

SENATE No. 947**The Commonwealth of Massachusetts**

PRESENTED BY:

Julian Cyr

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

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

An Act to ensure legal parentage equality.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>1/19/2023</i>
<i>Adam J. Scanlon</i>	<i>14th Bristol</i>	<i>1/25/2023</i>
<i>Robyn K. Kennedy</i>	<i>First Worcester</i>	<i>2/7/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/7/2023</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>2/7/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/7/2023</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/7/2023</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/7/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>2/22/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>2/22/2023</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>3/7/2023</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	<i>3/30/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>3/30/2023</i>
<i>Paul W. Mark</i>	<i>Berkshire, Hampden, Franklin and Hampshire</i>	<i>4/24/2023</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>6/20/2023</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>6/27/2023</i>

<i>Adam Gomez</i>	<i>Hampden</i>	<i>10/18/2023</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>	<i>2/20/2024</i>
<i>Pavel Payano</i>	<i>First Essex</i>	<i>2/20/2024</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Hampden</i>	<i>2/20/2024</i>

SENATE No. 947

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 947) of Julian Cyr, Bruce E. Tarr, Adam Scanlon, Robyn K. Kennedy and other members of the General Court for legislation to ensure legal parentage equality. The Judiciary.

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. The title of chapter 209C of the General Laws is hereby amended by
2 striking out the words “CHILDREN BORN OUT OF WEDLOCK” in that title and inserting in
3 place thereof the following words:-- “NONMARITAL CHILDREN AND PARENTAGE OF
4 CHILDREN”.

5 SECTION 2. Chapter 209C of the General Laws is hereby amended by inserting after
6 section 1 the following section 1A:- (a) It is the public policy of the Commonwealth that every
7 child has the same rights and protections under law as any other child without regard to the
8 marital status, gender, gender identity, or sexual orientation of the parent or parents or the
9 circumstances of the birth of the child, including whether the child was born as a result of
10 assisted reproduction or surrogacy. (b) a parent-child relationship is established between a person
11 and a child if (i) Birth: the person gives birth to the child, except as otherwise provided in
12 sections 28A-28Q; (ii) Presumption: there is a presumption of parentage under section 6, unless

the presumption is overcome in a judicial proceeding or a valid denial of parentage is made; (iii) Adjudication: the individual is adjudicated a parent of the child by a court with jurisdiction; (iv) Adoption: the individual adopts the child pursuant to chapter 210; (v) Acknowledgment: the individual acknowledges parentage of the child under this chapter unless the acknowledgment is rescinded or successfully challenged; (vi) De Facto Parentage: the individual is adjudicated a de facto parent of the child under section 25; (vii) Assisted reproduction: the individual's parentage of the child is established under section 27; (viii) Surrogacy: the individual's parentage of the child is established under sections 28A-28Q. (c) For the purpose of this chapter, the term "child born out of wedlock" includes the term nonmarital child; the term "man" or "father" includes a parent of any gender; the term "woman" or "mother" includes the term "parent who gave birth; the term "putative father" includes the term "alleged genetic parent" and does not include a presumed parent, an individual whose parental rights have been terminated or declared not to exist or a donor" any reference to "paternity" includes the term "parentage;" any reference to "nonpaternity" includes the term "nonparentage;" any reference to "voluntary acknowledgement of paternity" includes the term "voluntary acknowledgment of parentage;" and any reference to "husband" or "wife" includes the term "spouse."

SECTION 3. Section 5 of chapter 209C is hereby amended in line 50 by inserting after the word "chapter" the following sentence:- Voluntary acknowledgments of parentage may also be executed pursuant to this chapter by the person who gave birth and a person who is either a presumed parent pursuant to section 6 or an intended parent pursuant to section 27.

SECTION 4. Section 6 of chapter 209C is hereby amended in line 39 by adding the following subsection:-

(d) A presumption of parentage under this section may be overcome, and competing claims to parentage may be resolved, only 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 a 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 section 26.

(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 section 26.

(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 section 26.

SECTION 5. Section 11 of chapter 209C is hereby amended in line 2 by inserting after the word "father" the following:- presumed parent or intended parent pursuant to section 27.

SECTION 6. Section 11 of chapter 209C is hereby amended by striking out, in line 3, the words "mother of the child" and inserting in place thereof the following words:- individual who gave birth to the child.

SECTION 7. Section 11 of chapter 209C is hereby amended in lines 21-22 by striking "such putative father and mother and shall have the same force and effect as a judgment of paternity" and inserting the following:- "both parents and shall have the same force and effect as a judgment of parentage".

SECTION 8. Section 11 of chapter 209C is hereby amended in line 48 by striking "shall" and inserting the following:- may.

SECTION 9. Section 11 of chapter 209C is hereby amended in line 83 by inserting after the word "executed" the following sentence:-A voluntary acknowledgement of parentage that complies with this section and section 5 and is filed with the registrar of vital records and statistics or the court is equivalent to an adjudication of parentage of the child and confers on the acknowledged parent all rights and duties of a parent. The court shall give full faith and credit to a voluntary acknowledgment of parentage that is effective in another state if the acknowledgment was in a signed record and otherwise complies with the laws of the other state.

SECTION 10. Chapter 209C of the General Laws is hereby amended by inserting after section 24 the following section 25:

Section 25. De Facto Parentage

(a) This section shall apply to nonmarital and marital children. A proceeding to establish parentage of a child under this section may be commenced only by an individual who:

(i) is alive when the proceeding is commenced; and

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

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

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

(ii) while the child is alive.

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

(i) 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.

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

(iii) The court shall determine, based on the pleadings under subsections c(i) and c(ii) , whether the individual has alleged facts sufficient to satisfy by a preponderance of the evidence each of the requirements of paragraphs (i) through (vii) of subsection (d). Upon request made by a party entitled to notice, the court may hold a hearing on the issue of standing. Whether the hearing is an evidentiary hearing is in the discretion of the court. 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:

(i) the individual resided with the child as a regular member of the child's household for a significant period of time based on the age of the child;

(ii) the individual engaged in consistent caretaking of the child which may include regularly taking responsibility for the child's needs such as care, guidance, education and health, and making day-to-day decisions regarding the child individually or cooperatively with another parent;

(iii) the individual undertook full and permanent responsibilities of a parent of the child without expectation or payment of financial compensation. If an individual undertook the responsibilities of a parent of the child due to a parent of that child being deployed in the military, there shall be a presumption that such arrangements were intended to be temporary for the duration of the parent's military deployment;

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

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

(vi) a parent of the child fostered or supported the bonded and dependent relationship required under paragraph (v). Consent to guardianship, execution of a caregiver affidavit, execution of a Military Family Care Plan, or other caretaking agreement by a parent serving in the military shall not be considered as evidence that a parent fostered or supported the bonded and dependent relationship required under (v); and

(vii) continuing the relationship between the individual and the child is in the best interest of the child. In considering this factor, the court shall consider evidence of past or present abuse by the individual toward a parent or the child as a factor contrary to the best interests of the child. For the purpose of this section, "abuse" shall have the same meaning as provided in section 31 of chapter 208 and section 10(e) of this chapter.

(e) A parent of the child may use evidence of duress, coercion, or threat of harm to contest an allegation that the parent fostered or supported a bonded and dependent relationship as

provided in subsection (d)(vi) of this section or that continuing the relationship between the individual and the child is in the best interests of the child as provided in subsection d(vii) of this section. Such evidence may include, but not be limited to, whether, within the prior ten years, the individual seeking to be adjudicated a de facto parent (1) has been convicted of a crime involving violence against a parent of the child or the child including but not limited to rape,

assault with intent to commit rape, indecent assault and battery, assault or assault and battery on a family or household member; (2) was the subject of a final abuse prevention order pursuant to Chapter 209A or section 34B or 34C of Chapter 208 because the individual was found to have committed abuse against the child or a parent of the child; (3) was substantiated for abuse against the child by the Department of Children and Families; or (4) there exists other credible evidence of abuse by the individual against a parent of the child or the child.

(f) Subject to other limitations in this section, 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 26 of this chapter.

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

SECTION 11. Chapter 209C of the General Laws is hereby amended by inserting the following section 26:

Section 26. Competing Claims of Parentage

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

(i) the age of the child;

161 (ii) the length of time during which each individual assumed the role of parent of the
162 child;

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

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

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

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

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

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

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

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

179 SECTION 12. Chapter 209C of the General Laws is hereby amended by inserting the
180 following section 27:

Section 27. Parentage by Assisted Reproduction

This section shall apply to nonmarital and marital children. This section shall not apply to the birth of a child conceived by sexual intercourse or assisted reproduction by surrogacy agreement under sections 28A-28Q.

Venue for a proceeding to adjudicate parentage under this section is in the county of this state in which: (i) the child resides or is or will be born; (ii) any parent or intended parent resides; or (iii) a proceeding has been commenced for administration of the estate of an individual who is or may be a parent under this chapter.

The following terms shall have the following meanings:

“Assisted reproduction”, a method of causing pregnancy other than sexual intercourse and includes, but is not limited to, artificial insemination as well as intrauterine, intracervical, or vaginal insemination; donation of gametes; donation of embryos; in vitro fertilization and transfer of embryos; and intracytoplasmic sperm injection.

“Donor”, an individual who provides a gamete or embryo intended for assisted reproduction or gestation, whether or not for consideration. This term does not include a person who consents to assisted reproduction with the intent to be a parent of the resulting child.

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

A donor is not a parent of a child conceived through assisted reproduction by virtue of the donor’s genetic connection. A donor may not establish the donor's parentage by signing an acknowledgment of parentage pursuant to this chapter. A donor shall not be entitled to notice.

202 An individual who consents to assisted reproduction under subsection (f) with the intent
203 to be a parent of a child conceived by the assisted reproduction is a parent of the child.

204 Consent to assisted reproduction described in subsection (e) may be established either by
205 a record signed by the individual giving birth to a child conceived by assisted reproduction and
206 by an individual who intends to be a parent of the child before, on, or after the birth of the child
207 or if a court finds by a preponderance of the evidence that (i) prior to conception or birth of the
208 child, the parties agreed that they would be parents of the child; or (ii) the individual who seeks
209 to be a parent of the child voluntarily participated in and consented to the assisted reproduction
210 that resulted in the conception of the child.

211 Except as otherwise provided herein, an individual who, at the time of a child's birth, is
212 the spouse of the person who gave birth to the child by assisted reproduction may not challenge
213 the spouse's parentage of the child unless not later than 2 years after the birth of the child, the
214 spouse commences a proceeding to adjudicate their own parentage of the child, and the court
215 finds the spouse did not consent to the assisted reproduction, before, on, or after birth of the
216 child, or withdrew consent under subsection i. A proceeding by a spouse to challenge their own
217 parentage of a child born by assisted reproduction may be commenced at any time if the court
218 determines that the spouse neither provided a gamete for, nor consented to, the assisted
219 reproduction; the spouse and the person who gave birth to the child have not cohabited since the
220 probable time of assisted reproduction; and the spouse never openly held out the child as their
221 child. This subsection applies to a spouse's dispute of parentage even if the spouse's marriage is
222 declared invalid after assisted reproduction occurs. The person giving birth shall not challenge a
223 spouse's parentage under this section.

A married individual who has commenced an action for divorce may, after at least 60 days has elapsed since service of the complaint, proceed with assisted reproduction pursuant to this section and the spouse shall not be a parent of any child born as a result of the assisted reproduction unless the spouse consents in a record to be a parent of a child born as a result of assisted reproduction after commencement of a divorce action. A married individual proceeding with assisted reproduction pursuant to this section shall not utilize gametes of the spouse unless the spouse consents in a record to the use of the spouse's gametes for assisted reproduction by the married person after commencement of a divorce action.

An individual who consents under subsection e 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 a clinic or health-care provider does not affect a determination of parentage under this section. An individual who withdraws consent under this subsection is not a parent of the child under this subsection.

(i) 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. (ii) 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 either 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 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 either the embryo is in utero not later than 36 months after the individual's death; or the child is born not later than 45 months after the individual's death.

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.

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

(i) An individual giving birth or an individual who is or claims to be a parent under this section may commence a proceeding prior to or after the birth of a child to obtain a judgment (a) Declaring that the intended parent or parents are the parent or parents of the resulting child immediately upon birth of the child and ordering that parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon birth of the child; and (b) Designating the contents of the birth certificate and directing the department of public health to designate the intended parent or parents as the parent or parents of the resulting child. (ii) A judgment issued before the birth of the resulting child does not take effect unless and until the birth of the resulting child. Nothing in this subsection shall be construed to limit the court's authority to issue other orders under any other provision of the general laws. (iii) Neither the state, the department of public health nor the hospital where the child is or expected to be born

shall be a necessary party to a proceeding under this section. (iv) The burden of proof in proceedings under this section shall be by a preponderance of the evidence.

On request of a party, the court may close a proceeding under this article to the general public. All complaints, pleadings, papers or documents filed pursuant to this section, including docket entries, 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 or the parties. All such complaints, pleadings, papers or documents shall be segregated.

In a proceeding under this section, the court shall issue a final judgment adjudicating whether a person alleged or claiming to be a parent is the parent of a child. On request of a party and consistent with law of this state other than this section, the court in a proceeding under this section may order the name of the child changed. If the final judgment 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 13. Chapter 209C of the General Laws is hereby amended by inserting after section 27 the following sections:

Section 28A. Parentage by Consent to Surrogacy Agreement

(a) This section shall apply to nonmarital and marital children. This section shall not apply to the birth of a child conceived by sexual intercourse.

(b) Venue for proceedings under sections 28A through 28Q is in the county of this state in which: (i) the child resides or is born or expected to be born; (ii) a parent or intended

parent resides; (iii) an individual acting as a surrogate resides; or (iv) a proceeding has been commenced for administration of the estate of an individual who is or may be a parent under this chapter.

(c) The following terms shall have the following meanings:

(i) “Assisted reproduction”, a method of causing pregnancy other than sexual intercourse and includes, but is not limited to, artificial insemination as well as intrauterine, intracervical, or vaginal insemination; donation of gametes; donation of embryos; in vitro fertilization and transfer of embryos; and intracytoplasmic sperm injection.

(ii) “Intended parent”, an individual, whether married or unmarried, who manifests an intent to be legally bound as a parent of a child resulting from assisted reproduction.

(iii) “Genetic surrogate”, an individual who is at least 21 years of age, 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 chapter.

(iv) “Gestational surrogate”, an individual who is at least 21 years of age, 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 chapter.

(v) “Surrogacy agreement”, an agreement between one 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 28B. Eligibility

To execute an agreement to act as a gestational or genetic surrogate, an individual shall:

- (i) be at least 21 years of age; (ii) previously have given birth to at least one child; (iii) complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor; (iv) complete a mental health consultation by a licensed mental health professional; and (v) have independent legal representation of the individual's choice throughout the surrogacy agreement 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.

To execute a surrogacy agreement as an intended parent, whether or not genetically related to the child, an individual shall: (i) be at least 21 years of age; (ii) complete a mental health consultation by a licensed mental health professional; and (iii) have independent legal representation of the intended parent's choice throughout the surrogacy agreement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

Section 28C. Process Requirements

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

- (a) At least 1 party shall be a resident of the Commonwealth or, if no party is a resident of the Commonwealth, 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.

331 (b) An individual acting as a surrogate and each intended parent shall meet the
332 requirements of section 28B.

333 (c) Each intended parent, the individual acting as surrogate, and spouse, if any, of the
334 individual acting as surrogate shall be parties to the agreement.

335 (d) The agreement shall be in a record signed by each party listed in paragraph (c).

336 (e) The individual acting as a surrogate and each intended parent shall receive a copy
337 of the agreement.

338 (f) The signature of each party to the agreement shall be attested by a notary or
339 witnessed. (g) The individual acting as surrogate and, if married, the spouse of the individual
340 acting as surrogate and the intended parent or parents shall have independent legal representation
341 throughout the surrogacy agreement regarding the terms of the surrogacy agreement and the
342 potential legal consequences of the agreement paid for by the intended parent or parents, and
343 each counsel shall be identified in the surrogacy agreement. A single attorney for the individual
344 acting as surrogate and the individual's spouse, if married, and a single attorney for the intended
345 parents is sufficient to meet this requirement, provided the representation otherwise conforms to
346 the Rules of Professional Conduct.

347 (h) The intended parent or parents shall pay for independent legal representation for
348 the individual acting as surrogate and the individual's spouse, if any.

349 (i) The agreement shall be executed before a medical procedure occurs related to
350 attempting to achieve a pregnancy in the individual acting as surrogate, other than the medical
351 evaluation and mental health consultation required by section 28B.

Section 28D. Agreement Content Requirements

A surrogacy agreement shall comply with the following requirements:

(a) An individual acting as surrogate agrees to attempt to become pregnant by means of assisted reproduction.

(b) Except as otherwise provided in sections 28J, 28N, and 28O, the individual acting as 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 surrogacy agreement.

(c) The surrogate's spouse, if any, shall acknowledge and agree to comply with the obligations imposed on the individual acting as surrogate by the surrogacy agreement.

(d) Except as otherwise provided in sections 28H, 28K, 28N, and 28O, the intended parent or, if there are 2 intended parents, each one jointly and severally, immediately on birth of the child shall be the exclusive parent or parents of the child, regardless of the number of children born or gender or condition of each child.

(e) Except as otherwise provided in sections 28H, 28K, 28N, and 28O, the intended parent or, if there are 2 intended parents, each parent jointly and severally, immediately on birth of the child shall assume responsibility for the financial support of the child, regardless of the number of children born or the gender or condition of each child.

(f) The intended parent or parents are liable, and the surrogacy agreement shall include information providing that the intended parent or parents shall be responsible for paying, for the surrogacy-related expenses of the individual acting as surrogate, including expenses for health care provided for assisted reproduction, prenatal care, labor and delivery and for the

medical expenses of the resulting child that are not paid by insurance. This subsection shall not be construed to supplant any health insurance coverage that is otherwise available to the individual acting as surrogate or an intended parent for the coverage of health care costs. This subsection shall not change the health insurance coverage of the individual acting as surrogate or the responsibility of the insurance company to pay benefits under a policy that covers an individual acting as surrogate.

(g) The surrogacy agreement shall not infringe on the rights of the individual acting as surrogate to make all health and welfare decisions regarding the person, the person's body and the person's pregnancy throughout the duration of the surrogacy arrangement, including during attempts to become pregnant, pregnancy, delivery and post-partum. The agreement shall not infringe upon the right of the individual acting as surrogate to autonomy in medical decision making by, including, but not limited to, requiring the individual acting as surrogate to undergo a scheduled, nonmedically indicated caesarean section or to undergo multiple embryo transfer. Except as otherwise provided by law, any written or oral agreement purporting to waive or limit the rights described in this subsection are void as against public policy.

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

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

(j) A surrogacy agreement may provide for (i) payment of consideration and reasonable expenses and (ii) reimbursement of specific expenses if the agreement is terminated under this chapter.

Section 28E. Effect of subsequent change of marital status on agreement

Unless a surrogacy agreement expressly provides otherwise:

(a) The marriage of an individual acting as surrogate after the surrogacy agreement is signed by all parties shall not affect the validity of the agreement, the spouse's consent to the surrogacy agreement is not required, and the surrogate's spouse is not a presumed parent of a child conceived by assisted reproduction under the surrogacy agreement.

(b) The divorce or annulment of the individual acting as surrogate after the surrogacy agreement is signed by all parties shall not affect the validity of the surrogacy agreement.

(c) 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 surrogacy agreement, a parent of a child conceived by assisted reproduction under the surrogacy agreement.

(d) The divorce or annulment of an intended parent after the surrogacy agreement is signed by all parties shall not affect the validity of the surrogacy agreement and the intended parents are the parents of the child.

Section 28F. Exclusive Continuing Jurisdiction

During the period after the execution of a surrogacy agreement until the occurrence of the earlier of the date of termination of a surrogacy agreement pursuant to the agreement terms or 90 days after the birth of a child conceived by assisted reproduction under the surrogacy agreement, a court of this state conducting a proceeding under this chapter has exclusive, continuing

jurisdiction over all matters arising out of the agreement. This section does not give the court jurisdiction over a child custody or child support proceeding if jurisdiction is not otherwise authorized by the law of this state other than this chapter.

Section 28G. 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 individual acting as gestational surrogate through the date of termination of the agreement.

(c) Except in a case involving fraud, neither an individual acting as gestational surrogate nor the surrogate's spouse or former spouse of the person acting as surrogate, 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 28H. Parentage under gestational surrogacy agreement

(a) Except as otherwise provided in subsection (c) or section 28I(b) or 28K, 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 28K, neither an individual acting as 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 individual who agreed to be a gestational surrogate, the court shall, upon finding sufficient evidence, order genetic testing of the child. If the child is a genetic child of the individual who agreed to be a gestational surrogate, parentage shall be determined in accordance with sections 1 through 27 of this chapter.

(d) Except as otherwise provided in subsection (c) or subsection (b) of section 28I or section 28J, 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 individual acting as gestational surrogate and the surrogate's spouse or former spouse, if any, is a parent of the child.

Section 28I. Parentage of deceased intended parent under gestational surrogacy agreement

(a) Section 28H 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 28K, 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: (i) the surrogacy agreement provides otherwise; and (ii) 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 28J. Judgment of parentage under gestational surrogacy agreement

(a) Except as otherwise provided in subsection (c) of section 28H or section 28K, 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 for a judgment of parentage:

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

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

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

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

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

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

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

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

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

484 (d) A complaint under this section shall include: (i) sworn affidavits of the parties to the
485 surrogacy agreement and the assisted reproductive physician demonstrating the intent of the
486 parties for the intended parent or parents to be the sole legal parent or parents of the child and
487 that the child was born pursuant to assisted reproduction and (ii) certifications from the attorneys
488 representing the intended parent(s) and the individual acting as gestational surrogate that the
489 requirements of sections 28B, 28C, and 28D have been met. A complaint supported by such
490 affidavits and certifications shall be sufficient to establish parentage, and a hearing shall not be
491 required unless the court requires additional information which cannot reasonably be ascertained
492 without a hearing.

493 (e) Upon a finding that the complaint satisfies subsection (d), a court shall expeditiously,
494 but no later than sixty (60) days from the docketing of the complaint, issue a judgment of
495 parentage. Such parentage judgments issued under this section shall conclusively establish or
496 affirm, where applicable, the parent-child relationship.

497 (f) In the event the certification required by subsection (d) of this section cannot be made
498 because of a technical or nonmaterial deviation from the requirements of sections 28B, 28C, and

28D of this chapter, the court may nevertheless enforce the agreement and issue a judgment of parentage if the court determines the agreement is in substantial compliance with the requirements of said sections.

(g) On request of a party, the court may close a proceeding under this section to the general public. All complaints, pleadings, papers or documents filed pursuant to this section, including docket entries, 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 or the parties. All such complaints, pleadings, papers or documents shall be segregated.

Section 28K. Effect of gestational surrogacy agreement

(a) A gestational surrogacy agreement that substantially complies with sections 28B, 28C, and 28D is enforceable.

(b) If a child was conceived by assisted reproduction under a gestational surrogacy agreement that does not substantially comply with sections 28B, 28C, and 28D, 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) of this section, if the agreement is breached by the individual acting as 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 an individual acting as gestational surrogate of a provision in the agreement that the individual acting as 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:

(i) breach of the agreement by an individual acting as gestational surrogate which prevents the intended parent from exercising immediately on birth of the child the full rights of parentage; or

(ii) 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.

Section 28L. Requirements to validate genetic surrogacy agreement

(a) Except as otherwise provided in section 28O, a genetic surrogacy agreement shall be validated by a 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:

(i) sections 28B, 28C, and 28D of this chapter are satisfied; and

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

(c) An individual who terminates a genetic surrogacy agreement under section 28M 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).

Section 28M. Termination of genetic surrogacy agreement

(a) A party to a genetic surrogacy agreement may terminate the agreement as follows: An intended parent or individual acting as genetic surrogate 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 notary or witnessed.

(b) An intended parent or individual acting as genetic surrogate who terminates the agreement after the court issues an order validating the agreement under sections 28L or 28O of this chapter, but before the individual acting as genetic surrogate becomes pregnant by means of assisted reproduction, shall also file notice of the termination with such court.

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

(d) On termination of the genetic surrogacy agreement, the parties are released from all obligations under the agreement except that any intended parent remains responsible for all expenses incurred by the individual acting as genetic surrogate through the date of termination which are reimbursable under the agreement. Unless the agreement provides otherwise, the

individual acting as surrogate is not entitled to any non-expense related compensation paid for acting as a surrogate.

(e) Except in a case involving fraud, neither an individual acting as 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 28N. Parentage under validated genetic surrogacy agreement

(a) On birth of a child conceived by assisted reproduction under a genetic surrogacy agreement validated under section 28L or 28O of this chapter, each intended parent is, by operation of law, a parent of the resulting child.

(b) On birth of a child conceived by assisted reproduction under a genetic surrogacy agreement validated under section 28L or 28O of this chapter, the intended parent or parents shall file a notice with the court that validated the agreement that a child has been born as a result of assisted reproduction. Upon receiving such notice, the court shall immediately, or as soon as practicable, issue an order without notice and hearing:

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

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

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

(iv) to protect the privacy of the child and the parties, declaring that the court record is not open to inspection in accordance with section 28J;

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

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

(c) Except as otherwise provided in subsection (d) or section 28P, 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 individual acting as genetic surrogate and the surrogate's spouse or former spouse, if any, is a parent of the child.

(d) If a child born to an individual acting as genetic surrogate is alleged not to have been conceived by assisted reproduction, the court may, upon finding sufficient evidence, 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 individual acting as genetic surrogate, then the surrogate and the 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 sections 1 through 27 of this chapter.

However, if the second genetic source is an intended parent, the court, in its sole discretion, may determine parentage under sections 1 through 27 of this chapter. Unless the genetic surrogacy agreement provides otherwise, the individual acting as genetic surrogate is not entitled to any

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

605 (e) If an intended parent fails to file the notice required under subsection (b) of this
606 section, the individual acting as genetic surrogate may file with the court, not later than 60 days
607 after the birth of a child conceived by assisted reproduction under the agreement, notice that the
608 child has been born to the individual acting as genetic surrogate. On proof of a court order issued
609 under sections 28L or 28O of this chapter validating the agreement, the court shall order that
610 each intended parent is a parent of the child.

611 Section 28O. Effect of nonvalidated genetic surrogacy agreement

612 (a) A genetic surrogacy agreement, whether or not in a record, that is not validated under
613 section 28L is enforceable only to the extent provided in this section and section 28Q.

614 (b) If all parties agree, a court may validate a genetic surrogacy agreement after assisted
615 reproduction has occurred but before the birth of a child conceived by assisted reproduction
616 under the agreement if the court finds that:

617 (i) sections 28B, 28C, or 28D of this chapter are satisfied; and

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

619 (c) If a child conceived by assisted reproduction under a genetic surrogacy agreement that
620 is not validated under section 28L or subsection (b) of this section is born, the individual acting
621 as genetic surrogate is not automatically a parent and the court shall adjudicate parentage of the
622 child based on the best interest of the child, taking into account the factors in subsection (a) of
623 section 26 and the intent of the parties at the time of the execution of the agreement.

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

Section 28P. Parentage of deceased intended parent under genetic surrogacy agreement

(a) Except as otherwise provided in section 28N or 28O on birth of a child conceived by assisted reproduction under a genetic surrogacy agreement, each intended parent is, by operation of law, a parent of the child, notwithstanding the death of an intended parent during the period between the transfer of a gamete or embryo and the birth of the child.

(b) Except as otherwise provided in section 28N or 28O, an intended parent is not a parent of a child conceived by assisted reproduction under a genetic surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless: (i) the agreement provides otherwise; and (ii) the transfer of the 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 28Q. Breach of genetic surrogacy agreement

(a) Subject to section 28M(d), if a genetic surrogacy agreement is breached by an individual acting as a genetic surrogate or 1 or more intended parents, the non-breaching party is entitled to the remedies available at law or in equity.

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

645 (c) Except as otherwise provided in subsection (b), specific performance is a remedy
646 available for: (i) breach of a validated genetic surrogacy agreement by an individual acting as
647 genetic surrogate of a requirement which prevents an intended parent from exercising,
648 immediately upon birth of the child, the full rights of parentage; or (ii) breach by an intended
649 parent which prevents the intended parent's acceptance, immediately upon birth of the child, of
650 the duties of parentage.