

§ 102. DEFINITIONS

As used in this title:

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(XX) “Domestic assault” shall include any offense provided in subchapter 6, chapter 19 of Title 13 (domestic assault).

(XX) “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.

(XX) “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.

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§ 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)(1) Except as provided in subdivision (a)(2) 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.

(2) 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:

(A) 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.

(B) 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. Consistent with section 203 of this title, the court shall determine parental rights and responsibilities of the parents in accordance with 15 V.S.A chapter 11, subchapter 3A.

(b) 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, or was subject to a final abuse protection order because the person was found to have committed abuse against (the child or another parent of the child OR a family or household member, as defined in section 1101 of this title – *policy choice for committee as to whether the APO should be specific to child and other parent or broader*). (Timing?)

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§ 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 (1)(E) of this subsection (a); and

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

(2) A parent of the child may use evidence of duress, coercion, or threat of harm to contest an allegation of fostering or supporting a bonded dependent relationship as provided in subdivision (1)(F) of this subsection (a). 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, or was subject to a final abuse protection order because the person was found to have committed abuse against (the child or another parent of the child **OR** a family or household member, as defined in section 1101 of this title – *policy choice for committee as to whether the APO should be specific to child and other parent or broader*).

(b) In a proceeding to adjudicate the parentage of an 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 subdivisions (a)(1)(A) - (G) of this section are met, the court shall adjudicate parentage under section 206, 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 affidavit in response to the petition which 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 (a) of section 501 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.