

# SENATE . . . . . No. 2905

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## The Commonwealth of Massachusetts

—  
In the One Hundred and Ninety-First General Court  
(2019-2020)  
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SENATE, September 8, 2020.

The committee on Children, Families and Persons with Disabilities, to whom was referred the petition (accompanied by bill, Senate, No. 77) of Bruce E. Tarr, Lenny Mirra, Jason M. Lewis, Rebecca L. Rausch and other members of the General Court for legislation relative to parentage to promote children's security, reports the accompanying bill (Senate, No. 2905).

For the committee,  
Sonia Chang-Diaz

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## The Commonwealth of Massachusetts

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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           SECTION 1. Section 1 of chapter 209C of the General Laws, as appearing in the 2018  
2   Official Edition, is hereby amended by striking out, in lines 7 and 8, and in lines 14, 15 and 17,  
3   the word “paternity” and inserting in place thereof, in each instance, the following word:-  
4   parentage.

5           SECTION 2. Said section 1 of said chapter 209C, as so appearing, is hereby further  
6   amended by striking out, in line 11 and in line 20, the words “child born out of wedlock” and  
7   inserting in place thereof, in each instance, the following words:- nonmarital child.

8           SECTION 3. Section 2 of said chapter 209C, as so appearing, is hereby amended by  
9   striking out, in line 1, the word “Paternity” and inserting in place thereof the following word:-  
10   Parentage.

11          SECTION 4. Said section 2 of said chapter 209C, as so appearing, is hereby further  
12   amended by striking out, in lines 12, 13, 16, and in line 18, the word “paternity” and inserting in  
13   place thereof, in each instance, the following word:- parentage.

14           SECTION 5. Said section 2 of said chapter 209C, as so appearing, is hereby further  
15 amended by striking out, in line 5, the words “paternity filed pursuant to this chapter” and  
16 inserting in place thereof the following words:- parentage filed pursuant to this chapter or chapter  
17 209E.

18           SECTION 6. Section 3 of said chapter 209C, as so appearing, is hereby amended by  
19 striking out, in lines 3, 7, lines 35 and 36, and in line 51, the word “paternity” and inserting in  
20 place thereof, in each instance, the following word:- parentage.

21           SECTION 7. Said section 3 of said chapter 209C, as so appearing, is hereby further  
22 amended by inserting after the word “parentage”, in line 4, the following words:- under this  
23 chapter.

24           SECTION 8. Section 4 of said chapter 209C, as so appearing, is hereby amended by  
25 striking out, in lines 1 and 11, the word “paternity”, and inserting in place thereof, in each  
26 instance, the following word:- parentage.

27           SECTION 9. Section 5 of said chapter 209C, as so appearing, is hereby amended by  
28 striking out, in lines 1 and 2, lines 19, 35, 55, 60 and 62, the word “paternity” and inserting in  
29 place thereof, in each instance, the following word:- parentage.

30           SECTION 10. Said section 5 of said chapter 209C, as so appearing, is hereby further  
31 amended by inserting after the word “mother”, in lines 3, 7, the first time it appears, and in line  
32 17, the following words:- person who gave birth.

SECTION 11. Said section 5 of said chapter 209C, as so appearing, is hereby further amended by striking out, in line 4, the words “the mother” and inserting in place thereof the following words:- that person.

SECTION 12, Said section 5 of said chapter 209C, as so appearing, is hereby further amended by striking out, in line 4 and in line 9, the second time it appears, the word “father” and inserting in place thereof, in each instance, the following words:- other parent.

SECTION 13. Said section 5 of said chapter 209C, as so appearing, is hereby further amended by striking out, in lines 4 and 21, the word “himself” and inserting in place thereof, in each instance, the following word:- themselves.

SECTION 14. Said section 5 of said chapter 209C, as so appearing, is hereby further amended by striking out, in lines 21 and 22, the words “mother’s husband” and inserting in place thereof the following word:- spouse.

SECTION 15. Said section 5 of said chapter 209C, as so appearing, is hereby amended by striking out, in lines 24 to 37, inclusive, the words “mother and the putative father, whether either or both is a minor, and may be registered pursuant to section 11 only if the signatures of the mother and the father are notarized. If the mother of the child was or is married and the child’s birth occurs during the marriage or within 300 days of its termination by divorce, a voluntary acknowledgment of parentage naming the putative father may be executed by the mother and the putative father only if the mother and the person who was the spouse of the mother at the time of the child’s birth or conception sign an affidavit denying that the spouse is the father of the child; provided, however, that where the marriage has been terminated by annulment or by the death of either spouse, paternity of the putative father may only be

established by filing a complaint to establish paternity as provided in this chapter. A mother and a putative father” and inserting in place thereof the following words:- person who gave birth and either a presumed parent or alleged genetic parent as provided in this chapter or an intended parent as provided in Article 6 of chapter 209E, whether either or both is a minor and may be registered pursuant to section 11 only if the signatures of both signatories are notarized. If the person who gave birth to the child was or is married and the child’s birth occurs during the marriage or within 300 days of its termination by divorce, a voluntary acknowledgment of parentage naming the other parent may be executed by the person who gave birth and the other parent only if the person who gave birth and the person who was the spouse of the person who gave birth at the time of the child’s birth or conception sign an affidavit denying that the spouse is the parent of the child; provided, however, that where the marriage has been terminated by annulment or by the death of either spouse, parentage of the other parent may only be established by filing a complaint to establish paternity as provided in this chapter. A person who gave birth and the other parent.

SECTION 15A. Subsection (b) of said section 5 of said chapter 209C, as so appearing, is hereby further amended by adding the following sentence:- For the purposes of this chapter the term “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 a putative parent, 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.

SECTION 16. Section 6 of said chapter 209C, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words “In all actions under this chapter a man is presumed to be

the father of a child and must be jointed as a party” and inserting in place thereof the following words:- A person is presumed to be the parent of a child and shall be joined as a part in all actions under this chapter.

SECTION 17. Said section 6 of said chapter 209C, as so appearing, is hereby further amended by striking out, in lines 3, 6, 11,14, 16, 18 and 26, the word “he” and inserting in place thereof, in each instance, the following words:- the person.

SECTION 18. Said section 6 of said chapter 209C, as so appearing, is hereby further amended by striking out, in lines 3, 7 and 32, the word “mother” and inserting in place thereof, in each instance, the following words:- person who gave birth.

SECTION 19. Said section 6 of said chapter 209C, as so appearing, is hereby further amended by striking out, in lines 21 to 23, inclusive, the words “he has acknowledged paternity in a parental responsibility claim as provided in section four A of chapter two hundred and ten and the mother” and inserting in place thereof the following words:- the person has asserted parentage in a parental responsibility claim as provided in section 4A of chapter 210 and the person who gave birth.

SECTION 20. Said section 6 of said chapter 209C, as so appearing, is hereby further amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) Notwithstanding subsection (a), a spouse or former spouse shall not be required to be joined as a party if that person’s non-parentage of the child has previously been adjudicated in a proceeding between the spouse and the person who gave birth to the child in a court or administrative agency of competent jurisdiction.

SECTION 21. Said section 6 of said chapter 209C, as so appearing, is hereby further amended by adding the following subsection:-

(d) A presumption of parentage under this section may be overcome, and competing claims to parentage may be resolved, by a valid denial of parentage under section 11 of this chapter or as follows:

(1) A presumption of parentage cannot be overcome after the child attains 2 years of age unless the court determines: (i) the presumed parent is not a genetic parent, never resided with the child, and never held out the child as the presumed parent's child; or (ii) the child has more than 1 presumed parent.

(2) A proceeding to challenge the marital presumption by an alleged genetic parent who is not a presumed parent may be permitted by a court only if the alleged genetic parent proves, by clear and convincing evidence, that the alleged genetic parent has a substantial parent-child relationship with the child. If the court permits the proceeding, the court shall adjudicate parentage under chapter 209E, section 511.

(3) The following rules apply in a proceeding to adjudicate a presumed parent's parentage of a child if the individual who gave birth to the child is the only other individual with a claim to parentage of the child: (i) If no party to the proceeding challenges the presumed parent's parentage of the child, the court shall adjudicate the presumed parent to be a parent of the child; (ii) If the presumed parent is identified as a genetic parent of the child and that identification is not successfully challenged, the court shall adjudicate the presumed parent to be a parent of the child; (iii) If the presumed parent is not identified as a genetic parent of the child and the presumed parent or the individual who gave birth to the child challenges the presumed

parent's parentage of the child, the court shall adjudicate the parentage of the child in the best interest of the child based on the factors of chapter 209E, section 511(a) and (b).

(4) Subject to other limitations in this part, if in a proceeding to adjudicate a presumed parent's parentage of a child, another individual in addition to the individual who gave birth to the child asserts a claim to parentage of the child, the court shall adjudicate parentage under chapter 209E, section 511.

SECTION 22. Section 7 of said chapter 209C, as so appearing, is hereby amended by striking out, in lines 3 and 4 and in line 8, the word "paternity" and inserting in place thereof, in each instance, the word:- parentage.

SECTION 23. Section 8 of said chapter 209C, as so appearing, is hereby amended by striking out, in lines 1, 2, 5 and 15, the word "paternity" and inserting in place thereof the following word:- parentage.

SECTION 24. Said section 8 of said chapter 209C, as so appearing, is hereby further amended by striking out, in line 7, the words "mother or putative father submits" and inserting in place thereof the following words:- person who gave birth or alleged genetic parent submits sufficient evidence, which may include evidence.

SECTION 25. Said section 8 of said chapter 209C, as so appearing, is hereby further amended by striking out, in lines 12 and 13, the word "father or mother" and inserting in place thereof the following word:- parent.



140           SECTION 26. Said section 8 of said chapter 209C, as so appearing, is hereby further  
141 amended by striking out, in line 16, the word “mother” and inserting in place thereof the  
142 following words:- person who gave birth.

143           SECTION 27. Subsection (a) of section 10 of said chapter 209C, as so appearing, is  
144 hereby amended by striking out the first paragraph and inserting in place thereof the following  
145 paragraph:-

146           Upon or after an adjudication or voluntary acknowledgment of parentage for a nonmarital  
147 child, the court may award custody to either parent or to them jointly or to another suitable  
148 person as hereafter further specified as may be appropriate in the best interests of the child.

149           SECTION 28. Said section 10 of said chapter 209C, as so appearing, is hereby further  
150 amended by striking out subsection (b) and inserting in place thereof the following subsection:-

151           (b) Prior to or in the absence of an adjudication or voluntary acknowledgment of  
152 parentage, the person who gave birth shall have custody of a nonmarital child. In the absence of  
153 an order or judgment of a probate and family court relative to custody, the person who gave birth  
154 shall continue to have custody of a child after an adjudication of parentage or voluntary  
155 acknowledgment of parentage.

156           SECTION 29. Section 11 of said chapter 209C, as so appearing, is hereby amended by  
157 striking out, in line 2, the words “putative father” and inserting in place thereof, in each instance,  
158 the following words:- alleged genetic parent, presumed parent or intended parent.

159           SECTION 30. Said section 11 of said chapter 209C, as so appearing, is hereby further  
160 amended by striking out, in lines 7, 20, 22, 37 and 49 the word “paternity” and inserting in place  
161 thereof, in each instance, the following word:- parentage.

162           SECTION 31. Said section 11 of said chapter 209C, as so appearing, is hereby amended  
163 by striking out, in line 21, the word “father” and inserting in place thereof the following word:-  
164 parent.

165           SECTION 32. Said section 11 of said chapter 209C, as so appearing, is hereby further  
166 amended by striking out, in lines 2 and 59, the word “father” and inserting in place thereof, in  
167 each instance, the following words:- parent, presumed parent or intended parent.

168           SECTION 33. Said section 11 of said chapter 209C, as so appearing, is hereby further  
169 amended by inserting after the word “be”, in line 11, the following words:- in a record signed by  
170 the person who gave birth and by the individual seeking to establish a parent-child relationship  
171 and is hereby further amended by inserting after the word “public,” in line 11 and in line 51, the  
172 following words:- or witnessed.

173           SECTION 34. Said section 11 of said chapter 209C, as so appearing, is hereby further  
174 amended by striking out, in line 43, the word “rescind” and inserting in place thereof the  
175 following word:- challenge.

176           SECTION 35. Said section 11 of said chapter 209C, as so appearing, is hereby further  
177 amended by striking out the tenth sentence and inserting in place thereof the following sentence:-  
178 If either party rescinds the acknowledgment in a timely fashion and the basis of the  
179 acknowledgment is genetic parentage, the court shall order genetic marker testing and proceed to  
180 adjudicate parentage or nonparentage in accordance with this chapter; provided, however, that

181 the rescinded acknowledgment shall constitute the proper showing required for an order to  
182 submit to such testing; and provided, further, that the rescinded acknowledgment shall be  
183 admissible as evidence of the alleged genetic parent's parentage and shall serve as sufficient  
184 basis for admitting the report of the results of genetic marker tests.

185 SECTION 36. Said section 11 of said chapter 209C, as so appearing, is hereby further  
186 amended by striking out, in line 56, the word "nonpaternity" and inserting in place thereof the  
187 following word:- nonparentage.

188 SECTION 37. Said section 11 of said chapter 209C, as so appearing, is hereby further  
189 amended by striking out, in line 59, the word "a mother and father" and inserting in place thereof  
190 the following words:- parents.

191 SECTION 38 Said section 11 of said chapter 209C, as so appearing, is hereby further  
192 amended by adding the following subsection:-

193 (e) If there are competing claims of parentage of a child with an acknowledged parent,  
194 the court shall adjudicate parentage as provided in section 511 of chapter 209E.

195 SECTION 39. Section 12 of said chapter 209C, as so appearing, is hereby amended by  
196 striking out, in line 2, the word "paternity" and inserting in place thereof the following word:-  
197 parentage.

198 SECTION 40. Section 13 of said chapter 209C, as so appearing, is hereby amended by  
199 striking out, in lines 1 and 2, the words "paternity or in which paternity of a child is an issue" and  
200 inserting in place thereof the following words:- parentage or in which parentage of a child is an  
201 issue pursuant to this chapter.

SECTION 41. Said section 13 of said chapter 209C, as so appearing, is hereby further amended by striking out, in lines 7 to 9, inclusive, the words “father is adjudicated not to be the father of the child; provided, however, that the child, the child’s mother, the person adjudicated to be the father” and inserting in place thereof the following words:- parent is adjudicated not to be the parent of the child; provided, however, that the child, the person who gave birth to the child, the person adjudicated to be the parent.

SECTION 42. Said chapter 209C is hereby further amended by striking out section 14, as so appearing, and inserting in place thereof the following section:-

Section 14. An action to establish parentage of a child pursuant to this chapter may be instituted during pregnancy but shall only be filed by the person to give birth or their representative or by the IV-D agency as set forth in chapter 119A on behalf of the person to give birth. In the case of any complaint brought prior to the birth of the child, no final judgment on the issue of parentage shall be made until after the birth of the child; provided, however, that the court may order temporary support or health care coverage.

SECTION 43. Section 16 of said chapter 209C, as so appearing, is hereby amended by striking out subsections (c ), (d) and (e ) and inserting in place thereof the following 3 subsections:-

(c) In an action pursuant to this chapter, the persons who gave birth and the alleged parent shall be competent to testify and no privilege or disqualification created under chapter 233 shall prohibit testimony by a spouse or former spouse which is otherwise competent. If the person who gave birth is or was married, both that person and their spouse or former spouse may testify to parentage of the child.

(d) In an action to establish parentage, testimony relating to sexual access to the person who gave birth by an unidentified person at any time or by an identified person at any time other than the probable time of conception of the child is inadmissible in evidence unless offered by the person who gave birth.

(e) In an action to establish parentage based on alleged genetic parentage, the court may view the person who gave birth, the child and the alleged genetic parent to note any resemblance among the parties notwithstanding the absence of expert testimony.

SECTION 44. Said section 16 of said chapter 209C, as so appearing, is hereby further amended by striking out, in line 25, the word “mother” and inserting in place thereof the following words:- person who gave birth.

SECTION 45. Said section 16 of said chapter 209C, as so appearing, is hereby amended by striking out subsection (g) and inserting in place thereof the following subsection:-

(g) All other evidence relevant to the issue of parentage of the child, custody of a child or support of a child shall also be admissible.

SECTION 46. Section 17 of said chapter 209C, as so appearing, is hereby amended by striking out, in line 1, the words “paternity of a child born out of wedlock” and inserting in place thereof the following words:- parentage of a nonmarital child based on alleged genetic parentage.

SECTION 47. Said section 17 of said chapter 209C, as so appearing, is hereby further amended by striking out, in lines 4, 10, 13 and 26, the word “mother” and inserting in place thereof, in each instance, the following words:- person who gave birth.

245           SECTION 48. Said section 17 of said chapter 209C, as so appearing, is hereby further  
246 amended by striking out, in lines 4, 10, 13, lines 21 and 22, 28, 31, lines 48 and 49, both times  
247 they appear, the word “father” and inserting in place thereof, in each instance, the following  
248 words:- genetic parent.

249           SECTION 49. Said section 17 of said chapter 209C, as so appearing, is hereby further  
250 amended by striking out, in lines 31 and 34, the word “father” and inserting in place thereof, in  
251 each instance, the following words:- parent.

252           SECTION 50. Said section 17 of said chapter 209C, as so appearing, is hereby amended  
253 by adding the following sentence:- Genetic testing shall not be used to challenge the parentage  
254 of an individual who is a parent under Article 6 or 7 of chapter 209E or to establish the parentage  
255 of an individual who is a donor as provided in said chapter 209E.

256           SECTION 51. Section 21 of said chapter 209C, as so appearing, is hereby amended by  
257 striking out, in line 2, the word “establishing” and inserting in place thereof the following  
258 words:- determining the existence of a father and child relationship shall apply.

259           SECTION 52. Section 22 of said chapter 209C, as so appearing, is hereby amended by  
260 striking out, in line 9, the word “or”,- and by inserting after the word “nine D”, in lines 6 and 10,  
261 the following words:- , or 209E.

262           SECTION 53. Section 23 of said chapter 209C, as so appearing, is hereby amended by  
263 striking out, in lines 1, 10, 11 and 14, the word “paternity” and inserting in place thereof, in each  
264 instance, the following word:- parentage.

265           SECTION 54. The General Laws are hereby amended by inserting after chapter 209D the  
266 following chapter:

267           Chapter 209E

268           The Massachusetts Parentage Act.

269           Article 1. GENERAL PROVISIONS

270           Section 101. This chapter may be cited as the Massachusetts Parentage Act.

271           Section 102. For the purposes of this chapter the following terms shall, unless the context  
272 clearly requires otherwise, have the following meanings:

273           “Acknowledged parent”, an individual who has established a parent-child relationship  
274 through a voluntary acknowledgement of parentage.

275           “Adjudicated parent”, an individual who has been adjudicated to be a parent of a child by  
276 a court with jurisdiction.

277           “Alleged genetic parent”, an individual who is alleged to be, or alleges that the individual  
278 is, a genetic parent or possible genetic parent of a child whose parentage has not been  
279 adjudicated. The term includes a putative parent, alleged genetic father and alleged genetic  
280 mother. The term does not include: (A) a presumed parent; (B) an individual whose parental  
281 rights have been terminated or declared not to exist; or (C) a donor.

282           “Assisted reproduction”, a method of causing pregnancy other than sexual intercourse  
283 and includes but is not limited to:

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

285 (B) donation of gametes;

286 (C) donation of embryos;

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

288 (E) intracytoplasmic sperm injection.

289 “Birth”, includes stillbirth.

290 “Child”, an individual of any age whose parentage may be determined under this chapter.

291 “Child-support agency”, a government entity or public official authorized to provide  
292 parentage-establishment services under Title IV-D of the Social Security Act, 42 U.S.C. sections  
293 651 through 669.

294 “Determination of parentage”, establishment of a parent-child relationship by a court  
295 adjudication or signing of a valid acknowledgment of parentage.

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

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

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

302 “Embryo”, a cell or group of cells containing a diploid complement of chromosomes or a  
303 group of such cells, not including a gamete, that has the potential to develop into a live born



304 human being if transferred into the body of a person under conditions in which gestation may be  
305 reasonably expected to occur.

306 “Gamete”, sperm or egg.

307 “Individual”, a natural person of any age.

308 “Intended parent”, an individual, married or unmarried, who manifests an intent to be  
309 legally bound as a parent of a child conceived by assisted reproduction or a gestational or genetic  
310 carrier agreement.

311 “Marriage”, includes any legal relationship that provides substantially the same rights,  
312 benefits and responsibilities as marriage and is recognized as valid in the state or jurisdiction in  
313 which it was entered.

314 “Parent”, an individual who has established parentage that meets the requirements of this  
315 chapter.

316 “Parentage” or “parent-child relationship”, the legal relationship between a child and a  
317 parent of the child.

318 “Presumed parent”, an individual who under section 6 of chapter 209C is presumed to be  
319 a parent of a child, unless the presumption is overcome in a judicial proceeding, a valid denial of  
320 parentage is made under section 5 of said chapter 209C or a court adjudicates the individual to be  
321 a parent.

322 “Record”, information that is inscribed on a tangible medium or that is stored in an  
323 electronic or other medium and is retrievable in perceivable form.

324 “Sign”, with intent to authenticate or adopt a record to: (A) execute or adopt a tangible  
325 symbol; or (B) attach to or logically associate with the record an electronic symbol, sound or  
326 process.

327 “Signatory”, an individual who signs a record.

328 “Transfer”, a procedure for assisted reproduction by which an embryo or sperm is placed  
329 in the body of individual who will give birth to the child.

330 “Witnessed”, that at least 1 individual who is authorized to sign has signed a record to  
331 verify that the individual personally observed a signatory sign the record.

332 Section 103. SCOPE.

333 This chapter does not create, affect, enlarge or diminish parental rights or duties under the  
334 law of this state other than this chapter.

335 Section 104. AUTHORIZED COURT.

336 The probate and family court department may adjudicate parentage under this chapter.  
337 The district, Boston municipal, and juvenile court departments shall retain concurrent  
338 jurisdiction over adjudication of parentage and to accept registration of voluntary  
339 acknowledgments of parentage as provided in section 3 of chapter 209C.

340 Section 105. APPLICABLE LAW.

341 The court shall apply the law of this state to adjudicate parentage under this chapter,  
342 regardless of:

343 (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 chapter is subject to the law of this state other than this chapter 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 chapter applicable to a father-child relationship applies to a mother-child relationship and a provision of this chapter applicable to a mother-child relationship applies to a father-child relationship. This chapter 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 6 of chapter 209C, unless the presumption is overcome in a judicial proceeding or a valid denial of parentage is made;

(3) Adjudication: the individual is adjudicated a parent of the child by a court with jurisdiction;

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

(5) Acknowledgment: the individual acknowledges parentage of the child under chapter 209C, unless the acknowledgment is rescinded or successfully challenged;

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

(7) Assisted reproduction: the individual's parentage of the child is established under Article 6; or

(8) Gestational or genetic surrogacy agreement: the individual's parentage of the child is established 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 chapter, a parent-child relationship established under this chapter applies for all purposes, including the rights and duties of parentage.

#### Section 204. FULL FAITH AND CREDIT.

The commonwealth shall give full faith and credit to a determination of parentage from another state if the determination is valid and effective in accordance with the law of the other state.

Article 3. [Reserved]

Article 4. [Reserved]

Article 5. PROCEEDING TO ADJUDICATE PARENTAGE

Section 501. PROCEEDING AUTHORIZED.

(a) A proceeding may be commenced to adjudicate the parentage of a child as provided for in this chapter. Except as otherwise provided in this chapter, 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 sections 507 through 509, a proceeding to adjudicate parentage under this chapter 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 of the child;

(3) an individual who has an established parent-child relationship under section 201;

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

(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 chapter 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 plaintiff 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 chapter;

(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 subsection (b) of section 511.

(d) A donor shall not be entitled to notice.

#### 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) Lack of jurisdiction over 1 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 under this chapter is in the county of this state in which:

(1) the child resides or, for the purposes of Article 6 or 7, 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 chapter.

439           Section 506. ADJUDICATING PARENTAGE OF CHILD WITH ALLEGED GENETIC  
440 PARENT.

441           A proceeding to determine whether an alleged genetic parent who is not a presumed  
442 parent is a parent of a child may be commenced as provided in chapter 209C.

443           Section 507. ADJUDICATING PARENTAGE OF CHILD WITH PRESUMED  
444 PARENT.

445           (a) A proceeding to determine whether a presumed parent is a parent of a child may be  
446 commenced pursuant to chapter 209C.

447           Section 508. ADJUDICATING CLAIM OF DE FACTO PARENTAGE OF CHILD.

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

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

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

452           (b) An individual who claims to be a de facto parent of a child shall commence a  
453 proceeding to establish parentage of a child under this section:

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

455           (2) while the child is alive.

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



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

(2) An adverse party, parent, or legal guardian may file a pleading in response to the pleading filed under paragraph (1). A responsive pleading must be verified and must be served 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 shall be held on an expedited basis. The court may enter 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 1 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 at least 1 year, unless the court finds good cause to accept a shorter period;

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

(3) the individual undertook caretaking 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 1 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 511.

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

#### Section 508A. ADJUDICATING PARENTAGE OF CHILD WITH ACKNOWLEDGED PARENT.

(a) If a child as an acknowledged parent, a proceeding to challenge that acknowledgment of parentage or a denial of parentage, brought by a signatory to the acknowledgment or denial, is governed by chapter 209C.

(b) If a child has an acknowledged parent, the following rules apply to a proceeding to challenge the acknowledgment of parentage or 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:

(i) The individual must commence the proceeding not later than one year after the effective date of the acknowledgment unless the individual did not know and could not have reasonably known of the individual's potential parentage due to a material misrepresentation or concealment, in which case the proceeding shall be commenced within one year after the discovery of the individual's potential parentage.

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

(iii) If the court permits the proceeding, the court shall adjudicate parentage under Section 511.

#### Section 509. 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, 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:

521 (1) the individual shall commence the proceeding not later than 2 years after the effective  
522 date of the adjudication;

523 (2) the court may permit the proceeding only if the court finds permitting the proceeding  
524 is in the best interest of the child; and

525 (3) if the court permits the proceeding, the court shall adjudicate parentage under section  
526 511.

527 Section 510. ADJUDICATING PARENTAGE OF CHILD OF ASSISTED  
528 REPRODUCTION.

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

532 Section 511. ADJUDICATING COMPETING CLAIMS OF PARENTAGE.

533 (a) In a proceeding to adjudicate competing claims of, or challenges under this article or  
534 chapter 209C to, parentage of a child by 2 or more individuals, the court shall adjudicate  
535 parentage in the best interest of the child, based on:

536 (1) the age of the child;

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

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

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

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

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

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

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

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

551 (c) The court may adjudicate a child to have more than 2 parents under this chapter if the  
552 court finds that it is in the best interests of the child to do so. A finding of best interests of the  
553 child under this subsection does not require a finding of unfitness of any parent or person seeking  
554 an adjudication of parentage.

555 Section 512. TEMPORARY ORDER.

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

559 (1) petitioning to be adjudicated a parent;

(2) shown by a preponderance of the evidence to be a parent of the child; or

(3) a parent under this chapter.

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

(c) If the child on whose behalf an order of support is sought is a recipient of benefits pursuant to chapter 117, 118 or 119 and the department of transitional assistance, the department of children and families, the division of medical assistance or any other public assistance program has not been made a party, the court shall notify the IV-D agency of the order or judgment of support. Each judgment or order of support which is issued pursuant to this chapter shall conform to and shall be enforced in accordance with the provisions of chapter one hundred and nineteen A.

#### Section 513. CONSOLIDATING PROCEEDINGS.

(a) Except as otherwise provided in subsection (b) and consistent with the jurisdiction of the court under the law of this state other than this chapter, the court may combine a proceeding to adjudicate parentage under this chapter with a proceeding for adoption, termination of parental rights, care and protection, child custody or parenting time 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 chapter 209D, the Uniform Interstate Family Support Act.

581           Section 514. PROCEEDING BEFORE BIRTH.

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

585           Section 515. COURT TO ADJUDICATE PARENTAGE.

586           The court shall adjudicate parentage of a child without a jury.

587           Section 516. HEARING; INSPECTION OF RECORDS.

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

590           (b) A final order in a proceeding under this article is available for public inspection.

591           Other papers and records are available for public inspection only with the consent of the parties  
592 or by court order for good cause shown.

593           Section 517. DISMISSAL FOR WANT OF PROSECUTION.

594           The court may dismiss a proceeding under this chapter for want of prosecution only  
595 without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is  
596 void and has only the effect of a dismissal without prejudice.

597           Section 518. ORDER ADJUDICATING PARENTAGE.

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

(b) A final judgment under subsection (a) 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) 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 519. BINDING EFFECT OF DETERMINATION OF PARENTAGE.

(a) Except as otherwise provided herein:

(1) a signatory to an acknowledgment of parentage or denial of parentage is bound by the acknowledgment and denial as provided in chapter 209C; and

(2) a party to an adjudication of parentage by a court acting under circumstances that satisfy the jurisdiction requirements of section 2-201 of chapter 209D 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 chapter unless: (1) the determination of parentage was made under Article 6 or 7; or

(2) 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 section 2-201 of chapter 209D, 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 509, 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 chapter relating to appeal, vacation of judgment or other judicial review.

## Article 6. ASSISTED REPRODUCTION

### Section 601. SCOPE OF ARTICLE.

This article shall not apply to the birth of a child conceived by sexual intercourse or assisted reproduction by 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.

638 An individual who consents under section 604 to assisted reproduction by a person with  
639 the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.

640 Section 604. CONSENT TO ASSISTED REPRODUCTION.

641 (a) Except as otherwise provided in subsection (b), the consent described in section 603  
642 shall be in a record signed by the individual giving birth to a child conceived by assisted  
643 reproduction and an individual who intends to be a parent of the child.

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

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

649 (2) the individual who intends to be a parent of the child voluntarily participated in and  
650 consented to the assisted reproduction that resulted in the conception of the child.

651 Section 605. LIMITATION ON SPOUSE'S DISPUTE OF PARENTAGE.

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

655 (1) not later than 2 years after the birth of the child, the spouse commences a proceeding  
656 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 by a spouse to challenge that 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.

(d) The person giving birth shall not challenge a spouse's parentage under this section.

#### 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 chapter.

(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 chapter.

(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:

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

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

(2) either:

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

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

#### Section 609. LABORATORY ERROR.

If due to a laboratory error the 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 the parents of the child unless otherwise determined by the court.

#### Section 610. LIMITATIONS ON GENETIC TESTING.

Genetic testing, including genetic marker testing pursuant to section 11 of chapter 209C, shall not be used: (1) to challenge the parentage of an individual who is a parent under this Article or Article 7; or (2) to establish the parentage of an individual who is a donor.

### Article 7. PARENTAGE BY SURROGACY AGREEMENT

#### PART 1 GENERAL REQUIREMENTS

#### Section 701. DEFINITIONS.

In this article the following terms shall, unless the context clearly requires otherwise, have the following meanings:

“Genetic surrogate”, an individual who is not an intended parent and who agrees to become pregnant through assisted reproduction using the individual’s own gamete, under a genetic surrogacy agreement as provided in this article.

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

“Surrogacy agreement”, an agreement between 1 or more intended parents and an individual 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, surrogacy agreement 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, an individual shall:

- (1) be at least 21 years of age;
- (2) previously have given birth to at least 1 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, shall:

(1) be at least 21 years of age;

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

(3) 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 shall be executed in compliance with the following rules:

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

(2) A surrogate and each intended parent shall meet the requirements of section 702.

(3) Each intended parent, the surrogate, and the surrogate's spouse, if any, shall be parties to the agreement; provided however, that 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

754 unexplained absence or separation, legal separation, incapacity or circumstances constituting an  
755 unreasonable burden on the surrogate.

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

757 (5) The surrogate and each intended parent shall acknowledge in a record receipt of a  
758 copy of the agreement.

759 (6) The signature of each party to the agreement shall be attested by a notary or  
760 witnessed.

761 (7) The surrogate and the intended parent or parents shall have independent legal  
762 representation regarding the terms of the surrogacy agreement and the potential legal  
763 consequences of the agreement paid for by the intended parent or parents, and each counsel shall  
764 be identified in the surrogacy agreement.

765 (8) The intended parent or parents shall pay for independent legal representation for the  
766 surrogate.

767 (9) The agreement shall be executed before a medical procedure occurs related to the  
768 surrogacy agreement, other than the medical evaluation and mental health consultation required  
769 by section 702.

770 Section 704. REQUIREMENTS OF GESTATIONAL OR GENETIC SURROGACY  
771 AGREEMENT: CONTENT.

772 (a) A surrogacy agreement shall comply with the following requirements:

773 (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, shall 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 2 intended parents, each one jointly and severally, immediately on birth shall 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 2 intended parents, each parent jointly and severally, immediately on birth shall 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 shall include information providing that the intended parent or parents shall be responsible for the surrogacy-related expenses, including medical expenses, of the surrogate and the medical expenses of the child.

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

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

(b) A surrogacy agreement may provide for:

(1) payment of consideration and reasonable expenses; and

(2) reimbursement of specific expenses if the agreement is terminated under this article.

(c) A right created under a surrogacy agreement is not assignable and there is no third-party beneficiary of the agreement other than the child.

Section 705. SURROGACY AGREEMENT: EFFECT OF SUBSEQUENT CHANGE  
OF MARITAL STATUS.

(a) Unless a surrogacy agreement expressly provides otherwise:

(1) the marriage of a surrogate after the agreement is signed by all parties shall not affect the validity of the agreement, her spouse's consent to the agreement is not required and the surrogate's spouse is not a presumed parent of a child conceived by assisted reproduction under the agreement; and

(2) the divorce or annulment of the surrogate after the agreement is signed by all parties shall not affect the validity of the agreement.

(b) Unless a surrogacy agreement expressly provides otherwise:

(1) the marriage of an intended parent after the agreement is signed by all parties shall not affect the validity of a surrogacy agreement, the consent of the spouse of the intended parent is not required, and the spouse of the intended parent is not, based on the agreement, a parent of a 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 shall 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.

All complaints, pleadings, papers or documents filed pursuant to this section shall not be available for inspection, unless a judge of probate and family court of the county where such records are kept, for good cause shown, shall otherwise order or unless requested by the child resulting from the surrogacy agreement or by a party to the surrogacy agreement. All such complaints, pleadings, papers or documents shall be segregated.

#### 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 chapter has exclusive, continuing jurisdiction over all matters arising out of the agreement.

### 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 subsection (b) of section 710 or section 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 subsection (c) of section 709 or section 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:

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

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

879           (3) designating the content of the birth record in accordance with chapter 46 and directing  
880 the department of public health to designate each intended parent as a parent of the child;

881           (4) to protect the privacy of the child and the parties, declaring that the court record and  
882 related pleadings shall be impounded except as authorized under section 706;

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

884           (6) if necessary, that the hospital where the child will be or has been born, treat the  
885 intended parent(s) as the sole legal parent(s) for the purpose of naming and medical decisions;  
886 and

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

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

890           (c) Neither this state or the department of public health nor any town clerk nor the  
891 hospital where the child is to be born is a necessary party to a proceeding under subsection (a).  
892 Any party to the surrogacy agreement not joining in the action shall be served with notice of the  
893 proceeding.

(d) A complaint under this section shall be supported by the following: (i) sworn affidavits of the parties to the surrogacy agreement and the assisted reproductive physician demonstrating the intent of the parties for the intended parent or parents to be the sole legal parent or parents of the child and that the child was born pursuant to assisted reproduction and (ii) certifications from the attorney representing the intended parent(s) and the carrier that the requirements of sections 702, 703 and 704 have been met. A complaint supported by such affidavits and certifications shall be sufficient to establish parentage, and a hearing shall not be required unless the court requires additional information which cannot reasonably be ascertained without a hearing.

(e) Where a complaint satisfies subsection (d), a court shall, within 30 days of the filing of the complaint, issue an order or judgment of parentage. 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 702, 703 and 704, the court shall determine the rights and duties of the parties to the agreement consistent with the intent of the parties at the time of execution of the agreement. Each party to the agreement and any individual who at the time of the execution of the agreement was a spouse of a party to the agreement has standing to maintain a proceeding to adjudicate an issue related to the enforcement of the agreement.

(c) Except as expressly provided in a gestational surrogacy agreement or subsection (d) or (e), if the agreement is breached by the gestational surrogate or 1 or more intended parents, the non-breaching party is entitled to the remedies available at law or in equity.

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

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

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

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

### PART 3. 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 shall be validated by the probate and family court. A proceeding to validate the agreement shall 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 and parties. 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 shall 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 shall execute a notice of termination in a record stating the surrogate's intent to terminate the agreement. The notice of termination shall 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 earlier than 72 hours after the birth, the court shall make an order:

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

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

(3) designating the contents of the birth certificate 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 is not open to inspection except as authorized under section 706;

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

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

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

(d) Except as otherwise provided in subsection (e) or section 717, if, due to a clinical or laboratory error, a child conceived by assisted reproduction under a genetic 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 genetic surrogate and the surrogate's spouse or former 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 may order genetic testing to determine the genetic parentage of the child. If the child was not conceived by assisted reproduction and the second source of genetic material is the spouse of the surrogate, then the surrogate and her spouse shall be found to be the parents of the child. If the second genetic source is an individual other than the spouse of the surrogate, then parentage shall be determined as provided in chapter 209C. However, if the second genetic

999 source is an intended parent, the court, in its sole discretion, may determine parentage under  
1000 Articles 1 through 5. Unless the genetic surrogacy agreement provides otherwise, the surrogate  
1001 is not entitled to any non-expense related compensation paid for serving as a surrogate if the  
1002 child was not conceived by assisted reproduction.

1003 (f) Unless a genetic surrogate exercises the right under section 714 to terminate the  
1004 genetic surrogacy agreement, if an intended parent fails to file notice required under section  
1005 714(a), the genetic surrogate may file with the court, not later than 60 days after the birth of a  
1006 child conceived by assisted reproduction under the agreement, notice that the child has been born  
1007 to the genetic surrogate. Unless the genetic surrogate has properly exercised the right under  
1008 section 714 to withdraw consent to the agreement, on proof of a court order issued under section  
1009 713 validating the agreement, the court shall order that each intended parent is a parent of the  
1010 child.

1011 Section 716. EFFECT OF NONVALIDATED GENETIC SURROGACY  
1012 AGREEMENT.

1013 (a) A genetic surrogacy agreement, whether or not in a record, that is not validated under  
1014 section 713 is enforceable only to the extent provided in this section and section 718.

1015 (b) If all parties agree, a court may validate a genetic surrogacy agreement after assisted  
1016 reproduction has occurred but before the birth of a child conceived by assisted reproduction  
1017 under the agreement.

1018 (c) If a child conceived by assisted reproduction under a genetic surrogacy agreement that  
1019 is not validated under section 713 is born and the genetic surrogate, consistent with clause (2) of

1020 subsection (a) of section 714, withdraws her consent to the agreement before 72 hours after the  
1021 birth of the child, the court shall adjudicate the parentage of the child under Articles 1 through 5.

1022 (d) If a child conceived by assisted reproduction under a genetic surrogacy agreement  
1023 that is not validated under section 713 is born and a genetic surrogate does not withdraw her  
1024 consent to the agreement, consistent with clause (2) of subsection (a) of section 714, before 72  
1025 hours after the birth of the child, the genetic surrogate is not automatically a parent and the court  
1026 shall adjudicate parentage of the child based on the best interest of the child, taking into account  
1027 the factors in subsection (a) of section 513 and the intent of the parties at the time of the  
1028 execution of the agreement.

1029 (e) The parties to a genetic surrogacy agreement have standing to maintain a proceeding  
1030 to adjudicate parentage under this section.

1031 Section 717. GENETIC SURROGACY AGREEMENT: PARENTAGE OF DECEASED  
1032 INTENDED PARENT.

1033 (a) Except as otherwise provided in section 715 or 716, on birth of a child conceived by  
1034 assisted reproduction under a genetic surrogacy agreement, each intended parent is, by operation  
1035 of law, a parent of the child, notwithstanding the death of an intended parent during the period  
1036 between the transfer of a gamete or embryo and the birth of the child.

1037 (b) Except as otherwise provided in section 715 or 716, an intended parent is not a parent  
1038 of a child conceived by assisted reproduction under a genetic surrogacy agreement if the  
1039 intended parent dies before the transfer of a gamete or embryo unless:

1040 (1) the agreement provides otherwise; and

1041 (2) the transfer of the gamete or embryo occurs not later than 36 months after the death of  
1042 the intended parent, or birth of the child occurs not later than 45 months after the death of the  
1043 intended parent.

1044 Section 718. BREACH OF GENETIC SURROGACY AGREEMENT.

1045 (a) Subject to section 714(b), if a genetic surrogacy agreement is breached by a genetic  
1046 surrogate or 1 or more intended parents, the non-breaching party is entitled to the remedies  
1047 available at law or in equity.

1048 (b) Specific performance is not a remedy available for breach by a genetic surrogate of a  
1049 requirement of a validated or nonvalidated genetic surrogacy agreement that the surrogate be  
1050 impregnated, terminate or not terminate a pregnancy, or submit to medical procedures.

1051 (c) Except as otherwise provided in subsection (b), specific performance is a remedy  
1052 available for:

1053 (1) breach of a validated genetic surrogacy agreement by a genetic surrogate of a  
1054 requirement which prevents an intended parent from exercising the full rights of parentage 72  
1055 hours after the birth of the child; or

1056 (2) breach by an intended parent which prevents the intended parent's acceptance of  
1057 duties of parentage 72 hours after the birth of the child.

1058 Article 8. MISCELLANEOUS PROVISIONS

1059 Section 1. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

1060           In applying and construing this uniform act, consideration shall be given to the need to  
1061   promote uniformity of the law with respect to its subject matter among states that enact it.

1062           Section 2. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND  
1063   NATIONAL COMMERCE ACT.

1064           This chapter modifies, limits or supersedes the Electronic Signatures in Global and  
1065   National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify limit, or supersede  
1066   Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of  
1067   the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

1068           SECTION 55. This act shall take effect 1 year after its enactment.