

No. 162. An act relating to parentage proceedings.

(H.562)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. Title 15C is added to read:

TITLE 15C. PARENTAGE PROCEEDINGS

CHAPTER 1. SHORT TITLE; DEFINITIONS; SCOPE; GENERAL
PROVISIONS

§ 101. SHORT TITLE

This title may be cited as the Vermont Parentage Act.

§ 102. DEFINITIONS

As used in this title:

(1) “Acknowledged parent” means a person who has established a parent-child relationship under chapter 3 of this title.

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

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

(A) a presumed parent;

(B) a person whose parental rights have been terminated or declared not to exist; or

(C) a donor.

(4) “Assisted reproduction” means a method of causing pregnancy other than sexual intercourse and includes:

(A) intrauterine, intracervical, or vaginal insemination;

(B) donation of gametes;

(C) donation of embryos;

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

(E) intracytoplasmic sperm injection.

(5) “Birth” includes stillbirth.

(6) “Child” means a person of any age whose parentage may be determined under this title.

(7) “Domestic assault” shall include any offense as set forth in 13 V.S.A. chapter 19, subchapter 6 (domestic assault).

(8) “Donor” means a person who contributes a gamete or gametes or an embryo or embryos to another person for assisted reproduction or gestation, whether or not for consideration. This term does not include:

(A) a person who gives birth to a child conceived by assisted reproduction except as otherwise provided in chapter 8 of this title; or

(B) a parent under chapter 7 of this title or an intended parent under chapter 8 of this title.

(9) “Embryo” means a cell or group of cells containing a diploid complement of chromosomes or a group of such cells, not including a gamete,

that has the potential to develop into a live born human being if transferred into the body of a person under conditions in which gestation may be reasonably expected to occur.

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

(11) “Genetic population group” means, for purposes of genetic testing, a recognized group that a person identifies as all or part of the person’s ancestry or that is so identified by other information.

(12) “Gestational carrier” means an adult person who is not an intended parent and who enters into a gestational carrier agreement to bear a child conceived using the gametes of other persons and not the gestational carrier’s own, except that a person who carries a child for a family member using the gestational carrier’s own gametes and who fulfills the requirements of chapter 8 of this title is a gestational carrier.

(13) “Gestational carrier agreement” means a contract between an intended parent or parents and a gestational carrier intended to result in a live birth.

(14) “Intended parent” means a person, whether married or unmarried, who manifests the intent to be legally bound as a parent of a child resulting from assisted reproduction or a gestational carrier agreement.

(15) “Marriage” includes civil union and any legal relationship that provides substantially the same rights, benefits, and responsibilities as

marriage and is recognized as valid in the state or jurisdiction in which it was entered.

(16) “Parent” means a person who has established parentage that meets the requirements of this title.

(17) “Parentage” means the legal relationship between a child and a parent as established under this title.

(18) “Presumed parent” means a person who is recognized as the parent of a child under section 401 of this title.

(19) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(20) “Sexual assault” shall include sexual assault as provided in 13 V.S.A. § 3252(a), (b), (d), and (e); aggravated sexual assault as provided in 13 V.S.A. § 3253; aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a; lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602; and similar offenses in other jurisdictions.

(21) “Sexual exploitation” shall include sexual exploitation of an inmate as provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in 13 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A. § 1379, and similar offenses in other jurisdictions.

(22) “Sign” means, with the intent to authenticate or adopt a record, to:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(23) “Signatory” means a person who signs a record and is bound by its terms.

(24) “Spouse” includes a partner in a civil union or a partner in a legal relationship that provides substantially the same rights, benefits, and responsibilities as marriage and is recognized as valid in the state or jurisdiction in which it was entered.

§ 103. SCOPE AND APPLICATION

(a) Scope. This title applies to determination of parentage in this State.

(b) Choice of law. The court shall apply the law of this State to adjudicate parentage.

(c) Effect on parental rights. This title does not create, enlarge, or diminish parental rights and responsibilities under other laws of this State or the equitable powers of the courts, except as provided in this title.

§ 104. PARENTAGE PROCEEDING

(a) Proceeding authorized. A proceeding to adjudicate the parentage of a child shall be maintained in accordance with this title and with the Vermont Rules for Family Proceedings, except that proceedings for birth orders under sections 708 and 804 of this title shall be maintained in accordance with the Vermont Rules of Probate Procedure.

(b) Actions brought by the Office of Child Support. If the complaint is brought by the Office of Child Support, the complaint shall be accompanied by an affidavit of the parent whose rights have been assigned. In cases where the assignor is not a genetic parent or is a genetic parent who refuses to provide an affidavit, the affidavit may be submitted by the Office of Child Support, but the affidavit alone shall not support a default judgment on the issue of parentage.

(c) Original actions. Original actions to adjudicate parentage may be commenced in the Family Division of the Superior Court, except that proceedings for birth orders under sections 708 and 804 of this title shall be commenced in the Probate Division of the Superior Court.

(d) No right to jury. There shall be no right to a jury trial in an action to determine parentage.

(e) Disclosure of Social Security numbers. A person who is a party to a parentage action shall disclose that person's Social Security number to the court. The Social Security number of a person subject to a parentage adjudication shall be placed in the court records relating to the adjudication. The court shall disclose a person's Social Security number to the Office of Child Support.

§ 105. STANDING TO MAINTAIN PROCEEDING

Subject to other provisions of this chapter, a proceeding to adjudicate parentage may be maintained by:

(1) the child;

(2) the person who gave birth to the child unless a court has adjudicated that the person is not a parent or the person is a gestational carrier who is not a parent under subdivision 803(1)(A) of this title;

(3) a person whose parentage is to be adjudicated;

(4) a person who is a parent under this title;

(5) the Department for Children and Families, including the Office of Child Support; or

(6) a representative authorized by law to act for a person who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

§ 106. NOTICE OF PROCEEDING

(a) A petitioner under this chapter shall give notice of the proceeding to adjudicate parentage to the following:

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

(2) a person who is a parent of the child under this chapter;

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

(4) a person whose parentage of the child is to be adjudicated; and

(5) the Office of Child Support, in cases in which either party is a recipient of public assistance benefits from the Economic Services Division

and has assigned the right to child support, or in cases in which either party has requested the services of the Office of Child Support.

(b) A person entitled to notice under subsection (a) of this section and the Office of Child Support, where the Office is involved pursuant to subdivision (a)(5), has a right to intervene in the proceeding.

(c) Lack of notice required by subsection (a) of this section shall not render a judgment void. Lack of notice does not preclude a person entitled to notice under subsection (a) from bringing a proceeding under this title.

(d) This section shall not apply to petitions for birth orders under chapters 7 and 8 of this title.

§ 107. FORM OF NOTICE

Notice shall be by first-class mail to the person's last known address.

§ 108. PERSONAL JURISDICTION

(a) Personal jurisdiction. A person shall not be adjudicated a parent unless the court has personal jurisdiction over the person.

(b) Personal jurisdiction over nonresident. A court of this State having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident person, or the guardian or conservator of the person, if the conditions prescribed in Title 15B are fulfilled.

(c) Adjudication. Lack of jurisdiction over one person does not preclude the court from making an adjudication of parentage binding on another person over whom the court has personal jurisdiction.

§ 109. VENUE

Venue for a proceeding to adjudicate parentage shall be in the county in which:

(1) the child resides or is present or, for purposes of chapter 7 or 8 of this title, is or will be born;

(2) any parent or intended parent resides;

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

(4) a proceeding for probate or administration of the parent or alleged parent's estate has been commenced; or

(5) a child protection proceeding with respect to the child has been commenced.

§ 110. JOINDER OF PROCEEDINGS

(a) Joinder permitted. Except as otherwise provided in subsection (b) of this section, a proceeding to adjudicate parentage may be joined with a proceeding for parental rights and responsibilities, parent-child contact, child support, child protection, termination of parental rights, divorce, annulment, legal separation, guardianship, probate or administration of an estate or other appropriate proceeding, or a challenge or rescission of acknowledgment of parentage. Such proceedings shall be in the Family Division of the Superior Court.

(b) Joinder not permitted. A respondent may not join a proceeding described in subsection (a) of this section with a proceeding to adjudicate parentage brought as part of an interstate child support enforcement action under Title 15B.

§ 111. ORDERS

(a) Interim order for support. In a proceeding under this title, the court may issue an interim order for support of a child in accordance with the child support guidelines under 15 V.S.A. § 654 with respect to a person who is:

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

(2) petitioning to have parentage adjudicated;

(3) identified as the genetic parent through genetic testing under chapter 6 of this title;

(4) an alleged genetic parent who has declined to submit to genetic testing;

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

(6) the person who gave birth to the child, other than a gestational carrier; or

(7) a parent under this chapter.

(b) Interim order for parental rights and responsibilities. In a proceeding under this title, the court may make an interim order regarding parental rights and responsibilities on a temporary basis.

(c) Final orders. Final orders concerning child support or parental rights and responsibilities shall be governed by Title 15.

§ 112. ADMISSION OF PARENTAGE AUTHORIZED

(a) Admission of parentage. A respondent in a proceeding to adjudicate parentage may admit parentage of a child when making an appearance or during a hearing in a proceeding involving the child or by filing a pleading to such effect. An admission of parentage pursuant to this section is different from an acknowledgment of parentage as provided in chapter 3 of this title.

(b) Order adjudicating parentage. If the court finds an admission to be consistent with the provisions of this chapter and rejects any objection filed by another party, the court may issue an order adjudicating the child to be the child of the person admitting parentage.

§ 113. ORDER ON DEFAULT

The court may issue an order adjudicating the parentage of a person who is in default, providing:

- (1) the person was served with notice of the proceeding; and
- (2) the person is found by the court to be the parent of the child.

§ 114. ORDER ADJUDICATING PARENTAGE

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

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

(c) Change of name. On request of a party and for good cause shown, the court may order that the name of the child be changed.

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

§ 115. BINDING EFFECT OF DETERMINATION OF PARENTAGE

(a) Determination binding. Except as otherwise provided in subsection (b) of this section, a determination of parentage shall be binding on:

(1) all signatories to an acknowledgment of parentage or denial of parentage as provided in chapter 3 of this title; and

(2) all parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of section 108 of this title.

(b) Adjudication in proceeding to dissolve marriage. In a proceeding to dissolve a marriage, the court is deemed to have made an adjudication of the parentage of a child if:

(1) the court acts under circumstances that satisfy the jurisdictional requirements of section 108 of this title; and

(2) the final order:

(A) expressly identifies a child as a “child of the marriage” or “issue of the marriage” or by similar words indicates that the parties are the parents of the child; or

(B) provides for support of the child by the parent or parents.

(c) Determination a defense. Except as otherwise provided in this chapter, a determination of parentage shall be a defense in a subsequent proceeding seeking to adjudicate parentage by a person who was not a party to the earlier proceeding.

(d) Challenge to adjudication.

(1) Challenge by a person who was a party to an adjudication. A party to an adjudication of parentage may challenge the adjudication only by appeal or in a manner otherwise consistent with the Vermont Rules for Family Proceedings.

(2) Challenge by a person who was not a party to an adjudication. A person who has standing under section 105 of this title, but who did not receive notice of the adjudication of parentage under section 106 of this title and was not a party to the adjudication, may challenge the adjudication within two years after the effective date of the adjudication. The court, in its discretion, shall permit the proceeding only if it finds that it is in the best interests of the child. If the court permits the proceeding, the court shall adjudicate parentage under section 206 of this title.

(e) Child not bound. A child is not bound by a determination of parentage under this chapter unless:

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

(2) the determination was based on a finding consistent with the results of genetic testing;

(3) the determination of parentage was made under chapter 7 or 8 of this title; or

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

§ 116. FULL FAITH AND CREDIT

A court of this State shall give full faith and credit to a determination of parentage and to an acknowledgment of parentage from another state if the determination is valid and effective in accordance with the law of the other state.

CHAPTER 2. ESTABLISHMENT OF PARENTAGE

§ 201. RECOGNIZED PARENTS

A person may establish parentage by any of the following:

(1) Birth. Giving birth to the child, except as otherwise provided in chapter 8 of this title.

(2) Adoption. Adoption of the child pursuant to Title 15A.

(3) Acknowledgment. An effective voluntary acknowledgment of parentage under chapter 3 of this title.

(4) Adjudication. An adjudication based on an admission of parentage under section 112 of this title.

(5) Presumption. An un rebutted presumption of parentage under chapter 4 of this title.

(6) De facto parentage. An adjudication of de facto parentage, under chapter 5 of this title.

(7) Genetic parentage. An adjudication of genetic parentage under chapter 6 of this title.

(8) Assisted reproduction. Consent to assisted reproduction under chapter 7 of this title.

(9) Gestational carrier agreement. Consent to a gestational carrier agreement by the intended parent or parents under chapter 8 of this title.

§ 202. NONDISCRIMINATION

Every child has the same rights under law as any other child without regard to the marital status or gender of the parents or the circumstances of the birth of the child.

§ 203. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE

Unless parentage has been terminated by a court order or an exception has been stated explicitly in this title, parentage established under this title applies for all purposes, including the rights and duties of parentage under the law.

§ 204. DETERMINATION OF MATERNITY AND PATERNITY

Provisions of this title relating to determination of paternity may apply to determination of maternity as needed to determine parentage consistent with this title.

§ 205. NO LIMITATION ON CHILD

Nothing in this chapter limits the right of a child to bring an action to adjudicate parentage.

§ 206. ADJUDICATING COMPETING CLAIMS OF PARENTAGE

(a) Competing claims of parentage. Except as otherwise provided in section 616 of this title, in a proceeding to adjudicate competing claims of parentage or challenges to a child's parentage by two or more persons, the court shall adjudicate parentage in the best interests of the child, based on the following factors:

(1) the age of the child;

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

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

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

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

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

(b) Preservation of parent-child relationship. Consistent with the establishment of parentage under this chapter, a court may determine that a child has more than two parents if the court finds that it is in the best interests of the child to do so. A finding of best interests of the child under this subsection does not require a finding of unfitness of any parent or person seeking an adjudication of parentage.

CHAPTER 3. VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

§ 301. ACKNOWLEDGMENT OF PARENTAGE

(a) The following persons may sign an acknowledgment of parentage to establish parentage of a child:

(1) a person who gave birth to the child;

(2) a person who is the alleged genetic parent of the child;

(3) a person who is an intended parent to the child pursuant to chapter 7 or 8 of this title; and

(4) a presumed parent pursuant to chapter 4 of this title.

(b) The acknowledgment shall be signed by both the person who gave birth to the child and by the person seeking to establish a parent-child relationship and shall be witnessed and signed by at least one other person.

§ 302. ACKNOWLEDGMENT OF PARENTAGE VOID

An acknowledgment of parentage shall be void if, at the time of signing:

(1) a person other than the person seeking to establish parentage is a presumed parent, unless a denial of parentage in a signed record has been filed with the Department of Health; or

(2) a person, other than the person who gave birth, is an acknowledged, admitted, or adjudicated parent, or an intended parent under chapter 7 or 8 of this title.

§ 303. DENIAL OF PARENTAGE

A person presumed to be a parent or an alleged genetic parent may sign a denial of parentage only in the limited circumstances set forth in this section.

A denial of parentage shall be valid only if:

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

(2) the denial is in a record and is witnessed and signed by at least one other person; and

(3) the person executing the denial has not previously:

(A) acknowledged parentage, unless the previous acknowledgment has been rescinded pursuant to section 307 of this title or successfully challenged the acknowledgment pursuant to section 308 of this title; or

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

§ 304. CONDITIONS FOR ACKNOWLEDGMENT OR DENIAL OF PARENTAGE

(a) Completed forms for acknowledgment of parentage and denial of parentage shall be filed with the Department of Health.

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

(c) An acknowledgment of parentage or denial of parentage takes effect on the date of the birth of the child or the filing of the document with the Department of Health, whichever occurs later.

(d) An acknowledgment of parentage or denial of parentage signed by a minor shall be valid provided it is otherwise in compliance with this title.

§ 305. EQUIVALENT TO ADJUDICATION; NO RATIFICATION REQUIRED

(a) Acknowledgment. Except as otherwise provided in sections 307 and 308 of this title, a valid acknowledgment of parentage under section 301 of this title filed with the Department of Health is equivalent to an adjudication of

parentage of a child and confers upon the acknowledged parent all of the rights and duties of a parent.

(b) Ratification. Judicial or administrative ratification is neither permitted nor required for an unrescinded or unchallenged acknowledgment of parentage.

(c) Denial. Except as otherwise provided in sections 307 and 308 of this title, a valid denial of parentage under section 303 of this title filed with the Department of Health in conjunction with a valid acknowledgment of parentage under section 301 of this title is equivalent to an adjudication of the nonparentage of the presumed parent or alleged genetic parent and discharges the presumed parent or alleged genetic parent from all rights and duties of a parent.

(d) Rescission or challenge. A signatory of an acknowledgment of parentage may rescind or challenge the acknowledgment in accordance with sections 307-309 of this title.

§ 306. NO FILING FEE

The Department of Health shall not charge a fee for filing an acknowledgment of parentage or denial of parentage.

§ 307. TIMING OF RESCISSION

(a) A person may rescind an acknowledgment of parentage or denial of parentage under this chapter by any of the following methods:

(1) Filing a rescission with the Department of Health within 60 days after the effective date of the acknowledgment or denial. The signing of the rescission shall be witnessed and signed by at least one other person.

(2) Commencing a court proceeding within 60 days after:

(A) the effective date of the acknowledgment or denial, as provided in section 304 of this title; or

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

(b) If an acknowledgment of parentage is rescinded under this section, any associated denial of parentage becomes invalid, and the Department of Health shall notify the person who gave birth to the child and any person who signed a denial of parentage of the child that the acknowledgment of parentage has been rescinded. Failure to give notice required by this section does not affect the validity of the rescission.

§ 308. CHALLENGE TO ACKNOWLEDGMENT AFTER EXPIRATION
OF PERIOD FOR RESCISSION

(a) Challenge by signatory. After the period for rescission under section 307 of this title has expired, a signatory of an acknowledgment of parentage or denial of parentage may commence a proceeding to challenge the acknowledgment or denial only:

(1) on the basis of fraud, duress, coercion, threat of harm, or material mistake of fact; and

(2) within two years after the acknowledgment or denial is effective in accordance with section 304 of this title.

(b) Challenge by person not a signatory. If an acknowledgment of parentage has been made in accordance with this chapter, a person who is neither the child nor a signatory to the acknowledgment who seeks to challenge the validity of the acknowledgment and adjudicate parentage shall commence a proceeding within two years after the effective date of the acknowledgment unless the person did not know and could not reasonably have known of the person's potential parentage due to a material misrepresentation or concealment, in which case the proceeding shall be commenced within two years after the discovery of the person's potential parentage.

(c) Burden of proof. A person challenging an acknowledgment of parentage or denial of parentage pursuant to this section has the burden of proof by clear and convincing evidence.

(d) Consolidation. A court proceeding in which the validity of an acknowledgment of parentage is challenged shall be consolidated with any other pending court actions regarding the child.

§ 309. PROCEDURE FOR RESCISSION OR CHALLENGE

(a) Every signatory party. Every signatory to an acknowledgment of parentage and any related denial of parentage shall be made a party to a proceeding under section 307 or 308 of this title to rescind or challenge the acknowledgment or denial.

(b) Submission to personal jurisdiction. For the purpose of rescission of or challenge to an acknowledgment of parentage or denial of parentage, a signatory submits to personal jurisdiction of this State by signing the acknowledgment or denial, effective upon the filing of the document with the Department of Health pursuant to section 304 of this title.

(c) Suspension of legal responsibilities. Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment of parentage or denial of parentage, the court shall not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

(d) Proceeding to rescind or challenge. A proceeding to rescind or challenge an acknowledgment of parentage or denial of parentage shall be conducted as a proceeding to adjudicate parentage pursuant to chapter 1 of this title.

(e) Amendment to birth record. At the conclusion of a proceeding to rescind or challenge an acknowledgment of parentage or denial of parentage,

the court shall order the Department of Health to amend the birth record of the child, if appropriate.

§ 310. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF PARENTAGE

(a) The Department of Health shall develop an acknowledgment of parentage form and denial of parentage form for execution of parentage under this chapter.

(b) The acknowledgment of parentage form shall provide notice of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the acknowledgment and shall state that:

(1) there is no other presumed parent of the child or, if there is another presumed parent, shall state that parent's full name;

(2) there is no other acknowledged parent, adjudicated parent, or person who is an intended parent under chapter 7 or 8 of this title other than the person who gave birth to the child; and

(3) the signatories understand that the acknowledgment is the equivalent of a court determination of parentage of the child and that a challenge to the acknowledgment is permitted only under limited circumstances.

(c) A valid acknowledgment of parentage or denial of parentage is not affected by a later modification of the prescribed form.

§ 311. RELEASE OF INFORMATION

The Department of Health may release information relating to an acknowledgment of parentage under section 301 of this title as provided in 18 V.S.A. § 5002.

§ 312. ADOPTION OF RULES

The Department of Health may adopt rules to implement this chapter.

CHAPTER 4. PRESUMED PARENTAGE

§ 401. PRESUMPTION OF PARENTAGE

(a) Except as otherwise provided in this title, a person is presumed to be a parent of a child if:

(1) the person and the person who gave birth to the child are married to each other and the child is born during the marriage; or

(2) the person and the person who gave birth to the child were married to each other and the child is born not later than 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution; or

(3) the person and the person who gave birth to the child married each other after the birth of the child and the person at any time asserted parentage of the child and the person agreed to be and is named as a parent of the child on the birth certificate of the child; or

(4) the person resided in the same household with the child for the first two years of the life of the child, including periods of temporary absence, and

the person and another parent of the child openly held out the child as the person's child.

(b) A presumption of parentage shall be rebuttable and may be overcome and competing claims to parentage resolved only by court order or a valid denial of parentage pursuant to chapter 3 of this title.

§ 402. CHALLENGE TO PRESUMED PARENT

(a) Except as provided in subsection (b) of this section, a proceeding to challenge the parentage of a person whose parentage is presumed under section 401 of this title shall be commenced within two years after the birth of the child.

(b) A proceeding to challenge the parentage of a person whose parentage is presumed under section 401 of this title may be commenced two years or more after the birth of the child in the following circumstances:

(1) A presumed parent who is not the genetic parent of a child and who could not reasonably have known about the birth of the child may commence a proceeding under this section within two years after learning of the child's birth.

(2) An alleged genetic parent who did not know of the potential genetic parentage of a child and who could not reasonably have known on account of material misrepresentation or concealment may commence a proceeding under this section within two years after discovering the potential genetic parentage.

If the person is adjudicated to be the genetic parent of the child, the court may not disestablish a presumed parent.

(3) Regarding a presumption under subdivision 401(a)(4) of this title, another parent of the child may challenge a presumption of parentage if that parent openly held out the child as the presumptive parent's child due to duress, coercion, or threat of harm. Evidence of duress, coercion, or threat of harm may include whether within the prior ten years, the person presumed to be a parent pursuant to subdivision 401(a)(4) of this title has been convicted of domestic assault, sexual assault, or sexual exploitation of the child or another parent of the child, was subject to a final abuse protection order pursuant to 15 V.S.A. chapter 21 because the person was found to have committed abuse against the child or another parent of the child, or was substantiated for abuse against the child or another parent of the child pursuant to 33 V.S.A. chapter 49 or 33 V.S.A. chapter 69.

§ 403. MULTIPLE PRESUMPTIONS

If two or more conflicting presumptions arise under this chapter, the court shall adjudicate parentage pursuant to section 206 of this title.

CHAPTER 5. DE FACTO PARENTAGE

§ 501. STANDARD; ADJUDICATION

(a)(1) In a proceeding to adjudicate the parentage of a person who claims to be a de facto parent of the child, if there is only one other person who is a parent or has a claim to parentage of the child, the court shall adjudicate the

person who claims to be a de facto parent to be a parent of the child if the person demonstrates by clear and convincing evidence that:

(A) the person resided with the child as a regular member of the child's household for a significant period of time;

(B) the person engaged in consistent caretaking of the child;

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

(D) the person held out the child as the person's child;

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

(F) the person and another parent of the child fostered or supported the bonded and dependent relationship required under subdivision (E) of this subdivision (1); and

(G) continuing the relationship between the person and the child is in the best interests of the child.

(2) 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 subdivision (1)(F) of this subsection. Such evidence may include whether within the prior ten years, the person seeking to be adjudicated a de facto parent has been convicted of domestic assault, sexual assault, or sexual exploitation of the child or another parent of the child, was subject to a final abuse protection order pursuant to 15 V.S.A.

chapter 21 because the person was found to have committed abuse against the child or another parent of the child, or was substantiated for abuse against the child or another parent of the child pursuant to 33 V.S.A. chapter 49 or 33 V.S.A. chapter 69.

(b) In a proceeding to adjudicate the parentage of a person who claims to be a de facto parent of the child, if there is more than one other person who is a parent or has a claim to parentage of the child and the court determines that the requirements of subsection (a) of this section are met by clear and convincing evidence, the court shall adjudicate parentage under section 206 of this title, subject to other applicable limitations in this title.

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

§ 502. STANDING; PETITION

(a) A person seeking to be adjudicated a de facto parent of a child shall file a petition with the Family Division of the Superior Court before the child reaches 18 years of age. Both the person seeking to be adjudicated a de facto parent and the child must be alive at the time of the filing. The petition shall include a verified affidavit alleging facts to support the existence of a de facto parent relationship with the child. The petition and affidavit shall be served on all parents and legal guardians of the child and any other party to the proceeding.

(b) An adverse party, parent, or legal guardian may file a pleading and verified affidavit in response to the petition that shall be served on all parties to the proceeding.

(c) The court shall determine on the basis of the pleadings and affidavits whether the person seeking to be adjudicated a de facto parent has presented prima facie evidence of the criteria for de facto parentage as provided in subsection 501(a) of this title and, therefore, has standing to proceed with a parentage action. The court, in its sole discretion, may hold a hearing to determine disputed facts that are necessary and material to the issue of standing.

(d) The court may enter an interim order concerning contact between the child and a person with standing seeking adjudication under this chapter as a de facto parent of the child.

CHAPTER 6. GENETIC PARENTAGE

§ 601. SCOPE

This chapter governs procedures and requirements of genetic testing and genetic testing results of a person to determine parentage and adjudication of parentage based on genetic testing, whether the person voluntarily submits to testing or is tested pursuant to an order of the court. Genetic testing shall not be used to challenge the parentage of a person who is a parent by operation of law under chapter 7 or 8 of this title or to establish the parentage of a person who is a donor.

§ 602. REQUIREMENTS FOR GENETIC TESTING

Genetic testing shall be of a type reasonably relied upon by scientific and medical experts in the field of genetic testing and performed in a testing laboratory accredited by a national association of blood banks or an accrediting body designated by the Secretary of the U.S. Department of Health and Human Services. As used in this chapter, “genetic testing” shall have the same meaning as provided in 18 V.S.A. § 9331.

§ 603. COURT ORDER FOR TESTING

(a) Order to submit to genetic testing. Except as provided in section 615 of this title or as otherwise provided in this chapter, upon motion the court may order a child and other persons to submit to genetic testing.

(b) Presumption of genetic parentage. Genetic testing of the person who gave birth to a child shall not be ordered to prove that such person is the genetic parent unless there is a reasonable, good faith basis to dispute genetic parentage.

(c) In utero testing. A court shall not order in utero genetic testing.

(d) Concurrent or sequential testing. If two or more persons are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

§ 604. GENETIC TESTING RESULTS

(a) A person shall be identified as a genetic parent of a child if the genetic testing of the person complies with this chapter and the results of testing

disclose that the individual has at least a 99 percent probability of parentage as determined by the testing laboratory.

(b) Identification of a genetic parent through genetic testing does not establish parentage absent adjudication under this chapter and a court may rely on nongenetic evidence to determine parentage, including parentage by acknowledgment pursuant to chapter 3 of this title or by admission pursuant to section 112 of this title, presumed parentage under chapter 4 of this title, de facto parentage under chapter 5 of this title, and parentage by intended parents under chapter 7 or 8 of this title.

(c) A person identified under subsection (a) of this section as a genetic parent of a child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this chapter that:

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

(2) identifies a person other than the person who gave birth to the child as a possible genetic parent of the child.

§ 605. REPORT OF GENETIC TESTING

(a) A report of genetic testing shall be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this chapter is self-authenticating.

(b) A party in possession of results of genetic testing shall provide such results to all other parties to the parentage action upon receipt of the results and

not later than 15 days before any hearing at which the results may be admitted into evidence.

§ 606. ADMISSIBILITY OF RESULTS OF GENETIC TESTING

(a) Production of results; notice. Unless waived by the parties, a party intending to rely on the results of genetic testing shall do all of the following:

(1) make the test results available to the other parties to the parentage action at least 15 days prior to any hearing at which the results may be admitted into evidence;

(2) give notice to the court and other parties to the proceeding of the intent to use the test results at the hearing; and

(3) give the other parties notice of this statutory section, including the need to object in a timely fashion.

(b) Objection. Any motion objecting to genetic test results shall be made in writing to the court and to the party intending to introduce the evidence at least seven days prior to any hearing at which the results may be introduced into evidence. If no timely objection is made, the written results shall be admissible as evidence without the need for foundation testimony or other proof of authenticity or accuracy.

(c) Results inadmissible; exceptions. If a child has a presumed parent, acknowledged parent, or adjudicated parent, the results of genetic testing shall be admissible to adjudicate parentage only:

(1) with the consent of each person who is a parent of the child under this title, unless the court finds that admission of the testing is in the best interests of the child as provided in subsection 615(b) of this title; or

(2) pursuant to an order of the court under section 603 of this title.

§ 607. ADDITIONAL GENETIC TESTING

The court shall order additional genetic testing upon the request of a party who contests the result of the initial testing. If the initial genetic testing identified a person as a genetic parent of the child under section 604 of this title, the court shall not order additional testing unless the party provides advance payment for the testing.

§ 608. CONSEQUENCES OF DECLINING GENETIC TESTING

(a) If a person whose parentage is being determined under this chapter declines to submit to genetic testing ordered by the court, the court for that reason may adjudicate parentage contrary to the position of that person.

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

§ 609. ADJUDICATION OF PARENTAGE BASED ON GENETIC

TESTING

(a)(1) If genetic testing results pursuant to section 604 of this title exclude a person as the genetic parent of a child, the court shall find that person is not a genetic parent of the child and may not adjudicate the person as the child's parent on the basis of genetic testing.

(2) If genetic testing results pursuant to section 604 of this title identify a person as the genetic parent of a child, the court shall find that person to be the genetic parent and may adjudicate the person as the child's parent, unless otherwise provided by this title.

(3) Subdivisions (1) and (2) of this subsection do not apply if the results of genetic testing are admitted for the purpose of rebutting results of other genetic testing.

(b) If the court finds that genetic testing pursuant to section 604 of this title neither identifies nor excludes a person as the genetic parent of a child, the court shall not dismiss the proceeding. In that event, the results of genetic testing and other evidence are admissible to adjudicate the issue of parentage, including testimony relating to the sexual conduct of the person who gave birth to the child but only if it is alleged to have occurred during a time when conception of the child was probable.

§ 610. COSTS OF GENETIC TESTING

(a) The costs of initial genetic testing shall be paid:

(1) by the Office of Child Support in a proceeding in which the Office is providing services, if the Office requests such testing;

(2) as agreed by the parties or, if the parties cannot agree, by the person who made the request for genetic testing; or

(3) as ordered by the court.

(b) Notwithstanding subsection (a) of this section, a person who challenges a presumption, acknowledgment, or admission of parentage shall bear the cost for any genetic testing requested by such person.

(c) In cases in which the payment for the costs of initial genetic testing is advanced pursuant to subsection (a) of this section, the Office of Child Support may seek reimbursement from the genetic parent whose parent-child relationship is established.

§ 611. GENETIC TESTING WHEN SPECIMENS NOT AVAILABLE

(a) If a genetic testing specimen is not available from an alleged genetic parent of a child, for good cause the court may order the following persons to submit specimens for genetic testing:

(1) the parents of the alleged genetic parent;

(2) a sibling of the alleged genetic parent;

(3) another child of the alleged genetic parent and the person who gave birth to that other child; and

(4) another relative of the alleged genetic parent necessary to complete genetic testing.

(b) Prior to issuing an order under subsection (a) of this section, the court shall provide notice and opportunity to be heard to the person from whom a genetic sample is requested. If the court does order a person to be tested pursuant to subsection (a) of this section, it shall make a written finding that the need for genetic testing outweighs the legitimate interests, including the privacy and bodily integrity interests, of the person sought to be tested.

(c) A genetic specimen taken pursuant to this section shall be destroyed after final determination of the parentage case.

§ 612. DECEASED PERSON

For good cause shown, the court may order genetic testing of a deceased person.

§ 613. IDENTICAL SIBLING

(a) The court may order genetic testing of a person who is believed to have an identical sibling if evidence suggests the sibling may be the genetic parent of the child.

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

§ 614. CONFIDENTIALITY OF GENETIC TESTING

(a) A report of genetic testing for parentage is exempt from public inspection and copying under the Public Records Act and shall be kept confidential and released only as provided in this title.

(b) A person shall not intentionally release a report of genetic testing or the genetic material of another person for a purpose not relevant to a parentage proceeding without the written permission of the person who furnished the genetic material. A person who violates this section shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

§ 615. AUTHORITY TO DENY REQUESTED ORDER FOR GENETIC TESTING OR ADMISSION OF TEST RESULTS

(a) Grounds for denial. In a proceeding to adjudicate parentage, the court may deny a motion seeking an order for genetic testing or deny admissibility of the test results at trial if it determines that:

(1) the conduct of the parties estops a party from denying parentage; or

(2) it would be an inequitable interference with the relationship between the child and an acknowledged, adjudicated, de facto, presumed, or intended parent, or would otherwise be contrary to the best interests of the child as provided in subsection (b) of this section.

(b) Factors. In determining whether to deny a motion seeking an order for genetic testing under this title or a request for admission of such test results at

trial, the court shall consider the best interests of the child, including the following factors, if relevant:

(1) the length of time between the proceeding to adjudicate parentage and the time that a parent was placed on notice that genetic parentage is at issue;

(2) the length of time during which the parent has assumed a parental role for the child;

(3) the facts surrounding discovery that genetic parentage is at issue;

(4) the nature of the relationship between the child and the parent;

(5) the age of the child;

(6) any adverse effect on the child that may result if parentage is successfully disproved;

(7) the nature of the relationship between the child and any alleged parent;

(8) the extent to which the passage of time reduces the chances of establishing the parentage of another person and a child support obligation in favor of the child; and

(9) any additional factors that may affect the equities arising from the disruption of the relationship between the child and the parent or the chance of an adverse effect on the child.

(c) Order. In cases involving an acknowledged or presumed parent, if the court denies a motion seeking an order for genetic testing, the court shall issue

an order adjudicating the acknowledged or presumed parent to be the parent of the child.

§ 616. PRECLUDING ESTABLISHMENT OF PARENTAGE BY
PERPETRATOR OF SEXUAL ASSAULT

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

(b) This section shall not apply if the person alleged to have committed a sexual assault has previously been adjudicated to be a parent of the child.

(c) In a parentage proceeding, the person giving birth may file a pleading making an allegation under subsection (a) of this section at any time.

(d) The standard of proof that a child was conceived as a result of the person sexually assaulting the person who gave birth to the child may be proven by the petitioner by either of the following:

(1) clear and convincing evidence that the person was convicted of a sexual assault against the person giving birth and that the child was conceived as a result of the sexual assault; or

(2) clear and convincing evidence that the person sexually assaulted or sexually exploited the person who gave birth to the child and that the child was conceived as a result of the sexual assault or sexual exploitation, regardless of whether criminal charges were brought against the person.

(e) If the court finds that the burden of proof under subsection (d) of this section is met, the court shall enter an order:

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

(2) requiring that the Department of Health amend the birth certificate to delete the name of the person precluded as a parent; and

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

CHAPTER 7. PARENTAGE BY ASSISTED REPRODUCTION

§ 701. SCOPE

This chapter does not apply to the birth of a child conceived by sexual intercourse or assisted reproduction under a surrogacy agreement under chapter 8 of this title.

§ 702. PARENTAL STATUS OF DONOR

(a) A donor is not a parent of a child conceived through assisted reproduction.

(b) Notwithstanding subsection (a) of this section:

(1) a person who provides a gamete or gametes or an embryo or embryos to be used for assisted reproduction for the person's spouse is a parent of the resulting child; and

(2) a person who provides a gamete or an embryo for assisted reproduction is a parent of the resulting child if the person has a written agreement or agreements with the person giving birth that the person providing the gamete or the embryo is intended to be a parent.

§ 703. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION

A person who consents under section 704 of this title to assisted reproduction by another person with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.

§ 704. CONSENT TO ASSISTED REPRODUCTION

(a)(1) A person who intends to be a parent of a child born through assisted reproduction shall consent to such in a signed record that is executed by each intended parent and provides that the signatories consent to the use of assisted reproduction to conceive a child with the intent to parent the child.

(2) Consent pursuant to subdivision (1) of this subsection, executed via a form made available by the Department of Health, shall be accepted and relied upon for purposes of issuing a birth record.

(b) In the absence of a record pursuant to subsection (a) of this section, a court may adjudicate a person as the parent of a child if it finds by a preponderance of the evidence that:

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

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

§ 705. LIMITATION ON SPOUSE'S DISPUTE OF PARENTAGE

(a) Except as otherwise provided in subsection (b) of this section, a spouse may commence a proceeding to challenge his or her parentage of a child born by assisted reproduction during the marriage within two years after the birth of the child if the court finds that the spouse did not consent to the assisted reproduction before, on, or after the birth of the child or that the spouse withdrew consent pursuant to section 706 of this title.

(b) A spouse or the person who gave birth to the child may commence a proceeding to challenge the spouse's parentage of a child born by assisted reproduction at any time if the court determines:

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

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

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

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

§ 706. EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL
OF CONSENT

(a) If a marriage is dissolved before transfer or implantation of gametes or embryos, the former spouse is not a parent of the resulting child unless the former spouse consented in a signed record with notice to the other spouse and the person giving birth that, if assisted reproduction were to occur after a divorce, the former spouse would be a parent of the child.

(b) Consent of a person to assisted reproduction pursuant to section 704 of this title may be withdrawn by that person in a signed record with notice to the person giving birth and any other intended parent before transfer or implantation of gametes or embryos. A person who withdraws consent under this subsection is not a parent of the resulting child.

§ 707. PARENTAL STATUS OF DECEASED PERSON

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

(b)(1) If a person who consented in a record to assisted reproduction by the person giving birth to the child dies before transfer or implantation of gametes or embryos, the deceased person is not a parent of a child conceived by assisted reproduction unless:

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

(B) the deceased person's intent to be a parent of a child conceived by assisted reproduction after the person's death is established by a preponderance of the evidence.

(2) A person is a parent of a child conceived by assisted reproduction under subdivision (1) of this subsection only if:

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

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

§ 708. BIRTH ORDERS

(a) A party consenting to assisted reproduction, a person who is a parent pursuant to sections 702-704 of this title, an intended parent or parents, or the person giving birth may commence a proceeding in the Probate Division of the Superior Court to obtain an order:

(1) declaring that the intended parent or parents are the parent or parents of the resulting child and ordering that parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the child;

(2) sealing the record from the public to protect the privacy of the child and the parties;

(3) designating the contents of the birth certificate and directing the Department of Health to designate the intended parent or parents as the parent or parents of the child; or

(4) for any relief that the court determines necessary and proper.

(b) A proceeding under this section may be commenced before or after the birth of the child.

(c) Neither the State nor the Department of Health is a necessary party to a proceeding under this section.

(d) The intended parent or parents and any resulting child shall have access to the court records relating to the proceeding at any time.

§ 709. LABORATORY ERROR

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

CHAPTER 8. PARENTAGE BY GESTATIONAL CARRIER

AGREEMENT

§ 801. ELIGIBILITY TO ENTER GESTATIONAL CARRIER

AGREEMENT

(a) In order to execute an agreement to act as a gestational carrier, a person shall:

(1) be at least 21 years of age;

(2) have completed a medical evaluation that includes a mental health consultation;

(3) have had independent legal representation of the person's own choosing and paid for by the intended parent or parents regarding the terms of the gestational carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement; and

(4) not have contributed gametes that will ultimately result in an embryo that the gestational carrier will attempt to carry to term, unless the gestational carrier is entering into an agreement with a family member.

(b) Prior to executing a gestational carrier agreement, a person or persons intending to become a parent or parents, whether genetically related to the child or not, shall:

(1) be at least 21 years of age;

(2) have completed a medical evaluation and mental health consultation; and

(3) have retained independent legal representation regarding the terms of the gestational carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement.

§ 802. GESTATIONAL CARRIER AGREEMENT

(a) Written agreement. A prospective gestational carrier, that person's spouse, and the intended parent or parents may enter into a written agreement that:

(1) the prospective gestational carrier agrees to pregnancy by means of assisted reproduction;

(2) the prospective gestational carrier and that person's spouse have no rights and duties as the parents of a child conceived through assisted reproduction; and

(3) the intended parent or parents will be the parents of any resulting child.

(b) Enforceability. A gestational carrier agreement is enforceable only if it meets the following requirements:

(1) The agreement shall be in writing and signed by all parties.

(2) The agreement shall not require more than a one-year term to achieve pregnancy.

(3) At least one of the parties shall be a resident of this State.

(4) The agreement shall be executed before the commencement of any medical procedures other than the medical evaluations required by section 801 of this title and, in every instance, before transfer of embryos.

(5) The gestational carrier and the intended parent or parents shall meet the eligibility requirements of section 801 of this title.

(6) If any party is married, the party's spouse shall be a party to the agreement.

(7) The gestational carrier and the intended parent or parents shall be represented by independent legal counsel in all matters concerning the

agreement and each counsel shall affirmatively so state in a written declaration attached to the agreement. The declarations shall state that the agreement meets the requirements of this title and shall be solely relied upon by health care providers and staff at the time of birth and by the Department of Health for birth registration and certification purposes.

(8) The parties to the agreement shall sign a written acknowledgment of having received a copy of the agreement.

(9) The signing of the agreement shall be witnessed and signed by at least one other person.

(10) The agreement shall expressly provide that the gestational carrier:

(A) shall undergo assisted reproduction and attempt to carry and give birth to any resulting child;

(B) has no claim to parentage of all resulting children to the intended parent or parents immediately upon the birth of the child or children regardless of whether a court order has been issued at the time of birth; and

(C) shall acknowledge the exclusive parentage of the intended parent or parents of all resulting children.

(11) If the gestational carrier is married, the carrier's spouse:

(A) shall acknowledge and agree to abide by the obligations imposed on the gestational carrier by the terms of the gestational carrier agreement;

(B) has no claim to parentage of any resulting children to the intended parent or parents immediately upon the birth of the children regardless of whether a court order has been issued at the time of birth; and

(C) shall acknowledge the exclusive parentage of the intended parent or parents of all resulting children.

(12) The gestational carrier shall have the right to use the services of a health care provider or providers of the gestational carrier's choosing to provide care during the pregnancy.

(13) The intended parent or parents shall:

(A) be the exclusive parent or parents and accept parental rights and responsibilities of all resulting children immediately upon birth regardless of the number, gender, or mental or physical condition of the child or children; and

(B) assume responsibility for the financial support of all resulting children immediately upon the birth of the children.

(c) Medical evaluations. If requested by a party or the court, a party shall provide records to the court and other parties related to the medical evaluations conducted pursuant to section 801 of this title.

(d) Reasonable consideration and expenses. Except as provided in section 809 of this title, a gestational carrier agreement may include provisions for payment of consideration and reasonable expenses to a prospective gestational carrier, provided they are negotiated in good faith between the parties.

(e) Decision of gestational carrier. A gestational agreement shall permit the gestational carrier to make all health and welfare decisions regarding the gestational carrier's health and pregnancy, and shall not enlarge or diminish the gestational carrier's right to terminate the pregnancy.

§ 803. PARENTAGE; PARENTAL RIGHTS AND RESPONSIBILITIES

(a)(1) If a gestational carrier agreement satisfies the requirements of this chapter, the intended parent or parents are the parent or parents of the resulting child immediately upon the birth of the child, and the resulting child is considered the child of the intended parent or parents immediately upon the birth of the child. Neither the gestational carrier nor the gestational carrier's spouse, if any, is the parent of the resulting child.

(2) A person who is determined to be a parent of the resulting child is obligated to support the child. The breach of the gestational carrier agreement by the intended parent or parents does not relieve the intended parent or parents of the obligation to support the resulting child.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, if genetic testing indicates a genetic relationship between the gestational carrier and the child, parentage shall be determined by the Family Division of the Superior Court pursuant to chapters 1 through 6 of this title.

(b) Parental rights and responsibilities shall vest exclusively in the intended parent or parents immediately upon the birth of the resulting child.

(c) If due to a laboratory error, the resulting 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 considered the parent or parents of the child.

§ 804. BIRTH ORDERS

(a) Before or after the birth of a resulting child, a party to a gestational carrier agreement may commence a proceeding in the Probate Division of the Superior Court to obtain an order doing any of the following:

(1) Declaring that the intended parent or parents are the parent or parents of the resulting child and ordering that parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the child.

(2) Designating the contents of the birth certificate and directing the Department of Health to designate the intended parent or parents as the parent or parents of the child. The Department of Health may charge a reasonable fee for the issuance of a birth certificate.

(3) Sealing the record from the public to protect the privacy of the child and the parties.

(4) Providing any relief the court determines necessary and proper.

(b) Neither the State nor the Department of Health is a necessary party to a proceeding under subsection (a) of this section.

(c) The intended parent or parents and any resulting child shall have access to their court records at any time.

§ 805. EXCLUSIVE, CONTINUING JURISDICTION

Subject to the jurisdictional standards of 15 V.S.A. § 1071, the court conducting a proceeding under this chapter has exclusive, continuing jurisdiction of all matters arising out of the gestational carrier agreement until a child born to the gestational carrier during the period governed by the agreement attains the age of 180 days.

§ 806. TERMINATION OF GESTATIONAL CARRIER AGREEMENT

(a) A party to a gestational carrier agreement may withdraw consent to any medical procedure and may terminate the gestational carrier agreement at any time prior to any embryo transfer or implantation by giving written notice of termination to all other parties.

(b) Upon termination of the gestational carrier agreement under subsection (a) of this section, the parties are released from all obligations recited in the agreement except that the intended parent or parents remain responsible for all expenses that are reimbursable under the agreement incurred by the gestational carrier through the date of termination. The gestational carrier is entitled to keep all payments received and obtain all payments to which the gestational carrier is entitled. Neither a prospective gestational carrier nor the gestational carrier's spouse, if any, is liable to the intended parent or parents for terminating a gestational carrier agreement.

§ 807. GESTATIONAL CARRIER AGREEMENT; EFFECT OF

SUBSEQUENT CHANGE OF MARITAL STATUS

Unless a gestational carrier agreement expressly provides otherwise:

(1) the marriage of a gestational carrier or of an intended parent after the agreement has been signed by all parties does not affect the validity of the agreement, the gestational carrier's spouse's consent or intended parent's spouse's consent to the agreement is not required, and the gestational carrier's spouse or intended parent's spouse is not a presumed parent of a child conceived by assisted reproduction under the agreement; and

(2) the divorce, dissolution, annulment, or legal separation of the gestational carrier or of an intended parent after the agreement has been signed by all parties does not affect the validity of the agreement.

§ 808. EFFECT OF NONCOMPLIANCE; STANDARD OF REVIEW;

REMEDIES

(a) Not enforceable. A gestational carrier agreement that does not meet the requirements of this chapter is not enforceable.

(b) Standard of review. In the event of noncompliance with the requirements of this chapter or with a gestational carrier agreement, the Family Division of the Superior Court shall determine the respective rights and obligations of the parties to the gestational carrier agreement, including evidence of the intent of the parties at the time of execution.

(c) Remedies. Except as expressly provided in a gestational carrier agreement and in subsection (d) of this section, in the event of a breach of the gestational carrier agreement by the gestational carrier or the intended parent or parents, the gestational carrier or the intended parent or parents are entitled to all remedies available at law or in equity.

(d) Genetic testing. If a person alleges that the parentage of a child born to a gestational carrier is not the result of assisted reproduction, and this question is relevant to the determination of parentage, the court may order genetic testing.

(e) Specific performance. Specific performance is not an available remedy for a breach by the gestational carrier of any term in a gestational carrier agreement that requires the gestational carrier to be impregnated or to terminate a pregnancy. Specific performance is an available remedy for a breach by the gestational carrier of any term that prevents the intended parent or parents from exercising the full rights of parentage immediately upon the birth of the child.

§ 809. LIABILITY FOR PAYMENT OF GESTATIONAL CARRIER

HEALTH CARE COSTS

(a) The intended parent or parents are liable for the health care costs of the gestational carrier that are not paid by insurance. As used in this section, “health care costs” means the expenses of all health care provided for assisted reproduction, prenatal care, labor, and delivery.

(b) A gestational carrier agreement shall explicitly detail how the health care costs of the gestational carrier are paid. The breach of a gestational carrier agreement by a party to the agreement does not relieve the intended parent or parents of the liability for health care costs imposed by subsection (a) of this section.

(c) This section is not intended to supplant any health insurance coverage that is otherwise available to the gestational carrier or an intended parent for the coverage of health care costs. This section does not change the health insurance coverage of the gestational carrier or the responsibility of the insurance company to pay benefits under a policy that covers a gestational carrier.

Sec. 2. REPEAL

15 V.S.A. chapter 5, subchapter 3A (parentage proceedings) is repealed.

Sec. 3. 33 V.S.A. § 4921(e)(1) is amended to read:

(e)(1) Upon request, relevant Department records or information created under this subchapter shall be disclosed to:

* * *

(F) a Family Division of the Superior Court involved in any proceeding in which:

(i) custody of a child or parent-child contact is at issue pursuant to 15 V.S.A. chapter 11, subchapter 3A;

(ii) a parent of a child challenges a presumption of parentage under 15C V.S.A. § 402(b)(3); or

(iii) a parent of a child contests an allegation that he or she fostered or supported a bonded and dependent relationship between the child and a person seeking to be adjudicated a de facto parent under 15C V.S.A. § 501(a)(2);

* * *

Sec. 4. 33 V.S.A. § 6911 is amended to read:

§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

(a)(1) Information obtained through reports and investigations, including the identity of the reporter, shall remain confidential and shall not be released absent a court order, except as follows:

* * *

(C) Relevant information may be disclosed to a Family Division of the Superior Court, upon the request of that court, in any proceeding in which:

(i) a parent of a child challenges a presumption of parentage under 15C V.S.A. § 402(b)(3); or

(ii) a parent of a child contests an allegation that he or she fostered or supported a bonded and dependent relationship between the child and a person seeking to be adjudicated a de facto parent under 15C V.S.A. § 501(a)(2).

* * *

(c) The Commissioner or designee may disclose Registry information
only to:

* * *

(11) A Family Division of the Superior Court upon request of that court
if it is involved in any proceeding in which:

(A) a parent of a child challenges a presumption of parentage under
15C V.S.A. § 402(b)(3); or

(B) a parent of a child contests an allegation that he or she fostered or
supported a bonded and dependent relationship between the child and a person
seeking to be adjudicated a de facto parent under 15C V.S.A. § 501(a)(2).

* * *

Sec. 5. TRANSITIONAL PROVISION

This title applies to a pending proceeding to adjudicate parentage
commenced before the effective date of this act for an issue on which a
judgment has not been rendered.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

Date Governor signed bill: May 22, 2018