

HOUSE No. 4970

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2912) of the House Bill to ensure legal parentage equality (House, No. 4750), reports recommending passage of the accompanying bill (House, No. 4970). August 1, 2024.

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| Michael S. Day | Julian Cyr |
| Kate Hogan | William N. Brownsberger |
| Hannah Kane | Bruce E. Tarr |

HOUSE No. 4970

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to ensure legal parentage equality.

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 46 of the General Laws, as appearing in the 2022
2 Official Edition, is hereby amended by striking out the second paragraph and inserting in place
3 thereof the following paragraph:-

4 In the record of births, name, date of birth, place of birth and sex of child; legal names,
5 dates of birth, residences, places of birth and surname at birth or adoption of the parent or
6 parents. In the record of birth of a child born to parents not married to each other, the name of
7 and other facts relating to the other parent or parents shall not be recorded except as provided in
8 section 2 of chapter 209C where parentage has been acknowledged or adjudicated under the laws
9 of the commonwealth or under the law of any other jurisdiction.

10 SECTION 2. Section 4B of said chapter 46 is hereby repealed.

11 SECTION 3. Section 13 of said chapter 46, as appearing in the 2022 Official Edition, is
12 hereby amended by striking out, in lines 53 to 56, inclusive, the words “paternity by a court or
13 administrative agency of competent jurisdiction in the commonwealth and the court orders the

14 state registrar to amend the birth certificate to include the information relating to the father” and
15 inserting in place thereof the following words:- parentage by a court or administrative agency of
16 competent jurisdiction in the commonwealth and the court orders the state registrar to originally
17 issue or to amend the birth certificate to include the information relating to the parentage of the
18 child.

19 SECTION 4. Chapter 209C of the General Laws is hereby amended by striking out the
20 title, as so appearing, and inserting in place thereof the following title:- NONMARITAL
21 CHILDREN AND PARENTAGE OF CHILDREN.

22 SECTION 5. Section 1 of chapter 209C of the General Laws, as so appearing, is hereby
23 amended by inserting after the first sentence the following sentence:- A child shall have the same
24 rights and protections under law to parentage without regard to the marital status, gender, gender
25 identity or sexual orientation of their parents or the circumstances of the child’s birth, including
26 whether the child was born as a result of assisted reproduction or surrogacy.

27 SECTION 6. Said section 1 of said chapter 209C, as so appearing, is hereby further
28 amended by striking out, in lines 7 and 8, 14, 15 and 17, the word “paternity” and inserting in
29 place thereof, in each instance, the following word:- parentage.

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

33 SECTION 8. Said section 1 of said chapter 209C, as so appearing, is hereby further
34 amended by striking out, in lines 11 and 12, the words “a man and woman” and inserting in place
35 thereof the following word:- persons.

36 SECTION 9. Said section 1 of said chapter 209C, as so appearing, is hereby further
37 amended by striking out, in lines 20 and 25, the word “his”, and inserting in place thereof, in
38 each instance, the following word:- their.

39 SECTION 10. Said chapter 209C is hereby further amended by inserting after section 1
40 the following section:-

41 Section 1A. For the purposes of this chapter the following terms shall have the following
42 meanings, unless the context clearly requires otherwise:

43 “Acknowledged parent”, a person who has established a parent-child relationship through
44 a voluntary acknowledgement of parentage.

45 “Adjudicated parent”, a person who has been adjudicated to be a parent of a child by a
46 court of competent jurisdiction.

47 “Alleged genetic parent”, a person who is alleged to be or alleges to be a genetic parent
48 of a child whose parentage has not been adjudicated; provided, however, that this term shall
49 include a putative parent, an alleged genetic father and an alleged genetic mother; and provided
50 further that this term shall not include a presumed parent under section 6, an individual whose
51 parental rights have been terminated or declared not to exist or a donor as described in section
52 27.

53 “Assisted reproduction”, a method of causing pregnancy other than sexual intercourse
54 including, but not limited to, artificial insemination, intrauterine, intracervical or vaginal
55 insemination, donation of gametes or embryos, in vitro fertilization and transfer of embryos and
56 intracytoplasmic sperm injection.

57 “Donor”, a person who provides a gamete or embryo intended for use in assisted
58 reproduction or gestation, whether or not for consideration; provided, however, that this term
59 shall not include a person who consents to assisted reproduction with the intent to be a parent of
60 the resulting child.

61 “Genetic surrogacy agreement”, a surrogacy agreement involving a genetic surrogate.

62 “Genetic surrogate”, a person who is not an intended parent and agrees to become
63 pregnant through assisted reproduction using their own gamete under a genetic surrogacy
64 agreement as provided in this chapter.

65 “Gestational surrogacy agreement”, a surrogacy agreement involving a gestational
66 surrogate.

67 “Gestational surrogate”, a person who is not an intended parent and agrees to become
68 pregnant through assisted reproduction using gametes that are not their own under a gestational
69 surrogacy agreement as provided in this chapter.

70 “Intended parent”, a person, whether married or unmarried, who manifests an intent to be
71 legally bound as a parent of a child resulting from assisted reproduction.

72 “Nonmarital child”, a child born to persons who are not married to each other.

73 “Parent”, a person who has established parentage of a child through: (i) birth except as
74 otherwise provided in sections 28 to 28P, inclusive; (ii) presumption pursuant to section 6; (iii)
75 adjudication by a court of competent jurisdiction; (iv) adoption pursuant to chapter 210; (v)
76 acknowledgement pursuant to section 11; (vi) de facto parentage pursuant to section 25; (vii)

77 assisted reproduction pursuant to section 27; or (viii) surrogacy pursuant to sections 28 to 28P,
78 inclusive.

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

81 “Presumed parent”, a person who is presumed to be a parent of a child pursuant to section
82 6, unless the presumption is overcome in a judicial proceeding, a valid denial of parentage is
83 made under section 11 or a court adjudicates the person to be a parent.

84 “Surrogacy agreement”, an agreement between 1 or more intended parents and a person
85 who is not an intended parent in which that person agrees to become pregnant through assisted
86 reproduction and which provides that each intended parent is a parent of a child conceived under
87 the agreement.

88 “Surrogate”, a genetic surrogate or gestational surrogate.

89 SECTION 11. Section 2 of said chapter 209C, as appearing in the 2022 Official Edition,
90 is hereby amended by striking out, in line 1, the word “Paternity” and inserting in place thereof
91 the following word:- Parentage.

92 SECTION 12. Said section 2 of said chapter 209C, as so appearing, is hereby further
93 amended by striking out, in lines 5, 6, 12, 13, 16 and 18, the word “paternity” and inserting in
94 place thereof, in each instance, the following word:- parentage.

95 SECTION 13. Section 3 of said chapter 209C, as so appearing, is hereby amended by
96 striking out, in lines 3, 7, 32, 35 and 36 and 51, the word “paternity” and inserting in place
97 thereof, in each instance, the following word:- parentage.

98 SECTION 14. Said section 3 of said chapter 209C, as so appearing, is hereby further
99 amended by inserting after the word “parentage”, in line 4, the following words:- under this
100 chapter.

101 SECTION 15. Said section 3 of said chapter 209C, as so appearing, is hereby further
102 amended by striking out, in line 13, the word “his” and inserting in place thereof the following
103 word:- their.

104 SECTION 16. Section 4 of said chapter 209C, as so appearing, is hereby amended by
105 striking out, in lines 1 and 11, the word “paternity” and inserting in place thereof, in each
106 instance, the following word:- parentage.

107 SECTION 17. Section 5 of said chapter 209C, as so appearing, is hereby amended by
108 striking out, in lines 1 and 2, 19, 55, 60 and 62, the word “paternity” and inserting in place
109 thereof, in each instance, the following word:- parentage.

110 SECTION 18. Said section 5 of said chapter 209C, as so appearing, is hereby further
111 amended by striking out, in line 3, the word “mother” and inserting in place thereof the following
112 words:- person who gave birth to the child.

113 SECTION 19. Said section 5 of said chapter 209C, as so appearing, is hereby further
114 amended by striking out, in lines 4 and 21, the word “himself” and inserting in place thereof, in
115 each instance, the following word:- themselves.

116 SECTION 20. Said section 5 of said chapter 209C, as so appearing, is hereby further
117 amended by striking out, in lines 4 and 9, each time it appears, the word “father” and inserting in
118 place thereof, in each instance, the following words:- other parent.

119 SECTION 21. Said section 5 of said chapter 209C, as so appearing, is hereby further
120 amended by striking out, in line 7, the words “mother if the mother” and inserting in place
121 thereof the following words:- person who gave birth to the child if that person.

122 SECTION 22. Said section 5 of said chapter 209C, as so appearing, is hereby further
123 amended by striking out, in line 17, the words “mother of the child” and inserting in place
124 thereof the following words:- person who gave birth to the child.

125 SECTION 23. Said section 5 of said chapter 209C, as so appearing, is hereby further
126 amended by striking out, in lines 21 and 22, the words “father unless he is or was the mother’s
127 husband” and inserting in place thereof the following words:- parent unless such parent is or was
128 the spouse of the person who gave birth to the child.

129 SECTION 24. Said section 5 of said chapter 209C, as so appearing, is hereby further
130 amended by striking out subsection (b) and inserting in place thereof the following subsection:-

131 (b) Voluntary acknowledgments of parentage may be executed by the person who gave
132 birth and either an alleged genetic parent, presumed parent or intended parent as provided in this
133 chapter, whether either or both is a minor, and may be registered pursuant to section 11 only if
134 the signatures of both signatories are notarized. If the person who gave birth to the child was or
135 is married to a spouse other than the other parent and the child’s birth occurs during the marriage
136 or within 300 days of its termination by divorce, a voluntary acknowledgment of parentage
137 naming the other parent may be executed by the person who gave birth and the other parent only
138 if the person who gave birth and their spouse or former spouse at the time of the child’s birth or
139 conception sign an affidavit denying that the spouse is the parent of the child; provided,
140 however, that where the marriage has been terminated by annulment or by the death of either

141 spouse, parentage of the other parent may only be established by filing a complaint to establish
142 parentage as provided in this chapter. Prior to signing a voluntary acknowledgment of parentage
143 at the hospital or thereafter at the office of the city or town clerk as part of the birth registration
144 process pursuant to section 3C of chapter 46, with the department of transitional assistance, with
145 the IV-D agency set forth in chapter 119A, with any agency designated by the United States
146 Secretary of Health and Human Services or with any official of a court, a person who gave birth
147 and the other parent shall receive notice orally, or through the use of video or audio equipment,
148 and in writing of alternatives to signing the acknowledgment, including the availability of
149 genetic marker testing, as well as the benefits and responsibilities with respect to child support,
150 custody and visitation that may arise from signing the acknowledgment and subsequently filing
151 the acknowledgment with the court or with the registrar of vital records and statistics as provided
152 in this chapter.

153 SECTION 25. Section 6 of said chapter 209C, as so appearing, is hereby amended by
154 striking out, in lines 1 and 2, the words “In all actions under this chapter a man is presumed to be
155 the father of a child and must be joined as a party” and inserting in place thereof the following
156 words:- A person is presumed to be the parent of a child and shall be joined as a party in all
157 actions under this chapter.

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

161 SECTION 27. Said section 6 of said chapter 209C, as so appearing, is hereby further
162 amended by striking out, in line 3, 7, 12 and 19, the word “mother” and inserting in place
163 thereof, in each instance, the following words:- person who gave birth to the child.

164 SECTION 28. Said section 6 of said chapter 209C, as so appearing, is hereby further
165 amended by striking out, in line 17, the word “paternity” and inserting in place thereof the
166 following word:- parentage.

167 SECTION 29. Said section 6 of said chapter 209C, as so appearing, is hereby further
168 amended by striking out, in lines 21 to 23, inclusive, the words “he has acknowledged paternity
169 in a parental responsibility claim as provided in section four A of chapter two hundred and ten
170 and the mother” and inserting in place thereof the following words:- the person has
171 acknowledged parentage in a parental responsibility claim as provided in section 4A of chapter
172 210 and the person who gave birth to the child.

173 SECTION 30. Said section 6 of said chapter 209C, as so appearing, is hereby further
174 amended by striking out, in lines 25 to 27, inclusive, the words “his consent and the consent of
175 the child’s mother, he is named as the child’s father” and inserting in place thereof the following
176 words:- the person’s consent and the consent of the person who gave birth to the child, the
177 person is named as the child’s parent.

178 SECTION 31. Said section 6 of said chapter 209C, as so appearing, is hereby further
179 amended by striking out subsection (b) and inserting in place thereof the following subsection:-

180 (b) Notwithstanding subsection (a), a spouse or former spouse shall not be required to be
181 joined as a party if that person’s non-parentage of the child has previously been adjudicated in a

182 proceeding between the spouse and the person who gave birth to the child in a court or
183 administrative agency of competent jurisdiction.

184 SECTION 32. Section 7 of said chapter 209C, as so appearing, is hereby amended by
185 striking out, in lines 3 and 4 and 8, the word “paternity” and inserting in place thereof, in each
186 instance, the following word:- parentage.

187 SECTION 33. Section 8 of said chapter 209C, as so appearing, is hereby amended by
188 striking out, in lines 1, 2, 5 and 15, the word “paternity” and inserting in place thereof, in each
189 instance, the following word:- parentage.

190 SECTION 34. Said section 8 of said chapter 209C, as so appearing, is hereby further
191 amended by striking out, in line 4, the word “his” and inserting in place thereof the following
192 words:- the defendant’s.

193 SECTION 35. Said section 8 of said chapter 209C, as so appearing, is hereby further
194 amended by striking out, in line 7, the words “mother or putative father submits” and inserting in
195 place thereof the following words:- person who gave birth to the child or alleged genetic parent
196 submits sufficient evidence of parentage, which may include evidence.

197 SECTION 36. Said section 8 of said chapter 209C, as so appearing, is hereby further
198 amended by striking out, in lines 12 and 13, the words “father or mother” and inserting in place
199 thereof the following word:- parent.

200 SECTION 37. Said section 8 of said chapter 209C, as so appearing, is hereby further
201 amended by striking out, in line 16, the word “mother” and inserting in place thereof the
202 following words:- person who gave birth to the child.

203 SECTION 38. Section 9 of said chapter 209C, as so appearing, is hereby amended by
204 striking out, in line 21, the word “his” and inserting in place thereof the following words:- the
205 defendant’s.

206 SECTION 39. Said section 9 of said chapter 209C, as so appearing, is hereby further
207 amended by striking out, in line 27, the word “mother” and inserting in place thereof the
208 following words: another parent.

209 SECTION 40. Subsection (a) of section 10 of said chapter 209C, as so appearing, is
210 hereby amended by striking out the first paragraph and inserting in place thereof the following
211 paragraph:-

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

215 SECTION 41. Said section 10 of said chapter 209C, as so appearing, is hereby further
216 amended by striking out subsection (b) and inserting in place thereof the following subsection:-

217 (b) Prior to or in the absence of an adjudication or voluntary acknowledgment of
218 parentage, the person who gave birth shall have custody of a nonmarital child. In the absence of
219 an order or judgment of a probate and family court relative to custody, the person who gave birth
220 shall continue to have custody of a nonmarital child after an adjudication of parentage or
221 voluntary acknowledgment of parentage.

222 SECTION 42. Section 11 of said chapter 209C, as so appearing, is hereby amended by
223 striking out, in line 2, the words “putative father” and inserting in place thereof the following
224 words:- alleged genetic parent, presumed parent or intended parent.

225 SECTION 43. Said section 11 of said chapter 209C, as so appearing, is hereby further
226 amended by striking out, in line 3, the words “mother of” and inserting in place thereof the
227 following words:- person who gave birth to.

228 SECTION 44. Said section 11 of said chapter 209C, as so appearing, is hereby further
229 amended by striking out, in lines 7, 16, 20, 22 and 37, the word “paternity” and inserting in place
230 thereof, in each instance, the following word:- parentage.

231 SECTION 45. Said section 11 of said chapter 209C, as so appearing, is hereby further
232 amended by striking out, in line 21, the words “by such putative father and mother”.

233 SECTION 46. Subsection (a) of said section 11 of said chapter 209C, as so appearing, is
234 hereby amended by striking out the tenth sentence and inserting in place thereof the following
235 sentence:- If either party rescinds the acknowledgment in a timely fashion and the basis of the
236 acknowledgment was genetic parentage, the court shall order genetic marker testing and proceed
237 to adjudicate parentage or nonparentage in accordance with this chapter; provided, however, that
238 the rescinded acknowledgment shall constitute the proper showing required for an order to
239 submit to such testing; and provided further, that the rescinded acknowledgment shall be
240 admissible as evidence of the alleged genetic parent’s parentage and shall serve as sufficient
241 basis for admitting the report of the results of genetic marker tests.

242 SECTION 47. Said section 11 of said chapter 209C, as so appearing, is hereby further
243 amended by striking out, in line 56, the word “nonpaternity” and inserting in place thereof the
244 following word:- nonparentage.

245 SECTION 48. Said section 11 of said chapter 209C, as so appearing, is hereby further
246 amended by striking out, in line 59, the words “a mother and father” and inserting in place
247 thereof the following word:- parents.

248 SECTION 49. Section 12 of said chapter 209C, as so appearing, is hereby amended by
249 striking out, in line 2, the word “paternity” and inserting in place thereof the following word:-
250 parentage.

251 SECTION 50. Section 13 of said chapter 209C, as so appearing, is hereby amended by
252 striking out, in lines 1 and 2, the words “paternity or in which paternity” and inserting in place
253 thereof the following words:- parentage or in which parentage.

254 SECTION 51. Said section 13 of said chapter 209C, as so appearing, is hereby further
255 amended by striking out, in lines 7 to 9, inclusive, the words “father is adjudicated not to be the
256 father of the child; provided, however, that the child, the child’s mother, the person adjudicated
257 to be the father” and inserting in place thereof the following words:- parent is adjudicated not to
258 be the parent of the child; provided, however, that the child, the person who gave birth to the
259 child, the person adjudicated to be the parent.

260 SECTION 52. Said chapter 209C is hereby further amended by striking out section 14, as
261 so appearing, and inserting in place thereof the following section:-

262 Section 14. Except as otherwise provided in this chapter, an action to establish parentage
263 of a child may be instituted during pregnancy but shall only be filed by the person who is to give
264 birth to the child or such person's representative or by the IV-D agency as set forth in chapter
265 119A on behalf of the person who is to give birth. In the case of any complaint brought prior to
266 the birth of the child, no final judgment on the issue of parentage shall be made until after the
267 birth of the child; provided, however, that the court may order temporary support or health care
268 coverage.

269 SECTION 53. Section 16 of said chapter 209C, as so appearing, is hereby amended by
270 striking out subsections (c) to (e), inclusive, and inserting in place thereof the following 3
271 subsections:-

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

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

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

284 SECTION 54. Said section 16 of said chapter 209C, as so appearing, is hereby further
285 amended by striking out, in line 25, the word “mother” and inserting in place thereof the
286 following words:- person who gave birth to the child.

287 SECTION 55. Said section 16 of said chapter 209C, as so appearing, is hereby further
288 amended by striking out, in line 36, the word “paternity” and inserting in place thereof the
289 following word:- parentage.

290 SECTION 56. Section 17 of said chapter 209C, as so appearing, is hereby amended by
291 striking out, in lines 1 and 2, the words “paternity of a child born out of wedlock” and inserting
292 in place thereof the following words:- parentage of a nonmarital child based on alleged genetic
293 parentage.

294 SECTION 57. Said section 17 of said chapter 209C, as so appearing, is hereby further
295 amended by striking out, in lines 4, 9, 10, 13, 26 and 28, the word “mother” and inserting in
296 place thereof, in each instance, the following words:- person who gave birth to the child.

297 SECTION 58. Said section 17 of said chapter 209C, as so appearing, is hereby further
298 amended by striking out, in lines 4, 9, 10, 13, 26, 28, 31, 48 and 49, the words “putative father”
299 and inserting in place thereof, in each instance, the following words:- alleged genetic parent.

300 SECTION 59. Said section 17 of said chapter 209C, as so appearing, is hereby further
301 amended by striking out, in lines 21 and 22, the words “putative father’s” and inserting in place
302 thereof the following words:- alleged genetic parent’s.

303 SECTION 60. Said section 17 of said chapter 209C, as so appearing, is hereby further
304 amended by striking out, in lines 22 and 30, the word “paternity” and inserting in place thereof,
305 in each instance, the following words:- genetic parentage.

306 SECTION 61. Said section 17 of said chapter 209C, as so appearing, is hereby further
307 amended by striking out, in lines 31 and 32 and in line 49, the first time it appears, the word
308 “father” and inserting in place thereof, in each instance, the following word:- parent.

309 SECTION 62. Said section 17 of said chapter 209C, as so appearing, is hereby further
310 amended by adding the following sentence:- Genetic testing shall not be used to challenge the
311 parentage of an individual who is a parent under sections 25, 27 and 28 to 28P, inclusive, or to
312 establish the parentage of an individual who is a donor as provided in said sections.

313 SECTION 63. Section 21 of said chapter 209C, as so appearing, is hereby amended by
314 striking out, in line 4, the word “paternity” and inserting in place thereof the following word:-
315 parentage.

316 SECTION 64. Section 23 of said chapter 209C, as so appearing, is hereby amended by
317 striking out, in lines 1, 10, 11 and 14, the word “paternity” and inserting in place thereof, in each
318 instance, the following word:- parentage.

319 SECTION 65. Said chapter 209C is hereby further amended by adding the following 20
320 sections:-

321 Section 25. (a) This section shall apply to nonmarital and marital children.

322 (b) A proceeding to adjudicate parentage of a child under this section may be
323 commenced only by a person who: (i) is alive when the proceeding is commenced; and (ii)
324 claims to be a de facto parent of the subject child under this section.

325 (c) A proceeding under this section shall be commenced during a child's lifetime and
326 before the child attains 18 years of age.

327 (d) Proceedings under this section shall be governed by the Massachusetts Rules of
328 Domestic Relations Procedure.

329 (e) All parents, legal guardians and legal custodians of the subject child shall be entitled
330 to notice.

331 (f) The plaintiff shall file a verified complaint alleging specific facts to support each
332 element required to establish de facto parentage as set forth in subsection (i), along with any
333 other pleadings, affidavits or information required by the court. The verified complaint shall be
334 served on all parents, legal guardians and legal custodians of the child and any other party to the
335 proceeding. Prior to an adjudication of the merits, and within 60 days of the commencement of a
336 proceeding under this section, the court shall determine, based on the pleadings, whether the
337 plaintiff has alleged facts sufficient to satisfy each element required to establish de facto
338 parentage. Upon request made by a party entitled to notice or upon the court's own initiative, the
339 court may hold a hearing on the sufficiency of the pleadings; provided, however, that if the court
340 holds any such hearing, the hearing shall be held on an expedited basis. Failure of a pleading to
341 meet these standards shall constitute grounds for the court to enter a sua sponte judgment of
342 dismissal without prejudice.

343 (g) Prior to an adjudication of the merits, and within 60 days of the commencement of a
344 proceeding under this section, the court shall determine whether the plaintiff has standing to seek
345 an adjudication of parentage of a child under this section. Upon request made by a party entitled
346 to notice or upon the court's own initiative, the court may hold a hearing on the issue of
347 standing; provided, however, that any such hearing shall be held on an expedited basis; and
348 provided further, that a hearing shall be required and there shall be a rebuttable presumption
349 against standing if the court finds by a preponderance of the evidence that:

350 (i) the plaintiff is or was the defendant to: (A) an abuse prevention order issued after
351 notice and hearing pursuant to chapter 209A; (B) a protection order issued pursuant to section
352 34B or 34C of chapter 208; or (C) a harassment prevention order issued pursuant to chapter
353 258E, involving the child, a parent of the child or a household member of the child;

354 (ii) the department of children and families has made a determination supporting an
355 allegation of abuse against the plaintiff with respect to the subject child or another child in the
356 same household;

357 (iii) a defendant is engaged or has engaged in military service as defined in 50 U.S.C.
358 App. 511 within the past 3 years, unless the defendant consents in writing and such written
359 consent is filed with the complaint;

360 (iv) a defendant parent executed a military family care plan and but for the plan, the
361 plaintiff would not meet at least 1 of the requirements of subsection (i), unless the defendant
362 consents in writing and such written consent is filed with the complaint; or

363 (v) the plaintiff is or was the foster parent of the child and but for the plaintiff's role as
364 foster parent, the plaintiff would not meet at least 1 of the requirements of subsection (i); or

365 (vi) the plaintiff engaged in duress, coercion or threat of harm to establish any element of
366 de facto parentage as set forth in subsection (i).

367 (h) A plaintiff may file and serve a motion seeking a temporary order of contact between
368 the subject child and the plaintiff contemporaneously with the complaint. After a hearing, the
369 court may enter a temporary order concerning contact between the child and the plaintiff. No
370 temporary order shall issue before a determination of standing; provided, however, that a hearing
371 on the motion may occur on the same date as any hearing under subsections (f) or (g).

372 (i) Subject to subsection (j), the court shall adjudicate a plaintiff with standing in a
373 proceeding commenced under this section to be a legal parent of the subject child if the plaintiff
374 demonstrates by clear and convincing evidence that: (i) the plaintiff resided with the child as a
375 regular member of the child's household for not less than 3 years or 40 per cent of the child's
376 life, whichever is shorter; provided, however, that the period is not less than 2 years; provided
377 further, that the court may, in its discretion, accept a shorter period in extraordinary
378 circumstances for good cause shown; (ii) the plaintiff engaged in consistent caregiving of the
379 child, including, but not limited to, shaping the child's daily routine, addressing the child's
380 developmental needs and providing for the child's education and medical care, individually or
381 cooperatively with another parent; (iii) the plaintiff undertook full and permanent responsibilities
382 of a parent of the child without expectation or payment of financial compensation; (iv) the
383 plaintiff held out the child as the plaintiff's child; (v) the plaintiff established a bonded and
384 dependent relationship with the child that is parental in nature; (vi) each parent of the child
385 consented to the bonded and dependent relationship required under clause (v); provided,
386 however, that for the purposes of this section, consent shall include that each parent, over a
387 period of not less than 6 months: (a) held out the plaintiff as a parent of the child; and (b)

388 engaged in shared decision making with the plaintiff regarding significant issues of the child's
389 education, health and welfare; provided further, that the court may determine that a parent has
390 impliedly consented where that parent has not, without good cause, meaningfully engaged with
391 the subject child through direct contact, participation in decision making or regular financial
392 support for a period of 2 years; provided further, that good cause may include evidence that the
393 parent attempted to meaningfully engage with the subject child by regularly requesting contact or
394 participation in decision making but was prevented from doing so by another person; provided
395 further, that a notarized document affirming consent executed by a parent shall be evidence of
396 that parent's consent; and provided further, that consent to temporary guardianship shall not
397 constitute evidence that a parent consented under this clause; and (vii) adjudicating the plaintiff
398 to be the child's parent is in the best interest of the child. In making this determination, the court
399 shall consider evidence of past or present abuse by the plaintiff toward a parent or the child as a
400 factor contrary to the best interest of the child; provided, however, that a finding by a
401 preponderance of the evidence that the plaintiff engaged in duress, coercion or threat of harm in
402 order to establish any of the elements of clauses (i) to (vi), inclusive, shall be considered
403 evidence of abuse; provided further, that a finding by a preponderance of the evidence that a
404 pattern or serious incident of abuse as defined in section 10 by the plaintiff against a parent or
405 child has occurred shall create a rebuttable presumption that it is not in the best interest of the
406 child that the plaintiff be adjudicated a parent; and provided further, that where there is credible
407 evidence of abuse and the court adjudicates the plaintiff to be a parent of the subject child, the
408 court shall make detailed written findings on the presence and nature of the abuse, its effect on
409 the child and its impact on the plaintiff's parenting ability.

410 (j) Subject to other limitations in this section, if in a proceeding to adjudicate the plaintiff
411 as a de facto parent, there is more than 1 defendant parent and the court determines that the
412 requirements of subsection (i) are satisfied, the court shall adjudicate parentage under subsection
413 (c) of section 26.

414 (k) The adjudication of a plaintiff as a de facto parent under this section shall not affect
415 the legal parentage of any other parent to the child and shall not be considered evidence of
416 parental unfitness of a defendant parent to the child.

417 (l) Custody, parenting time, visitation and child support shall be determined in
418 accordance with applicable laws, rules, regulations, orders and guidelines.

419 (m) Nothing in this section shall be interpreted to preclude an action in equity pursuant to
420 section 6 of chapter 215 to establish a third-party right to visitation.

421 Section 26. (a) In a proceeding to adjudicate competing claims of, or challenges to,
422 parentage of a child by 2 or more persons, the court shall adjudicate parentage in the best interest
423 of the child, based on: (i) the age of the child; (ii) the length of time during which each person
424 assumed the role of parent of the child; (iii) the nature of the relationship between the child and
425 each person; (iv) the harm to the child if the relationship between the child and each person is not
426 recognized; (v) the basis for each person's claim to parentage of the child; and (vi) other
427 equitable factors arising from the disruption of the relationship between the child and each
428 person or the likelihood of other harm to the child.

429 (b) If a person challenges parentage based on the results of genetic testing, in addition to
430 the factors listed in subsection (a), the court shall consider: (i) the facts surrounding the
431 discovery that the person might not be a genetic parent of the child; and (ii) the length of time

432 between the time that the person was placed on notice that the person might not be a genetic
433 parent and the commencement of the proceeding.

434 (c) The court may adjudicate a child to have more than 2 parents if the court finds that it
435 is in the best interest of the child. A finding of best interest of the child under this section does
436 not require a finding of unfitness of any parent or person seeking an adjudication of parentage.

437 (d) Custody, parenting time, visitation and child support shall be determined in
438 accordance with applicable laws, rules, regulations, orders and guidelines.

439 Section 27. (a) This section shall apply to nonmarital and marital children. This section
440 shall not apply to the parentage of a child conceived by sexual intercourse or assisted
441 reproduction under a surrogacy agreement under sections 28 to 28P, inclusive.

442 (b) Venue for a proceeding to adjudicate parentage under this section shall be in the
443 county in which: (i) the child resides or was born or is reasonably expected to be born; (ii) any
444 parent or intended parent of the child resides; or (iii) a proceeding has been commenced for
445 administration of the estate of a person who is or may be a parent under this chapter.

446 (c) A donor shall not be a parent of a child conceived through assisted reproduction based
447 on the donor's genetic connection to such child. A donor shall not be entitled to establish the
448 donor's parentage by signing an acknowledgment pursuant to this chapter. A donor shall not be
449 entitled to notice in a proceeding under this chapter.

450 (d) A person who consents to assisted reproduction with the intent to be a parent of the
451 child conceived by said assisted reproduction shall be a parent of the child. Consent to assisted
452 reproduction may be established by: (i) a record signed by the person giving birth to a child

453 conceived by assisted reproduction and by an intended parent before, on or after the birth of the
454 child; or (ii) a finding by the court, by a preponderance of the evidence, that: (A) prior to
455 conception or birth of the child, the parties agreed that they would be parents of the child; or (B)
456 the person who seeks to be a parent of the child, together with the person giving birth,
457 voluntarily participated in and consented to the assisted reproduction that resulted in the
458 conception of the child.

459 (e)(1) Except as provided in paragraph (2), a person who, at the time of a child's birth, is
460 the spouse of the person who gave birth to the child by assisted reproduction may not challenge
461 their own parentage of the child unless, not later than 2 years after the birth of the child, they
462 commence a proceeding to adjudicate their own parentage of the child and the court finds that
463 they did not consent to the assisted reproduction before, on, or after the birth of the child or
464 withdrew consent pursuant to subsection (g).

465 (2) A proceeding to adjudicate a spouse's parentage of a child born by assisted
466 reproduction may be commenced at any time if the court determines that the spouse who is
467 challenging the parentage: (i) neither provided a gamete for, nor consented to, the assisted
468 reproduction; (ii) has not cohabitated with the person who gave birth to the child since the
469 probable time of assisted reproduction; and (iii) never openly held out the child as their child.
470 This subsection shall apply to a spouse's challenge of parentage even if the spouse's marriage is
471 declared invalid after assisted reproduction occurs.

472 (f) A person who consents to assisted reproduction pursuant to subsection (d) may
473 withdraw consent any time before a transfer or implantation of gametes or embryos that results
474 in a pregnancy by giving notice in writing of their withdrawal of consent to the person who

475 agreed to give birth to a child conceived by assisted reproduction and to any clinic or healthcare
476 provider facilitating the assisted reproduction; provided, however, that failure to give notice to a
477 clinic or healthcare provider shall not affect a determination of parentage pursuant to this section.
478 A person who withdraws consent in compliance with this subsection shall not be a parent of the
479 child under this section.

480 (g)(1) If a person who intends to be a parent of a child conceived by assisted reproduction
481 dies during the period between the transfer or implantation of a gamete or embryo and the birth
482 of the child, said person's death shall not preclude the establishment of their parentage of the
483 child if said person would be a parent of the child under this section but for the death.

484 (2) If a person who consented in writing to assisted reproduction by a person who agreed
485 to give birth to a child dies before a transfer or implantation of gametes or embryos, the deceased
486 person shall be a parent of a child conceived by the assisted reproduction if: (i) (A) the person
487 consented in writing that if assisted reproduction were to occur after their death, they would be a
488 parent of the child; or (B) the person's intent to be a parent of a child conceived by assisted
489 reproduction after their death is established by a preponderance of the evidence; and (ii) (A) the
490 embryo is in utero not later than 36 months after the person's death; or (B) the child is born not
491 later than 45 months after the person's death.

492 (h) If, due to a clinical or laboratory error, a child conceived by assisted reproduction is
493 not genetically related to any intended parent or any donor who donated to the intended parent or
494 parents, the intended parent or parents shall be the parent or parents of the child unless otherwise
495 determined by the court.

496 (i) Genetic testing, including genetic marker testing pursuant to section 11, shall not be
497 used to: (i) challenge the parentage of a person who is a parent pursuant to this section; or (ii)
498 establish the parentage of a person who is a donor.

499 (j) (1) A person giving birth or a person who is or claims to be a parent pursuant to this
500 section may commence a proceeding prior to or after the birth of a child by assisted reproduction
501 to obtain a judgment: (i) declaring that the intended parent or parents are the parent or parents of
502 the resulting child immediately upon the birth of the child and ordering that parental rights and
503 responsibilities vest exclusively in the intended parent or parents immediately upon birth of the
504 child; and (ii) designating the contents of the birth certificate and directing the department of
505 public health to designate the intended parent or parents as the parent or parents of the resulting
506 child.

507 (2) A judgment issued by a court pursuant to this subsection before the birth of the
508 resulting child by assisted reproduction shall not take effect until the birth of the resulting child.
509 Nothing in this subsection shall be construed to limit said court's authority to issue orders under
510 any other provision of the General Laws.

511 (3) The commonwealth, the department of public health and the hospital where the child
512 is or is expected to be born shall not be necessary parties to a proceeding under this section.

513 (4) The burden of proof in proceedings pursuant to this section shall be by a
514 preponderance of the evidence.

515 (k) At the request of a party to a proceeding pursuant to this section, the court shall close
516 the proceeding to the general public. Section 13 shall govern segregation of, access to and

517 inspection of complaints, pleadings, papers, documents and reports filed in connection with an
518 action pursuant to this section, and docket entries.

519 (l) The court shall issue a final judgment adjudicating whether a person alleged or
520 claiming to be a parent is the parent of a child in a proceeding pursuant to this section. At the
521 request of a party, and subject to other applicable laws, the court in a proceeding pursuant to this
522 section may order the legal name of the child to be changed. If the final judgment of the court is
523 at variance with the child's birth certificate, the court shall order the department of public health
524 to issue an amended birth certificate that conforms with the final judgment.

525 (m) Custody, parenting time, visitation and child support for a nonmarital child shall be
526 determined in accordance with applicable laws, rules, regulations, orders and guidelines.

527 (n) A spouse who has commenced an action for divorce, or a spouse who has been served
528 with a complaint for divorce, may begin assisted reproduction pursuant to this subsection;
529 provided at least 60 days have elapsed since service of the complaint. In such cases, the spouse
530 that does not begin assisted reproduction pursuant to this subsection shall not be a parent of any
531 child born as a result of the assisted reproduction unless both parties consent in writing to be
532 parents of the child after commencement of the divorce action. A spouse who proceeds with
533 assisted reproduction pursuant to this subsection shall not utilize gametes of their spouse unless
534 their spouse consents in writing to the use of their gametes for assisted reproduction by the
535 spouse after commencement of a divorce action.

536 Section 28. (a) Sections 28 to 28P, inclusive, shall apply to nonmarital and marital
537 children. This section shall not apply to the birth of a child conceived by sexual intercourse or
538 assisted reproduction under section 27.

539 (b) Venue for proceedings under sections 28 to 28P, inclusive, shall be in the county in
540 which: (i) the child resides, is born or pursuant to a surrogacy agreement is expected to be born;
541 (ii) a parent or intended parent of the child resides; (iii) a person acting as a surrogate resides; or
542 (iv) a proceeding has been commenced for administration of the estate of a person who is or may
543 be a parent under this chapter.

544 Section 28A. (a) To execute a surrogacy agreement to act as a surrogate, a person shall:
545 (i) be not less than 21 years of age; (ii) have previously given birth to at least 1 child; (iii)
546 complete a medical evaluation by a licensed physician related to surrogacy; and (iv) complete a
547 mental health consultation by a licensed mental health professional that is independent of the
548 health care providers or facility undertaking any assisted reproduction procedure contemplated
549 by the surrogacy agreement.

550 (b) To execute a surrogacy agreement as an intended parent, whether or not genetically
551 related to the child, a person shall: (i) be not less than 21 years of age; and (ii) complete a mental
552 health consultation by a licensed mental health professional that is independent of the health care
553 providers or facility undertaking any assisted reproduction procedure contemplated by the
554 surrogacy agreement.

555 Section 28B. A surrogacy agreement shall be enforceable if it meets the following
556 requirements:

557 (i) the prospective surrogate, their spouse, if any, and each intended parent are parties to
558 the agreement;

559 (ii) the prospective surrogate and each intended parent meet the eligibility requirements
560 of section 28A;

561 (iii) at least 1 party is a resident of the commonwealth or, if no party is a resident of the
562 commonwealth, at least 1 medical evaluation, medical procedure or mental health consultation
563 under the agreement occurs in the commonwealth;

564 (iv) the agreement is in writing and signed by all parties;

565 (v) the agreement is executed prior to a medical procedure attempting to cause a
566 pregnancy in the prospective surrogate, other than the medical evaluation and mental health
567 consultation required by section 28A and, in every instance, before transfer of embryos or
568 gametes;

569 (vi) the signature of each party to the agreement is attested by a notary;

570 (vii) each party to the agreement signs a written acknowledgment of having received a
571 copy of the agreement;

572 (viii) the prospective surrogate, the surrogate's spouse, if any, and each intended parent
573 have independent legal representation regarding the terms and potential legal consequences of
574 the surrogacy agreement, paid for by the intended parent or parents, and each legal representative
575 shall be identified in the surrogacy agreement; provided, however, that a single attorney for the
576 prospective surrogate and their spouse and a single attorney for the intended parents shall be
577 sufficient to meet this requirement; and

578 (ix) records related to the medical evaluation and mental health consultations conducted
579 pursuant to section 28A shall be made available to the surrogate, the surrogate's spouse, if any,
580 and each intended parent; provided, however, that all such records shall remain otherwise
581 confidential absent a court order.

582 Section 28C. (a) A surrogacy agreement is enforceable only if it contains the following
583 terms:

584 (i) the surrogate: (A) shall undergo assisted reproduction and attempt to carry and give
585 birth to any resulting child; (B) except as otherwise provided in sections 28I, 28M and 28N, shall
586 have no claim to parentage of any resulting child; and (C) acknowledges the exclusive parentage
587 of the intended parent or parents of all resulting children;

588 (ii) if the surrogate is married, their spouse: (A) acknowledges and agrees to abide by all
589 obligations imposed on the surrogate by the terms of the surrogacy agreement; (B) except as
590 otherwise provided in sections 28I, 28M and 28N, shall have no claim to parentage of any
591 resulting child; and (C) acknowledges the exclusive parentage of the intended parent or parents
592 of all resulting children; and

593 (iii) the intended parent or, if there are more than 1 intended parents, each parent jointly
594 and severally: (A) except as otherwise provided in sections 28G, 28J, 28M and 28N, agree to be
595 the exclusive parent or parents and accept parental rights and responsibilities of all resulting
596 children regardless of the number of children born or the gender or condition of each child; and
597 (B) except as otherwise provided in sections 28G, 28J, 28M and 28N, agree to assume
598 responsibility for the financial support of all resulting children immediately upon the birth of the
599 children regardless of the number of children born or the gender or condition of each child.

600 (b) The intended parent or parents shall pay for all surrogacy-related expenses of the
601 surrogate, including expenses for healthcare provided for assisted reproduction, prenatal care,
602 labor and delivery and the medical expenses of all resulting children, that are not covered by
603 insurance; provided, however, that this subsection shall not be construed to supplant any health

604 insurance coverage that is otherwise available to the surrogate or an intended parent for the
605 coverage of healthcare costs; provided further, that this subsection shall not change the health
606 insurance coverage of the surrogate or the responsibility of the insurance company to pay
607 benefits under a policy that covers a surrogate.

608 (c) The surrogacy agreement shall not infringe on the rights of the surrogate to make all
609 health and welfare decisions regarding the surrogate, the surrogate's body and the surrogate's
610 pregnancy throughout the duration of the surrogacy agreement, including during attempts to
611 become pregnant, pregnancy, labor and delivery and post-partum. The surrogacy agreement shall
612 not infringe upon the right of the surrogate to autonomy in medical decision making, including,
613 but not limited to, whether to consent to a caesarean section and whether to undergo multiple
614 embryo transfers. Except as otherwise provided by law, any written or oral agreement purporting
615 to waive or limit these rights shall be void as against public policy.

616 (d) The surrogacy agreement shall include information about the right of each party to
617 terminate the surrogacy agreement.

618 (e) Rights created under a surrogacy agreement shall not be assignable and there shall be
619 no third-party beneficiary to a surrogacy agreement other than the resulting child of the
620 surrogacy.

621 (f) A surrogacy agreement may provide for: (i) payment of consideration and reasonable
622 expenses; and (ii) reimbursement of specific expenses if the agreement is terminated pursuant to
623 this chapter.

624 Section 28D. Unless a surrogacy agreement expressly provides otherwise: (i) the validity
625 of a surrogacy agreement shall not be affected by the marriage of the surrogate or of an intended

626 parent after the surrogacy agreement has been signed by all parties and in such instances: (A) the
627 surrogate's spouse's or intended parent's spouse's consent to the surrogacy agreement shall not
628 be required; and (B) the surrogate's spouse or intended parent's spouse shall not be a presumed
629 parent of a child conceived by assisted reproduction under the surrogacy agreement; or (ii) the
630 divorce or marriage annulment of the surrogate or of an intended parent after the surrogacy
631 agreement has been signed by all parties shall not affect the validity of the surrogacy agreement.

632 Section 28E. After the execution of a surrogacy agreement and before the date of
633 termination of the surrogacy agreement pursuant its terms or 180 days after the birth of a child
634 conceived by assisted reproduction under the surrogacy agreement, whichever occurs earlier, the
635 court conducting a proceeding under sections 28 to 28P, inclusive, shall have exclusive,
636 continuing jurisdiction over all matters arising out of the surrogacy agreement; provided,
637 however, that the court shall not have jurisdiction over a child custody or child support
638 proceeding if jurisdiction is not otherwise authorized by the laws of the commonwealth.

639 Section 28F. (a) A party to a gestational surrogacy agreement may terminate the
640 agreement at any time before an embryo transfer or implantation by giving written notice of
641 termination to all other parties. If an embryo transfer or implantation does not result in
642 pregnancy, a party may terminate the agreement at any time before a subsequent embryo transfer
643 or implantation.

644 (b) Unless a gestational surrogacy agreement provides otherwise, upon termination of the
645 agreement under subsection (a), the parties shall be released from the agreement; provided,
646 however, that the intended parent or parents remain responsible for expenses that are

647 reimbursable under the agreement and incurred by the gestational surrogate through the date of
648 the termination of the agreement.

649 (c) Except in a case involving fraud, neither a gestational surrogate nor the surrogate's
650 spouse or former spouse, if any, shall be liable to the intended parent or parents for punitive or
651 liquidated damages for terminating a gestational surrogacy agreement in compliance with this
652 section.

653 Section 28G. (a) Except as otherwise provided in subsection (c), or sections 28H or 28J,
654 upon the birth of a child conceived by assisted reproduction under a gestational surrogacy
655 agreement, each intended parent shall be, by operation of law, a parent of the child. Parental
656 rights shall vest exclusively in the intended parent or parents immediately upon birth of the
657 resulting child.

658 (b) Except as otherwise provided in subsection (c) or section 28J, a person acting as
659 gestational surrogate or such person's spouse or former spouse, if any, shall not be, by operation
660 of law, a parent of the child.

661 (c) If a child is alleged to be a genetic child of the gestational surrogate, the court shall,
662 upon finding sufficient evidence, order genetic testing of the child. If the child is a genetic child
663 of the gestational surrogate, parentage shall be determined in accordance with sections 1 to 27,
664 inclusive.

665 (d) Except as otherwise provided in subsection (c), section 28H or section 28I, if, due to a
666 clinical or laboratory error, a child conceived by assisted reproduction under a gestational
667 surrogacy agreement is not genetically related to an intended parent or a donor who donated to
668 the intended parent or parents, each intended parent shall be a parent of the child and the person

669 acting as gestational surrogate and their spouse or former spouse, if any, shall not be a parent of
670 the child.

671 (e) This section shall apply to an intended parent, including an intended parent who dies
672 during the period between the transfer or implantation of a gamete or embryo and the birth of the
673 child.

674 Section 28H. Except as otherwise provided in section 28J, an intended parent shall not be
675 a parent of a child conceived by assisted reproduction under a gestational surrogacy agreement if
676 the intended parent dies before the transfer or implantation of a gamete or embryo unless: (i) the
677 surrogacy agreement provides otherwise; and (ii) the transfer of a gamete or embryo occurs not
678 later than 36 months after the death of the intended parent or birth of the child occurs not later
679 than 45 months after the death of the intended parent.

680 Section 28I. (a) Except as otherwise provided in subsection (c) of section 28G or section
681 28J, before, on or after the birth of a child conceived by assisted reproduction under a gestational
682 surrogacy agreement, any party to the agreement may commence a proceeding for a judgment of
683 parentage:

684 (i) declaring that each intended parent is a parent of the child and ordering that parental
685 rights and duties vest immediately upon the birth of the child exclusively in each intended
686 parent;

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

689 (iii) designating the content of the birth record in accordance with chapter 46 and
690 directing the department of public health to designate each intended parent as a parent of the
691 child;

692 (iv) to protect the privacy of the child and the parties, declaring that the court record and
693 related pleadings be impounded in accordance with this section;

694 (v) if necessary, ordering that the child be surrendered to the intended parent or parents;

695 (vi) if necessary, ordering that the hospital where the child will be or has been born, treat
696 the intended parent or parents as the sole legal parent or parents for the purpose of naming and
697 medical decisions; and

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

699 (b) The court may issue an order or judgment under subsection (a) before or after the
700 birth of the child, as requested by the parties.

701 (c) The commonwealth, the department of public health, the town or city clerk and the
702 hospital where the child is born or is intended to be born shall not be necessary parties to a
703 proceeding under subsection (a). Any party to the surrogacy agreement not joining in the action
704 shall be provided with notice of the proceeding.

705 (d) A complaint filed pursuant to this section shall include: (i) a copy of the executed
706 surrogacy agreement; (ii) a sworn affidavit of the assisted reproductive physician confirming that
707 the child was conceived pursuant to assisted reproduction; and (iii) certifications from the
708 attorneys representing the intended parent or parents and the gestational surrogate that the
709 requirements of sections 28A, 28B and 28C have been met. A complaint supported by such

710 affidavit and certifications shall be sufficient to establish parentage and a hearing shall not be
711 required unless the court requires additional information which cannot reasonably be ascertained
712 without a hearing.

713 (e) Upon a finding by a preponderance of the evidence that the complaint satisfies
714 subsection (d), a court shall expeditiously, but not later than 60 days from the docketing of the
715 complaint, issue a judgment of parentage. Parentage judgments issued under this section shall
716 conclusively establish or affirm, where applicable, the parent-child relationship for all purposes.
717 Custody, parenting time, visitation and child support for a nonmarital child shall be determined
718 in accordance with applicable laws, rules, regulations, orders and guidelines.

719 (f) In the event the certification required by subsection (d) cannot be made because of a
720 technical or nonmaterial deviation from the requirements of sections 28A, 28B and 28C, the
721 court may enforce the agreement and issue a judgment of parentage if the court determines the
722 agreement is in substantial compliance with the requirements of said sections.

723 (g) At the request of a party, the court shall close a proceeding under this section to the
724 general public. All complaints, pleadings, papers or documents filed pursuant to this section, and
725 docket entries, shall not be available for inspection unless the court where such records are kept,
726 for good cause shown, otherwise orders or unless requested by the child or the parties. All such
727 complaints, pleadings, papers or documents shall be segregated.

728 Section 28J. (a) A gestational surrogacy agreement that substantially complies with
729 sections 28A, 28B and 28C shall be enforceable.

730 (b) If a child was conceived by assisted reproduction under a gestational surrogacy
731 agreement that does not substantially comply with sections 28A, 28B and 28C, the court shall

732 determine the rights and duties of the parties to the agreement consistent with the intent of the
733 parties at the time of execution of the agreement. Each party to the agreement and any person
734 who at the time of the execution of the agreement was a spouse of a party to the agreement shall
735 have standing to commence a proceeding to adjudicate an issue related to the enforcement of the
736 agreement.

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

740 (d) Specific performance shall not be an available remedy for breach by a gestational
741 surrogate of a provision in an agreement that the gestational surrogate become pregnant,
742 terminate or not terminate a pregnancy or submit to medical procedures.

743 (e) Except as otherwise provided in subsection (d), if an intended parent is determined to
744 be a parent of the child pursuant to this chapter, specific performance shall be a remedy available
745 for: (i) breach of the agreement by a gestational surrogate which prevents the intended parent
746 from exercising, immediately on birth of the child, the full rights of parentage; or (ii) breach by
747 the intended parent which prevents the intended parent's acceptance, immediately on birth of the
748 child conceived by assisted reproduction under the agreement, of the duties of parentage.

749 Section 28K. (a) Except as otherwise provided in section 28N, a genetic surrogacy
750 agreement shall be validated by a probate and family court. A proceeding to validate the
751 agreement shall be commenced before assisted reproduction related to the surrogacy agreement.
752 A complaint filed pursuant to this section shall include: (i) a copy of the executed surrogacy

753 agreement; and (ii) certifications from the legal representatives of the intended parent or parents
754 and the genetic surrogate that the requirements of sections 28A, 28B and 28C have been met.

755 (b) The court shall issue an order validating a genetic surrogacy agreement, within 60
756 days of the commencement of such a proceeding, if the court finds by a preponderance of the
757 evidence that: (i) sections 28A, 28B and 28C are satisfied; and (ii) all parties entered into the
758 agreement voluntarily and understand its terms.

759 (c) A person who terminates a genetic surrogacy agreement under section 28L shall file
760 notice of the termination with the court and parties. On receipt of the notice, the court shall
761 vacate any order issued under subsection (b).

762 Section 28L. (a) An intended parent or genetic surrogate who is a party to the surrogacy
763 agreement may terminate the agreement at any time before a gamete or embryo transfer or
764 implantation by giving notice of termination in writing to all other parties. If a gamete or embryo
765 transfer or implantation does not result in a pregnancy, a party may terminate the agreement at
766 any time before a subsequent gamete or embryo transfer or implantation. The party's signature
767 on a notice of termination shall be attested by a notary.

768 (b) An intended parent or genetic surrogate who terminates the agreement after the court
769 issues an order validating the agreement under sections 28K or 28N, but before the genetic
770 surrogate becomes pregnant by means of assisted reproduction, shall file notice of the
771 termination with the court.

772 (c) A person shall not terminate a validated genetic surrogacy agreement if a gamete or
773 embryo transfer or implantation has resulted in a pregnancy.

774 (d) Upon the termination of the genetic surrogacy agreement, the parties shall be released
775 from all obligations under the agreement except that any intended parent or parents shall remain
776 responsible for all expenses incurred by the genetic surrogate through the date of the termination
777 which are reimbursable under the agreement. Unless the agreement provides otherwise, the
778 genetic surrogate is not entitled to any non-expense related compensation paid for acting as a
779 surrogate.

780 (e) Except in a case involving fraud, neither a genetic surrogate nor their spouse or
781 former spouse, if any, shall be liable to the intended parent or parents for punitive or liquidated
782 damages, for terminating a genetic surrogacy agreement in compliance with this section.

783 Section 28M. (a) Upon the birth of a child conceived by assisted reproduction under a
784 genetic surrogacy agreement validated pursuant to section 28K or 28N, each intended parent
785 shall be a parent of the resulting child.

786 (b) Upon the birth of a child conceived by assisted reproduction under a genetic
787 surrogacy agreement validated under section 28K or 28N, the intended parent or parents shall
788 file a notice with the court that validated said agreement that a child has been born as a result of
789 assisted reproduction under that agreement. Upon receiving such notice, the court shall
790 immediately, or as soon as practicable, issue an order without notice and hearing:

791 (i) declaring that any intended parent or parents is a parent of a child conceived by
792 assisted reproduction under the agreement and ordering that parental rights and duties vest
793 exclusively in any intended parent;

794 (ii) declaring that the genetic surrogate and their spouse or former spouse, if any, are not
795 parents of the child;

796 (iii) designating the contents of the birth certificate in accordance with chapter 46 and
797 directing the department of public health to designate any intended parent as a parent of the
798 child;

799 (iv) to protect the privacy of the child and the parties, declaring that the court record and
800 related pleadings be impounded in accordance with section 28I;

801 (v) if necessary, ordering that the child be surrendered to the intended parent or parents;
802 and

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

804 (c) Except as otherwise provided in subsection (d) or section 28O, if, due to a clinical or
805 laboratory error, a child conceived by assisted reproduction under a genetic surrogacy agreement
806 is not genetically related to an intended parent or a donor who donated to the intended parent or
807 parents, each intended parent and not the genetic surrogate and their spouse or former spouse, if
808 any, shall be a parent of the child.

809 (d) If a child born to a genetic surrogate is alleged not to have been conceived by assisted
810 reproduction, the court may, upon finding sufficient evidence, order genetic testing to determine
811 the genetic parentage of the child. If the child was not conceived by assisted reproduction and the
812 second source of genetic material is the spouse of the genetic surrogate, then the surrogate and
813 the spouse shall be found to be the parents of the child. If the second genetic source is a person
814 other than the spouse of the surrogate, then parentage shall be determined as provided in sections
815 1 to 27, inclusive; provided, however, that if the second genetic source is an intended parent, the
816 court, in its sole discretion, shall determine parentage under sections 1 to 27, inclusive. Unless
817 the genetic surrogacy agreement provides otherwise, the genetic surrogate shall not be entitled to

818 any non-expense related compensation paid for acting as a surrogate if the child was not
819 conceived by assisted reproduction.

820 (e) If an intended parent fails to file the notice required under subsection (b), the person
821 acting as genetic surrogate may file with the court, not later than 60 days after the birth of a child
822 conceived by assisted reproduction under the genetic surrogacy agreement, notice that the child
823 has been born to the genetic surrogate. On proof of a court order issued under sections 28K or
824 28N validating the agreement, the court shall order that each intended parent is a parent of the
825 child.

826 Section 28N. (a) A genetic surrogacy agreement, whether or not in writing, that is not
827 validated under section 28K shall be enforceable only to the extent provided in this section and
828 section 28P.

829 (b) If all parties agree, a court may validate a genetic surrogacy agreement after assisted
830 reproduction has occurred and before the birth of a child conceived by assisted reproduction
831 under the agreement if the court finds by a preponderance of the evidence that: (i) sections 28A,
832 28B or 28C are satisfied; and (ii) all parties entered into the agreement voluntarily and
833 understand its terms.

834 (c) If a child conceived by assisted reproduction under a genetic surrogacy agreement that
835 is not validated under section 28K or subsection (b) is born, the genetic surrogate shall not
836 automatically be a parent and the court shall adjudicate parentage of the child based on the best
837 interest of the child, taking into account the factors in subsection (a) of section 26 and the intent
838 of the parties at the time of the execution of the agreement.

839 (d) The parties to a genetic surrogacy agreement shall have standing to commence a
840 proceeding to adjudicate parentage under this section.

841 Section 28O. (a) Except as otherwise provided in sections 28M or 28N, upon the birth of
842 a child conceived by assisted reproduction under a genetic surrogacy agreement, each intended
843 parent shall be, by operation of law, a parent of the child, notwithstanding the death of an
844 intended parent during the period between the transfer of a gamete or embryo and the birth of the
845 child.

846 (b) Except as otherwise provided in sections 28M or 28N, an intended parent shall not be
847 a parent of a child conceived by assisted reproduction under a genetic surrogacy agreement if the
848 intended parent dies before the transfer of a gamete or embryo unless: (i) the agreement provides
849 otherwise; and (ii) the transfer of the gamete or embryo occurs not later than 36 months after the
850 death of the intended parent, or birth of the child occurs not later than 45 months after the death
851 of the intended parent.

852 Section 28P. (a) Subject to subsection (d) of section 28L, if a genetic surrogacy
853 agreement is breached by a genetic surrogate or 1 or more intended parents, the non-breaching
854 party is entitled to the remedies available at law or in equity.

855 (b) Specific performance shall not be an available remedy for breach by a genetic
856 surrogate of a requirement of a validated or nonvalidated genetic surrogacy agreement that the
857 genetic surrogate become pregnant, terminate or not terminate a pregnancy or submit to medical
858 procedures.

859 (c) Except as otherwise provided in subsection (b), specific performance shall be a
860 remedy available for: (i) breach of a validated genetic surrogacy agreement by a genetic

861 surrogate of a requirement which prevents an intended parent from exercising, immediately upon
862 birth of the child, the full rights of parentage; or (ii) breach by an intended parent which prevents
863 the intended parent's acceptance, immediately upon birth of the child, of the duties of parentage.

864 SECTION 66. The trial court of the commonwealth, in accordance with section 24 of
865 chapter 209C of the General Laws, shall update existing forms and promulgate new forms as
866 necessary for use under said chapter 209C, which shall be in such form and language to permit a
867 person to prepare and file such forms pro se.

868 SECTION 67. This act shall take effect on January 1, 2025.