized by law of this state other than this act to act for an individual who otherwise would be entitled to maintain a proceeding but is deceased, incapacitated, or a minor.

SECTION 503. NOTICE OF PROCEEDING.

(a) The petitioner shall give notice of a proceeding to adjudicate parentage under Article 5 to the following individuals:

(1) the individual who gave birth to the child, unless a court has adjudicated that this individual is not a parent;

(2) an individual who is a parent of the child under this act;

(3) a presumed, acknowledged, or adjudicated parent of the child;

(4) an individual whose parentage of the child is to be adjudicated; and

(5) the child, if the child is above the age of 14.

(b) An individual entitled to notice under subsection (a) has a right to intervene in the proceeding.

(c) Lack of notice required by subsection (a) does not render a judgment void. Lack of notice does not preclude an individual entitled to notice under subsection (a) from bringing a proceeding under Section 511(b).

(d) Notice shall be by first-class mail to the individual's last known address.

SECTION 504. PERSONAL JURISDICTION.

(a) The court may adjudicate an individual's parentage of a child only if the court has personal jurisdiction over the individual.

(b) A court of this state with 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 G. L. c. 209D, §2-201 are satisfied.

(c) Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual.

SECTION 505. VENUE. Venue for a proceeding to adjudicate parentage is in the county of this state in which:

(1) the child resides or is located or, for the purposes of Article 6 or 7 of this act, is or will be born;

(2) any parent or intended parent resides;

(3) the respondent resides or is located if the child does not reside in this state; or

(4) a proceeding has been commenced for administration of the estate of an individual who is or may be a parent under this act.

SECTION 506. ADMISSIBILITY OF RESULTS OF GENETIC TESTING.

(a) Except as otherwise provided in Section 402(b), the court shall admit a report of genetic testing ordered by the court under Section 403 as evidence of the truth of the facts asserted in the report.

(b) A party may object to the admission of a report described in subsection (a), not later than 14 days after the party receives the report. The party shall cite specific grounds for exclusion.

(c) A party that objects to the results of genetic testing may call a genetic-testing expert to testify in person or by another method approved by the court. Unless the court orders otherwise, the party offering the testimony bears the expense for the expert testifying.

(d) Admissibility of a report of genetic testing is not affected by whether the testing was performed:

(1) voluntarily or under an order of the court or a child-support agency; or

(2) before, on, or after commencement of the proceeding.

SECTION 507. ADJUDICATING PARENTAGE OF CHILD WITH ALLEGED GENETIC PARENT.

(a) A proceeding to determine whether an alleged genetic parent who is not a presumed parent is a parent of a child may be commenced:

(1) before the child attains 18 years of age; or

(2) after the child attains 18 years of age, but only if the child initiates the proceeding.

(b) Except as otherwise provided in Section 514, this subsection applies in a proceeding described in subsection (a) if the individual who gave birth to the child is the only other individual with a claim to parentage of the child. The court shall adjudicate an alleged genetic parent to be a parent of the child if the alleged genetic parent:

(1) is identified under Section 406 as a genetic parent of the child and the identification is not successfully challenged under Section 406;

(2) admits parentage in a pleading, when making an appearance, or during a hearing, the court accepts the admission, and the court determines the alleged genetic parent to be a parent of the child;

(3) declines to submit to genetic testing ordered by the court or a child-support agency, in which case the court may adjudicate the alleged genetic parent to be a parent of the child even if the alleged genetic parent denies a genetic relationship with the child;

(4) is in default after service of process and the court determines the alleged genetic parent to be a parent of the child; or

(5) is neither identified nor excluded as a genetic parent by genetic testing and, based on other evidence, the court determines the alleged genetic parent to be a parent of the child.

(c) Except as otherwise provided in Section 514 and subject to other limitations in this part, if in a proceeding involving an alleged genetic parent, at least one other individual in addition to the individual who gave birth to the child has a claim to parentage of the child, the court shall adjudicate parentage under Section 513.

SECTION 508. ADJUDICATING PARENTAGE OF CHILD WITH PRESUMED PARENT.

(a) A proceeding to determine whether a presumed parent is a parent of a child may be commenced:

(1) before the child attains 18 years of age; or

524 (2) after the child attains 18 years of age, but only if the child initiates the proceeding.

525 (b) A presumption of parentage under Section 204 cannot be overcome after the child
526 attains two years of age unless the court determines:

527 (1) the presumed parent is not a genetic parent, never resided with the child, and never
528 held out the child as the presumed parent's child; or

529 (2) the child has more than one presumed parent.

530 (c) Except as otherwise provided in Section 514, the following rules apply in a
531 proceeding to adjudicate a presumed parent's parentage of a child if the individual who gave
532 birth to the child is the only other individual with a claim to parentage of the child:

533 (1) If no party to the proceeding challenges the presumed parent's parentage of the child,
534 the court shall adjudicate the presumed parent to be a parent of the child.

535 (2) If the presumed parent is identified under Section 406 as a genetic parent of the child
536 and that identification is not successfully challenged under Section 406, the court shall adjudicate
537 the presumed parent to be a parent of the child.

538 (3) If the presumed parent is not identified under Section 406 as a genetic parent of the
539 child and the presumed parent or the individual who gave birth to the child challenges the
540 presumed parent's parentage of the child, the court shall adjudicate the parentage of the child in
541 the best interest of the child based on the factors under Section 513(a) and (b).

542 (d) Except as otherwise provided in Section 514 and subject to other limitations in this
543 part, if in a proceeding to adjudicate a presumed parent's parentage of a child, another individual

544 in addition to the individual who gave birth to the child asserts a claim to parentage of the child,
545 the court shall adjudicate parentage under Section 513.

546 SECTION 509. ADJUDICATING CLAIM OF DE FACTO PARENTAGE OF CHILD.

547 (a) A proceeding to establish parentage of a child under this section may be commenced
548 only by an individual who:

549 (1) is alive when the proceeding is commenced; and

550 (2) claims to be a de facto parent of the child.

551 (b) An individual who claims to be a de facto parent of a child must commence a
552 proceeding to establish parentage of a child under this section:

553 (1) before the child attains 18 years of age; and

554 (2) while the child is alive.

555 (c) The following rules govern standing of an individual who claims to be a de facto
556 parent of a child to maintain a proceeding under this section:

557 (1) The individual must file an initial verified pleading alleging specific facts that support
558 the claim to parentage of the child asserted under this section. The verified pleading must be
559 served on all parents and legal guardians of the child and any other party to the proceeding.

560 (2) An adverse party, parent, or legal guardian may file a pleading in response to the
561 pleading filed under paragraph (1). A responsive pleading must be verified and must be served
562 on parties to the proceeding.

(3) Unless the court finds a hearing is necessary to determine disputed facts material to the issue of standing, the court shall determine, based on the pleadings under paragraphs (1) and (2), whether the individual has alleged facts sufficient to satisfy by a preponderance of the evidence the requirements of paragraphs (1) through (7) of subsection (d).

If the court holds a hearing under this subsection, the hearing must be held on an expedited basis. The court may order an interim order concerning contact between the child and an individual with standing seeking adjudication under this section as a de facto parent of the child.

(d) In a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child, if there is only one other individual who is a parent or has a claim to parentage of the child, the court shall adjudicate the individual who claims to be a de facto parent to be a parent of the child if the individual demonstrates by clear-and convincing evidence that:

(1) the individual resided with the child as a regular member of the child's household for a significant period;

(2) the individual engaged in consistent caretaking of the child;

(3) the individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;

(4) the individual held out the child as the individual's child;

(5) the individual established a bonded and dependent relationship with the child which is parental in nature;

(6) another parent of the child fostered or supported the bonded and dependent relationship required under paragraph (5); and

(7) continuing the relationship between the individual and the child is in the best interest of the child.

(e) Subject to other limitations in this part, if in a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child, there is more than one other individual who is a parent or has a claim to parentage of the child and the court determines that the requirements of subsection (d) are satisfied, the court shall adjudicate parentage under Section 513.

(f) The adjudication of a person as a de facto parent under this section does not disestablish the parentage of any other parent.

SECTION 510. ADJUDICATING PARENTAGE OF CHILD WITH ACKNOWLEDGED PARENT.

(a) If a child has an acknowledged parent, a proceeding to challenge the acknowledgment of parentage or a denial of parentage, brought by a signatory to the acknowledgment or denial, is governed by Sections 309 and 310.

(b) If a child has an acknowledged parent, the following rules apply in a proceeding to challenge the acknowledgment of parentage or a denial of parentage brought by an individual, other than the child, who has standing under Section 502 and was not a signatory to the acknowledgment or denial:

(1) The individual must commence the proceeding not later than two years after the effective date of the acknowledgment.

(2) The court may permit the proceeding only if the court finds permitting the proceeding is in the best interest of the child.

(3) If the court permits the proceeding, the court shall adjudicate parentage under Section 513.

SECTION 511. ADJUDICATING PARENTAGE OF CHILD WITH ADJUDICATED PARENT.

(a) If a child has an adjudicated parent, a proceeding to challenge the adjudication, brought by an individual who was a party to the adjudication or received notice under Section 503, is governed by the rules governing a collateral attack on a judgment.

(b) If a child has an adjudicated parent, the following rules apply to a proceeding to challenge the adjudication of parentage brought by an individual, other than the child, who has standing under Section 502 and was not a party to the adjudication and did not receive notice under Section 503:

(1) The individual must commence the proceeding not later than two years after the effective date of the adjudication.

(2) The court may permit the proceeding only if the court finds permitting the proceeding is in the best interest of the child.

(3) If the court permits the proceeding, the court shall adjudicate parentage under Section 513.

SECTION 512. ADJUDICATING PARENTAGE OF CHILD OF ASSISTED
REPRODUCTION.

An individual who is a parent under Article 6 or the individual who gave birth to the child may bring a proceeding to adjudicate parentage. If the court determines the individual is a parent under Article 6, the court shall adjudicate the individual to be a parent of the child.

SECTION 513. ADJUDICATING COMPETING CLAIMS OF PARENTAGE.

(a) Except as otherwise provided in Section 514, in a proceeding to adjudicate competing claims of, or challenges under Section 508(c), 510, or 511 to, parentage of a child by two or more individuals, the court shall adjudicate parentage in the best interest of the child, based on:

(1) the age of the child;

(2) the length of time during which each individual assumed the role of parent of the child;

(3) the nature of the relationship between the child and each individual;

(4) the harm to the child if the relationship between the child and each individual is not recognized;

(5) the basis for each individual's claim to parentage of the child; and

(6) other equitable factors arising from the disruption of the relationship between the child and each individual or the likelihood of other harm to the child.

(b) If an individual challenges parentage based on the results of genetic testing, in addition to the factors listed in subsection (a), the court shall consider:

(1) the facts surrounding the discovery that the individual might not be a genetic parent of the child; and

(2) the length of time between the time that the individual was placed on notice that the individual might not be a genetic parent and the commencement of the proceeding.

(c) The court may adjudicate a child to have more than two parents under this act if the court finds that it is in the best interests of the child to do so. A finding of best interests of the child under this subsection does not require a finding of unfitness of any parent or person seeking an adjudication of parentage.

SECTION 514. PRECLUDING ESTABLISHMENT OF PARENTAGE BY PERPETRATOR OF SEXUAL ASSAULT.

(a) In this section, “sexual assault” shall include offenses under sections 22 to 23B, inclusive, of chapter 265 or section 2, 3, 4 or 17 of chapter 272, and similar offenses in other jurisdictions.

(b) In a proceeding in which a person is alleged to have committed a sexual assault that resulted in the birth of a child, the individual giving birth may seek to preclude the establishment of the other person’s parentage.

(c) This section shall not apply if:

(1) the person alleged to have committed the sexual assault has previously been adjudicated to be a parent of the child; or

(2) after the birth of the child, the person alleged to have committed the sexual assault established a bonded and dependent relationship with the child which is parental in nature.

(d) Unless Section 309 or 507 applies, a person giving birth must file a pleading making an allegation under subsection (b) not later than two years after the birth of the child. The individual may file the pleading only in a proceeding to establish parentage under this act.

(e) An allegation under subsection (b) may be proved by:

(1) evidence that the person alleged to have committed the sexual assault was convicted of a sexual assault, or a comparable crime in another jurisdiction, against the person giving birth and the child was born not later than 300 days after the sexual assault; or

(2) clear and convincing evidence that the person sexually assaulted the person who gave birth to the child and the child was born not later than 300 days after the sexual assault, regardless of whether criminal charges were brought against the person.

(f) Subject to subsections (a) through (d), if the court determines that an allegation has been proved under subsection (e), the court shall:

(1) adjudicate that the person alleged to have committed the sexual assault is not a parent of the child;

(2) require the Department of Public Health to amend the birth certificate if requested by the person giving birth and

(3) require the person alleged to have committed the sexual assault to pay child support, birth-related costs, or both, unless the person giving birth requests otherwise.

SECTION 515. TEMPORARY ORDER.

(a) In a proceeding under this article, the court may issue a temporary order for child support if the order is consistent with law of this state other than this act and the individual ordered to pay support is:

(1) a presumed parent of the child;

(2) petitioning to be adjudicated a parent;

(3) identified as a genetic parent through genetic testing under Section 506; (4) an alleged genetic parent who has declined to submit to genetic testing; (5) shown by a preponderance of the evidence to be a parent of the child; or (6) a parent under this act.

(b) A temporary order may include a provision for custody and visitation under law of this state other than this act.

SECTION 516. COMBINING PROCEEDINGS.

(a) Except as otherwise provided in subsection (b), the court may combine a proceeding to adjudicate parentage under this act with a proceeding for adoption, termination of parental rights, care and protection, child custody or visitation, guardianship, child support, divorce, annulment, separation, administration of an estate, or other appropriate proceeding.

(b) A respondent may not combine a proceeding described in subsection (a) with a proceeding to adjudicate parentage brought under the Uniform Interstate Family Support Act (Chapter 209D).

SECTION 517. PROCEEDING BEFORE BIRTH. Except as otherwise provided in Article 7, a proceeding to adjudicate parentage may be commenced before the birth of the child and an order or judgment may be entered before birth, but enforcement of the order or judgment of parentage must be stayed until the birth of the child.

SECTION 518. COURT TO ADJUDICATE PARENTAGE. The court shall adjudicate parentage of a child without a jury.

SECTION 519. HEARING; INSPECTION OF RECORDS.

(a) On request of a party and for good cause, the court may close a proceeding under this article to the public.

(b) A final order in a proceeding under this article is available for public inspection. Other papers and records are available for public inspection only with the consent of the parties or by court order.

SECTION 520. DISMISSAL FOR WANT OF PROSECUTION. The court may dismiss a proceeding under this act for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

SECTION 521. ORDER ADJUDICATING PARENTAGE.

(a) In a proceeding under this article, the court shall issue a final judgment adjudicating whether a person alleged or claiming to be a parent is the parent of a child.

(b) A final judgment under subsection (a) of this section shall identify the child by name and date of birth.

(c) On request of a party and for good cause, the court in a proceeding under this article may order the name of the child changed.

(d) If the final judgment under subsection (a) of this section is at variance with the child's birth certificate, the court shall order the Department of Public Health to issue an amended birth certificate.

SECTION 522. BINDING EFFECT OF DETERMINATION OF PARENTAGE.

(a) Except as otherwise provided in subsection (b):

(1) a signatory to an acknowledgment of parentage or denial of parentage is bound by the acknowledgment and denial as provided in Article 3; and

(2) a party to an adjudication of parentage by a court acting under circumstances that satisfy the jurisdiction requirements of G. L. c. 209D, §2-201, and any individual who received notice of the proceeding are bound by the adjudication.

(b) A child is not bound by a determination of parentage under this act unless:

(1) the determination was based on an un-rescinded acknowledgment of parentage and the acknowledgment is consistent with the results of genetic testing;

(2) the determination was based on a finding consistent with the results of genetic testing, and the consistency is declared in the determination or otherwise shown;

(3) the determination of parentage or un-rescinded acknowledgment of parentage was made under Article 6 or 7; or

(4) the child was a party or was represented by an attorney, guardian ad litem, or similar individual in the proceeding in which the child’s parentage was adjudicated.

(c) In a proceeding for divorce or annulment, the court is deemed to have made an adjudication of parentage of a child if the court acts under circumstances that satisfy the jurisdiction requirements of G. L. c. 209D, §2-201 and the final order:

(1) expressly identifies the child as a “child of the marriage” or “issue of the marriage” or includes similar words indicating that both spouses are parents of the child; or

(2) provides for support of the child by a spouse unless that spouse’s parentage is disclaimed specifically in the order.

(d) Except as otherwise provided in subsection (b) or Section 511, a determination of parentage may be asserted as a defense in a subsequent proceeding seeking to adjudicate parentage of an individual who was not a party to the earlier proceeding.

(e) A party to an adjudication of parentage may challenge the adjudication only under law of this state other than this act relating to appeal, vacation of judgment, or other judicial review.

ARTICLE 6

ASSISTED REPRODUCTION

SECTION 601. SCOPE OF ARTICLE. This article does not apply to the birth of a child conceived by sexual intercourse or assisted reproduction under a surrogacy agreement under Article 7.

SECTION 602. PARENTAL STATUS OF DONOR. A donor is not a parent of a child conceived through assisted reproduction.

SECTION 603. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION. An individual who consents under Section 604 to assisted reproduction by a person with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.

SECTION 604. CONSENT TO ASSISTED REPRODUCTION.

(a) An individual who intends to be a parent of a child born through assisted reproduction shall consent to such in a signed record that is executed by each intended parent and provides that the signatories consent to the use of assisted reproduction to conceive a child with the intent to parent the child.

(b) Failure to consent in a record as provided by subsection (a), before, on, or after birth of the child, does not preclude the court from finding consent to parentage if the court finds by a preponderance of the evidence that:

(1) prior to conception or birth of the child, the parties agreed that they both intended to be the parents of the child;

(2) the person voluntarily participated in and consented to the procedures that resulted in the conception of the child; or

(3) the person resided with the child after birth and undertook to develop a parental relationship with the child.

SECTION 605. LIMITATION ON SPOUSE'S DISPUTE OF PARENTAGE.

(a) Except as otherwise provided in subsection (b), an individual who, at the time of a child's birth, is the spouse of the person who gave birth to the child by assisted reproduction may not challenge the individual's parentage of the child unless:

(1) not later than two years after the birth of the child, the spouse commences a proceeding to adjudicate the spouse's parentage of the child; and

(2) the court finds the spouse did not consent to the assisted reproduction, before, on, or after birth of the child, or withdrew consent under Section 607.

(b) A proceeding to challenge a spouse's parentage of a child born by assisted reproduction may be commenced at any time if the court determines:

(1) the spouse neither provided a gamete for, nor consented to, the assisted reproduction;

(2) the spouse and the person who gave birth to the child have not cohabited since the probable time of assisted reproduction; and

(3) the spouse never openly held out the child as the spouse's child.

(c) This section applies to a spouse's dispute of parentage even if the spouse's marriage is declared invalid after assisted reproduction occurs.

SECTION 606. EFFECT OF CERTAIN LEGAL PROCEEDINGS REGARDING MARRIAGE. If a marriage of a person who gives birth to a child conceived by assisted reproduction is terminated through divorce or annulment before transfer or implantation of gametes or embryos to the person giving birth, a former spouse of the person giving birth is not a parent of the child unless the former spouse consented in a record that the former spouse would

be a parent of the child if assisted reproduction were to occur after a divorce or annulment, and the former spouse did not withdraw consent under Section 607.

SECTION 607. WITHDRAWAL OF CONSENT.

(a) An individual who consents under Section 604 to assisted reproduction may withdraw consent any time before a transfer or implantation of gametes or embryos that results in a pregnancy, by giving notice in a record of the withdrawal of consent to the person who agreed to give birth to a child conceived by assisted reproduction and to any clinic or health-care provider who may be facilitating the assisted reproduction. Failure to give notice to the clinic or health-care provider does not affect a determination of parentage under this act.

(b) An individual who withdraws consent under subsection (a) is not a parent of the child under this article.

SECTION 608. PARENTAL STATUS OF DECEASED INDIVIDUAL.

(a) If an individual who intends to be a parent of a child conceived by assisted reproduction dies during the period between the transfer or implantation of a gamete or embryo and the birth of the child, the individual's death does not preclude the establishment of the individual's parentage of the child if the individual otherwise would be a parent of the child under this act.

(b) If an individual who consented in a record to assisted reproduction by a person who agreed to give birth to a child dies before a transfer or implantation of gametes or embryos, the deceased individual is a parent of a child conceived by the assisted reproduction only if:

(1) either:

823 (A) the individual consented in a record that if assisted reproduction were to occur after
824 the death of the individual, the individual would be a parent of the child; or

825 (B) the individual's intent to be a parent of a child conceived by assisted reproduction
826 after the individual's death is established by a preponderance of the evidence; and

827 (2) either:

828 (A) the embryo is in utero not later than 36 months after the individual's death; or

829 (B) the child is born not later than 45 months after the individual's death.

830

831 SECTION 609. LABORATORY ERROR.

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

835 ARTICLE 7

836 PARENTAGE BY SURROGACY AGREEMENT PART 1

837 GENERAL REQUIREMENTS SECTION 701. DEFINITIONS.

838 In this article:

839 (1) "Genetic surrogate" means a person who is not an intended parent and who agrees to
840 become pregnant through assisted reproduction using the surrogate's own gamete, under a
841 genetic surrogacy agreement as provided in this article.

(2) “Gestational surrogate” means a person who is not an intended parent and who agrees to become pregnant through assisted reproduction using gametes that are not the surrogate’s own, under a gestational surrogacy agreement as provided in this article.

(3) “Surrogacy agreement” means an agreement between one or more intended parents and a person who is not an intended parent in which the person agrees to become pregnant through assisted reproduction and which provides that each intended parent is a parent of a child conceived under the agreement. Unless otherwise specified, the term refers to both a gestational surrogacy agreement and a genetic surrogacy agreement.

SECTION 702. ELIGIBILITY TO ENTER GESTATIONAL OR GENETIC SURROGACY AGREEMENT.

(a) To execute an agreement to act as a gestational or genetic surrogate, a person must:

(1) be at least 21 years of age;

(2) previously have given birth to at least one child;

(3) complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;

(4) complete a mental-health consultation by a licensed mental-health professional; and

(5) have independent legal representation of the person’s choice regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement and that is paid for by the intended parent or parents.

(b) To execute a surrogacy agreement, each intended parent, whether or not genetically related to the child, must:

(1) be at least 21 years of age;

(2) complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;

(3) complete a mental-health consultation by a licensed mental health professional; and

(4) have independent legal representation of the intended parent's choice regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

SECTION 703. REQUIREMENTS OF GESTATIONAL OR GENETIC SURROGACY AGREEMENT: PROCESS.

A surrogacy agreement must be executed in compliance with the following rules:

(1) At least one party must be a resident of this state or, if no party is a resident of this state, at least one medical evaluation or procedure or mental-health consultation under the agreement must occur in this state, or the birth is anticipated to or does occur in this state.

(2) A surrogate and each intended parent must meet the requirements of Section 702.

(3) Each intended parent, the surrogate, and the surrogate's spouse, if any, must be parties to the agreement. However, the failure of the spouse of the surrogate to be a party to the agreement shall not violate this provision if such failure is for reason of prolonged unexplained absence or separation, legal separation, incapacity, or circumstances constituting an unreasonable burden on the surrogate.

881 (4) The agreement must be in a record signed by each party listed in paragraph (3).

882 (5) The surrogate and each intended parent must acknowledge in a record receipt of a
883 copy of the agreement.

884 (6) The signature of each party to the agreement must be attested by a notary or
885 witnessed.

886 (7) The surrogate and the intended parent or parents must have independent legal
887 representation regarding the terms of the surrogacy agreement and the potential legal
888 consequences of the agreement, and each counsel must be identified in the surrogacy agreement.

889 (8) The intended parent or parents must pay for independent legal representation for the
890 surrogate.

891 (9) The agreement must be executed before a medical procedure occurs related to the
892 surrogacy agreement, other than the medical evaluation and mental health consultation required
893 by Section 702.

894

895 SECTION 704. REQUIREMENTS OF GESTATIONAL OR GENETIC SURROGACY
896 AGREEMENT: CONTENT.

897 (a) A surrogacy agreement must comply with the following requirements:

898 (1) A surrogate agrees to attempt to become pregnant by means of assisted reproduction.

(2) Except as otherwise provided in Sections 711, 714, and 715, the surrogate and the surrogate's spouse or former spouse, if any, have no claim to parentage of a child conceived by assisted reproduction under the agreement.

(3) The surrogate's spouse, if any, must acknowledge and agree to comply with the obligations imposed on the surrogate by the agreement.

(4) Except as otherwise provided in Sections 711, 714, and 715, the intended parent or, if there are two intended parents, each one jointly and severally, immediately on birth will be the exclusive parent or parents of the child, regardless of number of children born or gender or mental or physical condition of each child.

(5) Except as otherwise provided in Sections 711, 714, and 715, the intended parent or, if there are two intended parents, each parent jointly and severally, immediately on birth will assume responsibility for the financial support of the child, regardless of number of children born or gender or mental or physical condition of each child.

(6) The agreement must include information providing that the intended parent(s) will be responsible for the surrogacy-related expenses, including medical expenses, of the surrogate and the medical expenses of the child.

(7) The agreement must permit the surrogate to make all health and welfare decisions regarding the surrogate and the surrogate's pregnancy.

(8) The agreement must include information about each party's right under this article to terminate the surrogacy agreement.

(b) A surrogacy agreement may provide for:

- 920 (1) payment of consideration and reasonable expenses; and
- 921 (2) reimbursement of specific expenses if the agreement is terminated under this article.
- 922 (c) A right created under a surrogacy agreement is not assignable and there is no third-
- 923 party beneficiary of the agreement other than the child.

924 SECTION 705. SURROGACY AGREEMENT: EFFECT OF SUBSEQUENT

925 CHANGE OF MARITAL STATUS.

926 (a) Unless a surrogacy agreement expressly provides otherwise:

927 (1) the marriage of a surrogate after the agreement is signed by all parties does not affect

928 the validity of the agreement, her spouse's consent to the agreement is not required, and the

929 surrogate's spouse is not a presumed parent of a child conceived by assisted reproduction under

930 the agreement; and

931 (2) the divorce or annulment of the surrogate after the agreement is signed by all parties

932 does not affect the validity of the agreement.

933 (b) Unless a surrogacy agreement expressly provides otherwise:

934 (1) the marriage of an intended parent after the agreement is signed by all parties does not

935 affect the validity of a surrogacy agreement, the consent of the spouse of the intended parent is

936 not required, and the spouse of the intended parent is not, based on the agreement, a parent of a

937 child conceived by assisted reproduction under the agreement; and

(2) the divorce or annulment of an intended parent after the agreement is signed by all parties does not affect the validity of the agreement and, except as otherwise provided in Section 714, the intended parents are the parents of the child.

SECTION 706. INSPECTION OF DOCUMENTS. Unless the court orders otherwise, a petition and any other document related to a surrogacy agreement filed with the court under this part are not open to inspection by any individual other than the parties to the proceeding, a child conceived by assisted reproduction under the agreement upon attaining the age of eighteen, or their attorneys. A court may not authorize an individual to inspect a document related to the agreement, unless required by exigent circumstances. The individual seeking to inspect the document may be required to pay the expense of preparing a copy of the document to be inspected.

SECTION 707. EXCLUSIVE, CONTINUING JURISDICTION. During the period after the execution of a surrogacy agreement until 90 days after the birth of a child conceived by assisted reproduction under the agreement, a court of this state conducting a proceeding under this act has exclusive, continuing jurisdiction over all matters arising out of the agreement. This section does not give the court jurisdiction over a child-custody or child-support proceeding if jurisdiction is not otherwise authorized by law of this state other than this act.

PART 2

SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENT

SECTION 708. TERMINATION OF GESTATIONAL SURROGACY AGREEMENT.

(a) A party to a gestational surrogacy agreement may terminate the agreement, at any time before an embryo transfer, by giving notice of termination in a record to all other parties. If an embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent embryo transfer.

(b) Unless a gestational surrogacy agreement provides otherwise, on termination of the agreement under subsection (a), the parties are released from the agreement, except that each intended parent remains responsible for expenses that are reimbursable under the agreement and incurred by the gestational surrogate through the date of termination.

(c) Except in a case involving fraud, neither a gestational surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or liquidated damages, for terminating a gestational surrogacy agreement under this section.

SECTION 709. PARENTAGE UNDER GESTATIONAL SURROGACY AGREEMENT.

(a) Except as otherwise provided in subsection (c) or Section 710(b) or 712, on birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, each intended parent is, by operation of law, a parent of the child. Parental rights shall vest exclusively in the intended parent or parents immediately upon birth of the resulting child.

(b) Except as otherwise provided in subsection (c) or Section 712, neither a gestational surrogate nor the surrogate's spouse or former spouse, if any, is a parent of the child.

(c) If a child is alleged to be a genetic child of the person who agreed to be a gestational surrogate, the court shall order genetic testing of the child. If the child is a genetic child of the person who agreed to be a gestational surrogate, parentage must be determined based on Articles 1 through 5.

(d) Except as otherwise provided in subsection (c) or Section 710(b) or 712, if, due to a clinical or laboratory error, a child conceived by assisted reproduction under a gestational surrogacy agreement is not genetically related to an intended parent or a donor who donated to the intended parent or parents, each intended parent, and not the gestational surrogate and the surrogate's spouse or former spouse, if any, is a parent of the child, subject to any other claim of parentage.

SECTION 710. GESTATIONAL SURROGACY AGREEMENT: PARENTAGE OF DECEASED INTENDED PARENT.

(a) Section 709 applies to an intended parent even if the intended parent died during the period between the transfer of a gamete or embryo and the birth of the child.

(b) Except as otherwise provided in Section 712, an intended parent is not a parent of a child conceived by assisted reproduction under a gestational surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

- (1) the agreement provides otherwise; and
- (2) the transfer of a gamete or embryo occurs not later than 36 months after the death of the intended parent or birth of the child occurs not later than 45 months after the death of the intended parent.

SECTION 711. GESTATIONAL SURROGACY AGREEMENT: ORDER OR
JUDGMENT OF PARENTAGE.

(a) Except as otherwise provided in Sections 709(c) or 712, before, on, or after the birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, any party to the agreement may commence a proceeding in the Probate and Family Court in the county where the intended parents(s) reside, where the gestational surrogate resides or where the resulting child is born or expected to be born for an order or judgment:

(1) declaring that each intended parent is a parent of the child and ordering that parental rights and duties vest immediately on the birth of the child exclusively in each intended parent;

(2) declaring that the gestational surrogate and the surrogate's spouse or former spouse, if any, are not the parents of the child;

(3) designating the content of the birth record in accordance with Chapter 46 and directing the Department of Public Health to designate each intended parent as a parent of the child;

(4) to protect the privacy of the child and the parties, declaring that the court record and related pleadings are not open to inspection and shall be impounded except as authorized under Section 706;

(5) if necessary, that the child be surrendered to the intended parent or parents; (6) if necessary, that the hospital where the child will be or has been born, treat

the intended parent(s) as the sole legal parent(s) for the purpose of naming and medical decisions; and

(7) for other relief the court determines necessary and proper.

(b) The court may issue an order or judgment under subsection (a) before the birth of the child. The court may stay enforcement of the order or judgment until the birth of the child.

(c) Neither this state or the Department of Public Health nor any town clerk nor the hospital where the child is to be born is a necessary party to a proceeding under subsection (a).

(d) Sworn affidavits of the parties and the assisted reproductive physician demonstrating the intent of the parties for the intended parent(s) to be the sole legal parent(s) of the child and that the child was born pursuant to assisted reproduction shall be sufficient to permit such a finding, and a hearing shall not be required unless the court requires additional information which cannot reasonably be ascertained without a hearing.

(e) The court shall, within thirty (30) days of the filing of the petition, grant the petition upon a finding that the intent of the parties was for the intended parent(s) to be the sole legal parent(s) of the child and that the child was conceived through assisted reproduction pursuant to a gestational surrogacy agreement. Such parentage orders issued under this section shall conclusively establish or affirm, where applicable, the parent-child relationship.

SECTION 712. EFFECT OF GESTATIONAL SURROGACY AGREEMENT.

(a) A gestational surrogacy agreement that substantially complies with Sections 702, 703, and 704 is enforceable.

(b) If a child was conceived by assisted reproduction under a gestational surrogacy agreement that does not substantially comply with Sections 802, 803, and 804, the court shall

1040 determine the rights and duties of the parties to the agreement consistent with the intent of the
1041 parties at the time of execution of the agreement. Each party to the agreement and any individual
1042 who at the time of the execution of the agreement was a spouse of a party to the agreement has
1043 standing to maintain a proceeding to adjudicate an issue related to the enforcement of the
1044 agreement.

1045 (c) Except as expressly provided in a gestational surrogacy agreement or subsection (d)
1046 or (e), if the agreement is breached by the gestational surrogate or one or more intended parents,
1047 the non-breaching party is entitled to the remedies available at law or in equity.

1048 (d) Specific performance is not a remedy available for breach by a gestational surrogate
1049 of a provision in the agreement that the gestational surrogate be impregnated, terminate or not
1050 terminate a pregnancy, or submit to medical procedures.

1051 (e) Except as otherwise provided in subsection (d), if an intended parent is determined to
1052 be a parent of the child, specific performance is a remedy available for:

1053

1054 (1) breach of the agreement by a gestational surrogate which prevents the intended parent
1055 from exercising immediately on birth of the child the full rights of parentage; or

1056 (2) breach by the intended parent which prevents the intended parent's acceptance,
1057 immediately on birth of the child conceived by assisted reproduction under the agreement, of the
1058 duties of parentage.

1059 PART 3

1060 SPECIAL RULES FOR GENETIC SURROGACY AGREEMENT

SECTION 713. REQUIREMENTS TO VALIDATE GENETIC SURROGACY
AGREEMENT.

(a) Except as otherwise provided in Section 716, to be enforceable, a genetic surrogacy agreement must be validated by the Probate and Family Court. A proceeding to validate the agreement must be commenced before assisted reproduction related to the surrogacy agreement.

(b) The court shall issue an order validating a genetic surrogacy agreement if the court finds that:

(1) Sections 702, 703, and 704 are satisfied; and

(2) all parties entered into the agreement voluntarily and understand its terms.

(c) An individual who terminates a genetic surrogacy agreement under Section 714 shall file notice of the termination with the court. On receipt of the notice, the court shall vacate any order issued under subsection (b). An individual who does not notify the court of the termination of the agreement is subject to sanctions.

SECTION 714. TERMINATION OF GENETIC SURROGACY AGREEMENT.

(a) A party to a genetic surrogacy agreement may terminate the agreement as follows:

(1) An intended parent who is a party to the agreement may terminate the agreement at any time before a gamete or embryo transfer by giving notice of termination in a record to all other parties. If a gamete or embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent gamete or embryo transfer. The notice of termination must be attested by a notarial officer or witnessed.(2) A genetic surrogate who is a party to the agreement may withdraw consent to the agreement any time before 72 hours after the

birth of a child conceived by assisted reproduction under the agreement. To withdraw consent, the genetic surrogate must execute a notice of termination in a record stating the surrogate's intent to terminate the agreement. The notice of termination must be attested by a notary or witnessed and be delivered to each intended parent any time before 72 hours after the birth of the child.

(b) On termination of the genetic surrogacy agreement under subsection (a), the parties are released from all obligations under the agreement except that each intended parent remains responsible for all expenses incurred by the surrogate through the date of termination which are reimbursable under the agreement. Unless the agreement provides otherwise, the surrogate is not entitled to any non-expense related compensation paid for serving as a surrogate.

(c) Except in a case involving fraud, neither a genetic surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or liquidated damages, for terminating a genetic surrogacy agreement under this section.

SECTION 715. PARENTAGE UNDER VALIDATED GENETIC SURROGACY AGREEMENT.

(a) Unless a genetic surrogate exercises the right under Section 714 to terminate a genetic surrogacy agreement, each intended parent is a parent of a child conceived by assisted reproduction under an agreement validated under Section 713.

(b) Unless a genetic surrogate exercises the right under Section 714 to terminate the genetic surrogacy agreement, on proof of a court order issued under Section 713 validating the agreement and on petition of any party to the agreement no early than 72 hours after the birth, the court shall make an order:

1104 (1) declaring that each intended parent is a parent of a child conceived by assisted
1105 reproduction under the agreement and ordering that parental rights and duties vest exclusively in
1106 each intended parent;

1107 (2) declaring that the genetic surrogate and the surrogate's spouse or former spouse, if
1108 any, are not parents of the child;

1109 (3) designating the contents of the birth certificate in accordance with Chapter 46 and
1110 directing the Department of Public Health to designate each intended parent as a parent of the
1111 child;

1112 (4) to protect the privacy of the child and the parties, declaring that the court record is not
1113 open to inspection except as authorized under Section 706;

1114 (5) if necessary, that the child be surrendered to the intended parent or parents; and

1115 (6) for other relief the court determines necessary and proper.

1116 (c) If a genetic surrogate terminates under Section 714(a)(2) a genetic surrogacy
1117 agreement, parentage of the child conceived by assisted reproduction under the agreement must
1118 be determined under Articles 1 through 5.

1119 (d) Except as otherwise provided in subsection (e) or Section 717, if, due to a clinical or
1120 laboratory error, a child conceived by assisted reproduction under a genetic surrogacy agreement
1121 is not genetically related to an intended parent or a donor who donated to the intended parent or
1122 parents, each intended parent, and not the genetic surrogate and the surrogate's spouse or former
1123 spouse, if any, is a parent of the child, subject to any other claim of parentage.

(e) If a child born to a genetic surrogate is alleged not to have been conceived by assisted reproduction, the court shall order genetic testing to determine the genetic parentage of the child. If the child was not conceived by assisted reproduction, parentage must be determined under Articles 1 through 5, and unless the genetic surrogacy agreement provides otherwise, the surrogate is not entitled to any non-expense related compensation paid for serving as a surrogate.

(f) Unless a genetic surrogate exercises the right under Section 714 to terminate the genetic surrogacy agreement, if an intended parent fails to file notice required under Section 714(a), the genetic surrogate or the state IV-D agency may file with the court, not later than 60 days after the birth of a child conceived by assisted reproduction under the agreement, notice that the child has been born to the genetic surrogate. Unless the genetic surrogate has properly exercised the right under Section 714 to withdraw consent to the agreement, on proof of a court order issued under Section 713 validating the agreement, the court shall order that each intended parent is a parent of the child.

SECTION 716. EFFECT OF NONVALIDATED GENETIC SURROGACY AGREEMENT.

(a) A genetic surrogacy agreement, whether or not in a record, that is not validated under Section 713 is enforceable only to the extent provided in this section and Section 718.

(b) If all parties agree, a court may validate a genetic surrogacy agreement after assisted reproduction has occurred but before the birth of a child conceived by assisted reproduction under the agreement.

(c) If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under Section 713 is born and the genetic surrogate, consistent with Section

714(a)(2), withdraws her consent to the agreement before 72 hours after the birth of the child, the court shall adjudicate the parentage of the child under Articles 1 through 5.

(d) If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under Section 713 is born and a genetic surrogate does not withdraw her consent to the agreement, consistent with Section 714(a)(2), before 72 hours after the birth of the child, the genetic surrogate is not automatically a parent and the court shall adjudicate parentage of the child based on the best interest of the child, taking into account the factors in Section 513(a) and the intent of the parties at the time of the execution of the agreement.

(e) The parties to a genetic surrogacy agreement have standing to maintain a proceeding to adjudicate parentage under this section.

SECTION 717. GENETIC SURROGACY AGREEMENT: PARENTAGE OF DECEASED INTENDED PARENT.

(a) Except as otherwise provided in Section 715 or 716, on birth of a child conceived by assisted reproduction under a genetic surrogacy agreement, each intended parent is, by operation of law, a parent of the child, notwithstanding the death of an intended parent during the period between the transfer of a gamete or embryo and the birth of the child.

(b) Except as otherwise provided in Section 715 or 716, an intended parent is not a parent of a child conceived by assisted reproduction under a genetic surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

(1) the agreement provides otherwise; and

1166 (2) the transfer of the gamete or embryo occurs not later than 36 months after the death of
1167 the intended parent, or birth of the child occurs not later than 45 months after the death of the
1168 intended parent.

1169 SECTION 718. BREACH OF GENETIC SURROGACY AGREEMENT.

1170 (a) Subject to Section 714(b), if a genetic surrogacy agreement is breached by a genetic
1171 surrogate or one or more intended parents, the non-breaching party is entitled to the remedies
1172 available at law or in equity.

1173 (b) Specific performance is not a remedy available for breach by a genetic surrogate of a
1174 requirement of a validated or non-validated genetic surrogacy agreement that the surrogate be
1175 impregnated, terminate or not terminate a pregnancy, or submit to medical procedures.

1176 (c) Except as otherwise provided in subsection (b), specific performance is a remedy
1177 available for:

1178 (1) breach of a validated genetic surrogacy agreement by a genetic surrogate of a
1179 requirement which prevents an intended parent from exercising the full rights of parentage 72
1180 hours after the birth of the child; or

1181 (2) breach by an intended parent which prevents the intended parent's acceptance of
1182 duties of parentage 72 hours after the birth of the child.

1183 ARTICLE 8

1184 MISCELLANEOUS PROVISIONS

1185 SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In
1186 applying and construing this uniform act, consideration must be given to the need to promote
1187 uniformity of the law with respect to its subject matter among states that enact it.

1188 SECTION 802. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
1189 NATIONAL COMMERCE ACT. This act modifies, limits, or supersedes the Electronic
1190 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
1191 modify limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
1192 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
1193 Section 7003(b).

1194 SECTION 803. TRANSITIONAL PROVISION. This act applies to a pending
1195 proceeding to adjudicate parentage commenced before the effective date of this act for an issue
1196 on which a judgment has not been entered.

1197 SECTION 804. REPEALS; CONFORMING AMENDMENTS. Insofar as the provisions
1198 of this act differ from provisions regarding the establishment of parentage in Chapter
1199 209C, the provisions of this act shall supersede Chapter 209C.

1200 SECTION 805. EFFECTIVE DATE. This act takes effect sixty days after enactment.