
**Report to
The Vermont Legislature**

**Annual Report on
Voluntary Acknowledgment of Parentage**

**In Accordance with S.28 sect. 4
Act 183; 15 V.S.A. §308: Presumption of Parentage**

Submitted to: Senate Committee on Health and Welfare
House Committee on Human Services

Submitted by: Ken Schatz, DCF Commissioner

Prepared by: Robin Arnell, Office of Child Support Staff Attorney

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Executive Summary

The Vermont State Legislature, through S. 28 Act 183 and 15 V.S.A. §308(4), requested a report be submitted addressing whether and how the voluntary acknowledgment of parentage process should be amended to allow persons who are not the biological parent of a child assume parental rights and responsibilities of a child through the completion of a voluntary acknowledgment of parentage form. The report is to include: a proposal to amend the voluntary acknowledgment of parentage process allowing non-biological parents to assume parental rights; a proposal for notifying biological parents of the birth of child when the parentage form has been submitted by a non-biological parent; and a summary of whether the voluntary acknowledgment of parentage by a non-biological parent will be legally recognized in other jurisdictions.

Per the discussion in this report, the Agency recommends that the voluntary acknowledgment of parentage (VAP) process continues to establish parental rights and responsibilities to non-wed biological parents wherein both signatories are biological parents. The Agency does not believe the VAP statute is the appropriate mechanism to address the realities of modern society which includes surrogacy situations involving assisted reproduction, same-sex marriages, and the possibility of friends and family members establishing parentage. It is recommended that the Legislature take a thorough and deliberative approach in responding to the needs of today's families and their varying compositions.

Introduction

Vermont enacted its Voluntary Acknowledgement of Parentage (VAP) statute in 1997¹ as part of a larger federal mandate requiring all state child support programs to adopt a series of child support enforcement measures to avoid losing federal funds. The federal mandate surrounding the VAP expedites parentage establishment in an effort to stream-line the child support process in recognition of the fact that an increasing percentage of children are born out of wedlock. Currently over 40% of Vermont children are born out of wedlock.

As a result, VAPs signed by unwed biological parents² have the legal effect of a judicial determination of parentage without the additional layer of a separate parentage proceeding.³ This is significant because of the children born in Vermont since 1997, almost 30% have had parentage established by a VAP. Those seeking to challenge the VAP do so by alleging they (or the other party) are not the biological parent. In this report, any reference to 'parentage' should be considered 'legal' parentage as opposed to 'biological' parentage.

Vermont's parentage statutes have not kept up with recent social developments and scientific advances. In an attempt to address unmarried same sex couples' inability to voluntarily acknowledge parentage, the Legislature passed S. 28 during the 2014 legislative session, which provided as follows:

On or before January 15, 2015, the Secretary of Human Services, after consultation with the court administrator, shall submit to the Senate Committee on Health and Welfare and the House Committee on Human Services a report addressing whether and how the

¹ Corresponding legislation dictates that a VAP must be signed before a father can be named on a birth certificate of a child born of unmarried parents. 18 V.S.A. § 5071(d)

² This is consistent with federal regulations that make several references to the *alleged father* and *mother* in the context of the VAP process. 45 C.F.R. § 303.5(a)

³ 42 U.S.C. § 666 (a)(5).

voluntary acknowledgement of parentage process should be amended to allow persons who are not the biological parent of a child to assume parental rights and responsibilities of a child through completion of a voluntary acknowledgement form. The report shall include:

- (1) A proposal for amending the voluntary acknowledgement of parentage process, including the acknowledgement form to allow non-biological parents to assume parental rights;**
- (2) A proposal for notifying a biological parent of the birth of a child when a voluntary acknowledgment of parentage form has been submitted by a non-biological parent and the biological parent has a due process right to notification, including notice to the biological parents of any rights to assert parentage or parental rights; and**
- (3) A summary of whether voluntary acknowledgement of parentage by a non-biological parent will be legally recognized in other jurisdictions, including by federal government assistance programs.**

Overview of Trends in Vermont's Case Law

The analysis contained herein recognizes that a parent-child relationship and attendant parental rights and responsibilities are not necessarily dependent upon biology.⁴ This is a longstanding principle, modernized and strengthened by medical advances in the area of assisted reproductive technology and the legalization of same-sex marriage. Both examples highlight the reality of families with children who have no biological connection to one of the parents.

As currently written in statute, parties are reputedly presumed to be parents of a child if the child is born of their marriage; if the parents execute a Voluntary Acknowledgement of Parentage; if found by genetic testing to be the biological parent; or upon their failure to appear for genetic testing without good cause.⁵ Signatories to a VAP must be the biological parents of the listed child.⁶ A number of Vermont cases, however, recognize that biology is not necessarily determinative of parentage.

Two cases, *Lerman* and *Godin*, concern two men's attempts to disestablish paternity of a child born during their respective marriages upon their suspicions, long after divorce, that they were not the father. In *Lerman*, the Vermont Supreme Court held that a former husband was not entitled to court-ordered genetic testing approximately ten years after his divorce became final, under the doctrine of *res judicata*, which precluded a re-litigation of paternity. *Lerman v.*

⁴ See, Harris, Leslie Joan. "Voluntary Acknowledgments of Parentage for Same-Sex Couples." American University Journal of Gender Social Policy and Law 20, no 3 (2013): 467-488 (<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1574&context=jgspl&sei-redir=1&referer=http%3A%2F%2Fwww.bing.com%2Fsearch%3Fq%3Djournal%2Bof%2Bgender%2Bvoluntary%2BBacknowledgement%26src%3DIE-SearchBox%26Form%3DIE8SRC#search=%22journal%20gender%20voluntary%20acknowledgement%22>)

⁵ 15 V.S.A. § 308; "The presumption provision was added to § 308 quite recently, see 1993, No. 228 (Adj. Sess.), § 13 (adding subsection (4) to 15 V.S.A. § 308), apparently to make the collection of child support easier, see 15 V.S.A. § 293(b) (where presumption applies, it is a "sufficient basis for initiating a support action . . . without any further proceedings to establish parentage"). We have examined the legislative history of the statute and can find no indication that it was intended to govern the rights of parentage of children born through artificial insemination or to same-sex partners, or to do anything other than provide a speedy recovery of child support." See *Miller-Jenkins v. Miller Jenkins*, 2006 VT 78, ¶44.

⁶ 15 V.S.A. § 307(d).

Lerman, 148 Vt. 629, 629, 528 A.2d 1121, 1122 (1987) (mem.). Similarly, the *Godin* court recognized the importance of the finality of paternity adjudications; that an established parent-child relationship, in this case of fourteen years, overrides a parent's desire to ascertain the true genetic makeup of a child born during the marriage. *Godin v. Godin*, 168 Vt. 514, 725 A.2d 904 (1998). The court wrote, "It is thus readily apparent that a parent-child relationship was formed, and it is that relationship, and not the results of a genetic test, that must control." *Id.* at 524, 725 A.2d at 911.

In subsequent years, case law has developed strengthening the concept that the parental relationship, not biology, is determinative in the question of parentage. The court in *Miller-Jenkins v. Miller-Jenkins*, 2006 VT 78, 18- Vt. 441, 912 A.2d 952 (child born to Lisa, by anonymous donor, during Lisa and Janet's civil union), after consideration of a number of factors, determined that Janet is a parent of the child regardless of the lack of a biological connection or a presumption. Conversely, a man's failure to assume the responsibilities of parenthood undermined his parentage claim even though he might have had a biological link. *Columbia v. Lawton*, 2013 VT 2, 193 Vt. 165, 71 A.3d 1218.

In a seeming departure from the tide of recent case law, the court in *Moreau* concluded that a man who had held himself out as father was not the biological parent of the child and therefore had no parental rights. The court distinguished *Miller-Jenkins* from *Moreau* in that there are no statutory parental rights extended to a man who acted as a parent, but who was not married to the mother, and had no legal claim to parentage. The court again declined to endorse "de facto parenthood". *Moreau v. Sylvester*, 2014 WL 1328176 (Vt.,2014), 95 A.3d 416 (2014).

However, in the case of *McGee v. Gonyo*, Docket No. 2014-270, now pending before the Vermont Supreme Court, the parties signed a VAP for the child, creating a rebuttable presumption of parentage. Gonyo argues that this presumption was created even through the parties signed the VAP knowing Gonyo was not the biological father. He held himself out as the father for the first several years of the child's life. Despite the fact that his legal claim for parentage is based on the VAP (unlike the man in *Moreau*, who had no legal claim for parentage), and despite his assumption of parental responsibilities (unlike the man in *Columbia*, who did not hold himself out as a parent), the trial court found he had no parental rights after genetic testing confirmed he was not the biological father.

An evolving area of law impacting parentage and parental rights and responsibilities is that of assisted reproductive technology (ART). Vermont is among fourteen states that do not have a statute that addresses parentage in the context of assisted reproduction.⁷ Most states have adopted, or have taken language from, a version of the Uniform Parentage Act to address the issue of assisted reproduction.⁸

Despite social and medical advances, a VAP signed by non-biological parents is akin to adoption. Adoption statutes already exist which allow non-biological parents to assume parental

⁷ The following states have no statute on assisted reproduction: Hawaii, Indiana, Iowa, Kentucky, Louisiana, Maine, Mississippi, Nebraska, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont and West Virginia.

⁸ Some states allow the sperm or egg donor to "opt-in" to parenthood if all the parties agree in writing. See CAL. FAM. CODE § 7613 (West); KAN.STAT.ANN. § 23-2208 (West); N.J. STAT. ANN. § 9:17-44 (West). Minnesota, Missouri, and Montana have adopted the Act verbatim, while California, Illinois, and Wisconsin have excluded the word "married" or made similar changes. Arkansas, Michigan and Oklahoma have amended their statutes to contemplate egg donation.

rights and responsibilities of children. These adoption statutes provide for judicial oversight, provide for notice to the biological parent, serve the best interests of the child, and provide a level of stability for the child which is not created by the VAP. While the Legislature has directed that the Agency focus this report on the very narrow proposition of expanding the voluntary acknowledgement of parentage process to include same sex couples, to do so implicates a host of other issues. Hence, this report delivers a response to the three specific proposals as charged, but also recommends that the Legislature take a more comprehensive approach to evaluating Vermont's parentage statutes. Such an approach will ensure due consideration of the realities of the modern family and the paramount interest of the welfare of children.

Summary of the Recommendations

A proposal for amending the voluntary acknowledgement of parentage process, including the acknowledgement form to allow non-biological parents to assume parental rights.

- The Agency recommends VAPs continue to be available to establish parentage exclusively where both signatories are biological parents, as required by federal regulations.
- The Agency recommends that judicial review be maintained in all other cases to ensure the best interest of the child is considered, and to provide notice to the biological parent.
- If the Legislature wishes to establish or amend the processes for permitting non-biological parents to assume parental rights, the Agency proposes that these processes not be a part of the VAP statute, and that the Legislature addresses a number of policy questions listed below.

(1) A proposal for notifying a biological parent of the birth of a child when a voluntary acknowledgment of parentage form has been submitted by a non-biological parent and the biological parent has a due process right to notification, including notice to the biological parents of any rights to assert parentage or parental rights.

- The Agency recommends VAPs continue to be available to establish parentage exclusively where both signatories are biological parents, as required by federal regulations.
- The Agency suggests that notice to a biological parent is an essential component whenever a person seeks to assume parentage and parental rights and responsibilities of a child that is not their biological child. Any notification requirement when non-biological parents assume parental rights ought to be consistent with the adoption statutes.
- If the Legislature is seeking to allow non-biological parents to assume parental rights and responsibilities, the Agency recommends the Legislature consider a number of policy questions, listed below, relative to notification of the biological parent.

(2) A summary of whether voluntary acknowledgement of parentage by a non-biological parent will be legally recognized in other jurisdictions, including by federal government assistance programs.

- The Agency cannot predict whether other jurisdictions will recognize VAP signed by non-biological parents.
- The Agency cannot predict whether federal government assistance programs will recognize parentage as having been established by a VAP signed by non-biological parents.

Charges and Detailed Recommendations

(1) A proposal for amending the voluntary acknowledgement of parentage process, including the acknowledgement form to allow non-biological parents to assume parental rights.

The Agency recommends VAPs continue to be available to establish parentage only where the signatories are both biological parents. Currently, federal regulations prohibit any prerequisite or ratification requirement; filing the VAP with the Department of Health is sufficient to establish parentage.

The Agency recommends that judicial review be maintained in all other cases to ensure the best interest of the child is considered, and to provide notice to the biological parent. However, if the Legislature amends Vermont statutes to allow non-biological parents to assume parental rights, the Agency proposes the Legislature take into account the existing adoption process and considers the following policy questions:

- *What is the definition of non-biological parent?* The Legislature should consider whether a non-biological parent in an opposite-sex couple, or a friend or family member may be eligible to assume parental rights and responsibilities as a non-biological parent.
- *Can two or more non-biological parents assume parental rights and responsibilities?* For example, the Legislature should consider that if a biological mother and her female partner could assume parental rights and responsibilities, that likewise the biological father and his male partner could assume parental rights and responsibilities. Similarly, the Legislature should consider whether two people who are biologically unrelated to the child may assume parental rights and responsibilities.
- *How will the Legislature harmonize any new statute with the adoption, probate,⁹ and other statutes?¹⁰*

⁹ Biology remains relevant in adoption proceedings, as efforts are to be made to identify and notify a biological father of the adoptee before a child is adopted and at any time during the adoption proceedings. 15A V.S.A. § 3-404.

¹⁰ Other areas of state law that may be impacted if biology were not relevant in determining parentage include juvenile proceedings. In juvenile proceedings, parents are defined as a child's biological or adoptive parent. 33

- *May the process be used in lieu of adoption?*
- *How should conflicting determinations of parentage and parental rights and responsibilities be resolved? Will there be a hierarchy favoring one over the other?* The Legislature and the Vermont Supreme Court have restricted multiple parentage actions, rejecting any interpretation that would allow for competing parentage actions. This interpretation favors finality for children. In the event there are two competing actions, the Legislature should consider whether the non-biological parent would trump the biological parent, and should consider the application of the best interest of the child standard.
- *Should there be a procedure for a third party asserting biological parentage, to contest parentage and parental rights and responsibilities asserted by non-biological parents?* The Uniform Parentage Act, adopted in full or in part by some states, allows for post-adjudication parentage actions.¹¹ This means that a person who has not been a part of any judicial proceeding may commence a proceeding within a proscribed period of time after the proceeding.
- *Do de facto parents have any parental rights and responsibilities?* “De facto parent” and “psychological parent” are terms used to describe the relationship of a child with a non-biological parent who has assumed the role of parent despite lack of biological connection. The Vermont Supreme Court has rejected the claim of de facto parenting.¹²
- *Should the Legislature consider an expedited adoption process for certain categories of adoptive parents, where some judicial oversight is maintained but where timelines are shortened and cost is minimized?*
- *Should the process to establish parentage and parental rights and responsibilities in favor of a non-biological parent include notification to the biological parent?* Courts have recognized that when a parent demonstrates a commitment to the responsibilities of parenthood, certain constitutional rights attach. It can be argued, though, that notification is an essential component to a knowing waiver of those rights.

(2) A proposal for notifying a biological parent of the birth of a child when a voluntary acknowledgment of parentage form has been submitted by a non-biological parent and the biological parent has a due process right to notification, including notice to the biological parents of any rights to assert parentage or parental rights.

The Agency recommends VAPs continue to be available to establish parentage where both the signatories are both biological parents.

The Agency suggests that notice to a biological parent is an essential component whenever a person seeks to assume parental rights and responsibilities of a child that is not his/her biological

V.S.A. § 5102(20). Additionally, a parental relationship impacts inheritance rights of the surviving spouse or other descendants. 14 V.S.A. § 315.

¹¹ U.L.A. Parentage Act § 609(b)(2000); Wash Rev. Code Ann. §26.26.540(2); Tex.Fam.Code.Ann. §160.609(b).

¹² *Moreau v. Sylvester*, 95 A.3d 416 (2014).

child. Any notification requirement when non-biological parents assume parental rights and responsibilities ought to be consistent with the adoption statute.

Biological parents have constitutionally protected rights, which include the right to assert a claim for parentage and to exercise parental rights and responsibilities. If the Legislature amends the statute to create a new process for non-biological parents to assume parental rights and responsibilities, the Agency proposes the Legislature consider the following policy questions:

- *Should a biological parent be required to give up his/her parental rights in order for non-biological parent/s to assume parental rights and responsibilities?*
- *If not, may a child have more than two legal parents?*
- *If so, should the non-biological parents be required to provide notice to the biological parent and should the biological parent then be required to waive parental rights and responsibilities in writing?* A document enabling known biological parents to relinquish parental status should be used. Thus, if the identity of a biological parent is known, he or she should be required to sign a document waiving any and all claims to parental status.

The form should provide clear notice to the biological parent of any right he or she may have to seek parentage or parental rights and responsibilities, as well as the consequences of signing the form.

- *Should a putative parent registry be activated to provide notice to a biological parent, including where a biological parent is unknown?* The Legislature may consider the establishment of a formal Putative Father Registry to aid in the identification and notification of alleged biological parents. Vermont has already provided for a similar repository of information in the context of adoption.¹³
- *Should the Legislature consider using the notification component for biological parents already existing in the adoption statute?*¹⁴ The biological parent executes a statement either denying paternity or disclaiming interest in the child, and the form is completed in the presence of a judge, appointee or military officer.¹⁵ The parent is notified that their consent to adopt the child is irrevocable. The adoption statute provides for oversight and explanation to the person relinquishing parental rights as well as to the person adopting the child. The agency recommends that with any new process, no less notice be provided when non-biological parents assume parental rights and responsibilities.

¹³ See 15A V.S.A. § 1-110.

¹⁴ See 15A V.S.A. § 2-402,

¹⁵ <https://www.vermontjudiciary.org/eforms/Pc%20135a.pdf>

(3) A summary of whether voluntary acknowledgement of parentage by a non-biological parent will be legally recognized in other jurisdictions, including by federal government assistance programs.

The Agency cannot predict whether other jurisdictions will recognize VAPs signed by non-biological parents, but a reasonable argument could be made that a VAP signed by non-biological parents pursuant to Vermont law ought to be given full faith and credit, and recognized as a rebuttable presumption in other jurisdictions. In fact, the Uniform Interstate Family Support Act (U.I.F.S.A) requires that a party whose parentage of a child has been previously determined by or pursuant to law may not plead non-parentage as a defense to a proceeding under this title.¹⁶

Even if other state courts do not interpret U.I.F.S.A. to extend the requirement for them to recognize a VAP signed by non-biological parents, courts have discretion as to whether to defer to other states' precedents; adherence to the principle of comity may result in other states' recognizing VAPs signed by same-sex couples.

However, even if a VAP signed by non-biological parents were recognized as valid, it's conceivable that a court in another jurisdiction could issue a conflicting parentage order based on biology. There is no uniform law in place to address competing rights in such a scenario.

The Agency cannot predict whether federal government assistance programs will recognize parentage as having been established by a VAP signed by non-biological parents. It is unclear whether Social Security would award derivative benefits or other types of benefits to a child based on a non-biological parent's death or disability, as law in this area is developing.

Conclusion

The Agency recommends that VAPs continue to be available as a means to establish parentage only where the signatories are both biological parents.

However, the current framework of the parentage and adoption statutes lacks an expeditious and clear mechanism to deal with the realities of modern society. To focus on whether non-biological parents may sign VAPs ignores other needed statutory changes. It fails to address situations involving anonymous sperm donors, or situations where the biological father is unknown. It also fails to address surrogacy situations involving assisted reproductive technology. But most importantly, a VAP for non-biological parents would allow any (or possibly more) people to assume the role of parents without any judicial oversight to protect the best interest of the child.

The Vermont Supreme Court has recognized this deficiency and in a concurring decision by Justice Dooley, has implored the Legislature to act, stating, "I can think of no subject that is in greater need of legislative action than this one—defining who may be considered a parent for purposes of determining parental rights and responsibilities and parent-child contact.... [O]ur responsibility to protect the best interests of the child will become only more challenging as the changing nature of families presents circumstances that are well outside the contemplation of our now archaic and inadequate statutes. I recognize that there may come a tipping point where

¹⁶ 15B V.S.A. § 315

judicial action to define rights and responsibilities beyond those of biological parents and marital partners becomes unavoidable. I would rather that the Legislature act before we see that day....It is for this very reason that I urge the Legislature to act, and to act with some urgency so that an archaic legal system does not create uncertainty for families and children and inflict real harm on them.” *Moreau v. Sylvester*, 2014 WL 1328176 (Vt., 2014)(concurring opinion).

The Agency of Human Services recommends that, while a significant review of the parentage statute is overdue, change to the VAP statute is not the appropriate mechanism and should continue to be reserved to expedite parentage proceedings for unwed biological couples. The Agency would urge the Legislature to take a more thorough and deliberative approach and consider a robust response to the needs of today’s families.

Confidential

State of Vermont Voluntary Acknowledgment of Parentage Form

Parentage creates specific legal obligations. This signed form may be used in court in support of a parentage claim. You should seek legal advice before signing this form if you have any questions or if you are confused about your rights and responsibilities. Further information about the legal rights and responsibilities of a parent is available on the back of this form.

These rights and responsibilities are serious, and you should not sign this form unless you understand them. If you need help understanding your rights and responsibilities as parents and the alternatives to, and consequences of, signing this form, call 1-800-786-3214 (or dial 2-1-1 for help in other languages).

Child's Information	
Child's Full Name	Date of Birth
City/Town, County, and State of Birth	Social Security Number (if any)

Being of sound mind and memory, voluntarily and without coercion, and of our own free will, we hereby acknowledge that we are the biological parents of this child. We understand that signing this acknowledgment is voluntary and we understand our rights and responsibilities as a parent and the alternatives to, and consequences of, signing this form.

Mother's Information			
Full Name	Date of Birth	State of Birth	Social Security Number
Mailing Address	City	State	Zip Code
Mother's Signature	Guardian's Signature if mother is a minor		
Signature of Witness*	Date	Witnessed in (City, County, State)	

Father's Information			
Full Name	Date of Birth	State of Birth	Social Security Number
Mailing Address	City	State	Zip Code
Father's Signature	Guardian's Signature if father is a minor		
Signature of Witness*	Date	Witnessed in (City, County, State)	

* The witness must be at least **18 years of age** and **not** the mother or father of the child.

IMPORTANT: PLEASE READ OTHER SIDE OF THIS FORM.

Revised 8/12



Important Information

Legal Parentage

If you are married when your child is born, Vermont law automatically recognizes you both as the *legal* parents. However, if you are **not married** when your child is born, the law:

- Assumes the mother is the biological (and *legal*) parent of the child; but
- Does not recognize the father until parentage has been legally established.

Establishing Parentage

You may establish parentage one of two ways:

1. **By signing this Voluntary Acknowledgment of Parentage form and filing it with the Office of Vital Records.** Do not sign this form if either of you is unsure or has any doubt about the father's identity.
2. **By filing an action in the Family Division of Superior Court.** The judge may establish legal parentage and parental rights and responsibilities; assign child and medical support obligations; and order genetic testing if needed. For further information about the court process for establishing parentage, ask the court clerk. For help establishing parentage, apply to the Vermont Office of Child Support.

What Voluntary Acknowledgment Means

By signing this *Voluntary Acknowledgment of Parentage* form, both parents accept the legal rights and responsibilities that come with being a parent. This means that:

- Either parent may seek parental rights and responsibilities (*custody*) or ask for parent-child contact (*visitation*);
- Both parents have the right to notice and a hearing before the child may be adopted; and
- Both parents are responsible for financially supporting the child. Once parental rights and responsibilities are established, either parent or the Office of Child Support may file a petition to establish a child support order with the Family Division of Superior Court.

Confidentiality

The *Voluntary Acknowledgment of Parentage* form is confidential; however, it may be shared with the Office of Child Support for the purpose of initiating a parentage or child support proceeding.

Legal Representation

You may hire an attorney to advise you about the legal consequences of voluntarily acknowledging parentage and to represent you at any legal proceedings.

Changing Your Mind

The law allows a person who signed this form to rescind the acknowledgment within 60 days after signing or prior to a judicial determination of parentage, whichever occurs first. The rescision must be in writing and must be filed with the Department of Health at the address below.

Submitting this Form

Keep a copy of the completed form for your records. After both parents and the witnesses have signed the completed form, submit it to:

**Office of Vital Records, Department of Health
108 Cherry Street, PO Box 70
Burlington, VT 05402-0070 • 1-800-439-5008**

If this form is filed with the Department of Health within 6 months of the child's birth, the father's full name, date and place of birth will be added to the child's birth certificate. After 6 months from the date of birth, the child's birth certificate may be amended only by order of the Probate Court, as provided in 18 V.S.A. Section 5075(a).