



Honorable John Dooley, Associate Justice, Retired  
January 10, 2018

**SECTION 609. ADJUDICATING CLAIMS OF DE FACTO PARENTAGE OF CHILD.**

(a) A proceeding to establish the parentage of a child under this section may be commenced only by an individual who:

- (1) is alive when the proceeding is commenced; and
- (2) claims to be a de facto parent of the child.

(b) An individual who claims to be a de facto parent of a child must commence the proceeding:

- (1) before the child is 18 years of age; and
- (2) while the child is alive.

(c) An individual who claims to be a de facto parent of a child must establish standing to maintain the proceeding under the following rules:

(1) The individual must file an initial verified pleading alleging specific facts that support the claim to parentage asserted under this section. The verified pleading must be served on all parents and legal guardians of the child and any other party to the proceeding.

(2) An adverse party, parent, or legal guardian may file a pleading in response to the pleadings filed under paragraph (1). A responsive pleading must be verified and must be served on parties to the proceeding.

(3) Unless the court finds that a hearing is necessary to determine disputed facts material to the issue of standing, the court shall determine based on the pleadings under paragraphs (1) and (2) whether the individual seeking to be adjudicated a parent of the child under this section has alleged facts sufficient to satisfy the requirements of paragraphs (1) through (7) of subsection (d). If the court holds a hearing under this subsection, the hearing must be held on an expedited basis.



Honorable John Dooley, Associate Justice, Retired

(d) In a proceeding to adjudicate the parentage of an individual who claims to be a de facto parent of the child, if there is only one other individual who is a parent or has a claim to parentage of the child, the court shall adjudicate the individual who claims to be a de facto parent to be a parent of the child if the individual demonstrates by clear-and-convincing evidence that:

- (1) the individual resided with the child as a regular member of the child's household for a significant period;
- (2) the individual engaged in consistent caretaking of the child;
- (3) the individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;
- (4) the individual held out the child as the individual's child;
- (5) the individual established a bonded and dependent relationship with the child which is parental in nature;
- (6) another parent of the child fostered or supported the bonded and dependent relationship required under paragraph (5); and
- (7) continuing the relationship between the individual and the child is in the best interest of the child.

(e) In a proceeding to adjudicate the parentage of an individual who claims to be a de facto parent of the child, if there is more than one other individual who is a parent or has a claim to parentage of the child and the court determines that the requirements of paragraphs (1) through (7) of subsection (d) are met, the court shall adjudicate parentage under Section 613, subject to other applicable limitations in this [part].



Honorable John Dooley, Associate Justice, Retired

### Comment

This section adds a new means by which an individual can establish a parent-child relationship. This section is modeled on provisions that were recently enacted in Delaware and Maine, two states that adopted UPA (2002), and it reflects trends in state family law.

In most states, if an individual can establish that he or she has developed a strong parent-child relationship with the consent and encouragement of a legal parent, the individual is entitled to some parental rights and possibly some parental responsibilities. Some states extend rights to such persons under equitable principles. See, e.g., *Bethany v. Jones*, 378 S.W.3d 731 (Ark. 2011) (in loco parentis); *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010) (in equity); *Boseman v. Harrell*, 704 S.E.2d 494 (N.C. 2010) (in equity); *McAllister v. McAllister*, 779 N.W.2d 652 (N.D. 2010) (psychological parent); *Marquez v. Caudill*, 656 S.E.2d 737 (S.C. 2008) (psychological parent); *In re Clifford K.*, 619 S.E.2d 138 (W. Va. 2005) (psychological parent). Other states extend rights to such individuals through broad third-party custody and visitation statutes. See, e.g., Minn. Stat. § 257C.01-08; Tex. Fam. Code § 102.003(9).

In addition, by statute and through case law, several states recognize such persons as legal parents. See, e.g., *Elisa B. v. Superior Court*, 117 P.3d 660 (Cal. 2005) (under the holding out provision of UPA (1973)); *In re Parentage of L.B.*, 122 P.3d 161 (Wash. 2005) (under Washington state constitution); *In re S.N.V.*, 2011 WL 6425562 (Colo. App. 2011) (under the holding out provision of UPA (1973)); Del. Code Ann., tit. 13, § 8-201(c) (by express statutory provision); *Frazier v. Goudschaal*, 295 P.3d 542 (Kan. 2013) (under a provision based on UPA (1973)); *Partanen v. Gallagher*, 59 N.E.3d 1133 (Mass. 2016)(under a provision based on the holding out provision of UPA (1973)); Me. Rev. Stat. tit. 19-a, § 1891 (by express statutory provision); *Guardianship of Madelyn B.*, 98 A.3d 494 (N.H. 2014) (under the holding out provision of UPA (1973)); *Chatterjee v. King*, 280 P.3d 283 (N.M. 2012) (under the holding out provision of UPA (1973)).

To provide greater clarity to the parties and affected child, UPA (2017) addresses this issue through an express statutory provision. Under this new section, an individual who has functioned as a child's parent for a significant period such that the individual formed a bonded and dependent parent-child relationship may be recognized as a legal parent. This provision ensures that individuals who form strong parent-child bonds with children with the consent and encouragement of the child's legal parent are not excluded from a determination of parentage simply because they entered the child's life sometime after the child's birth. Consistent with the case law and the existing statutory provisions in other states, this section does not include a specific time length requirement. Instead, whether the period is significant is left to the determination of the court, based on the circumstances of the case. The length of time required will vary depending on the age of the child.

At the same time, however, the scope of this section is limited in several ways. First, this section includes a heightened standing requirement that must be satisfied by the individual claiming to be a de facto parent. This requirement is included to ensure that permitting proceedings by de facto parents does not subject parents to unwarranted and unjustified litigation. At the standing stage, under Section 609(c)(3), the requirements may be proved by only a preponderance of the evidence.



## Uniform Parentage Act (2017) with Comments



Honorable John Dooley, Associate Justice, Retired

Second, the section sets forth a series of substantive requirements that must be satisfied before a court can adjudicate such an individual to be a parent. Some of these substantive requirements—the individual reside with the child for a significant period of time and the individual formed a bonded and dependent relationship with the child which is parental in nature—re based on factors developed under common law doctrine that is utilized in many states. See, e.g., *In re Parentage of L.B.*, 122 P.3d 161, 176 (Wash. 2005), cert. denied, 547 U.S. 1143 (2006); *V.C. v. J.M.B.*, 748 A.2d 539, 551 (N.J.), cert. denied, 531 U.S. 926 (2000); *Custody of H.S.H.-K.*, 533 N.W.2d 419, 421 (Wis. 1995). Accordingly, a court may look to those common law decisions for guidance.

Third, this section permits only the individual alleging himself or herself to be a de facto parent to initiate a proceeding under this section. This limitation was added to address concerns that stepparents might be held responsible for child support under this theory of parentage. Finally, this section requires the proceeding to establish de facto parentage be commenced before the death of the child and the death of the individual alleged to be a de facto parent, and before the child attains 18 years of age. These safeguards protect against unwarranted and unjustified litigation.

This section is not intended to preclude legal actions based on other legal theories. See, e.g., *DeHart v. DeHart*, 986 N.E.2d 85 (Ill. 2013) (recognizing a cause of action for equitable adoption and contract for adoption in an action contesting the validity of a will).

(National Conference of Commissioners on Uniform State Laws. *Uniform Parentage Act (2017)*, [http://www.uniformlaws.org/shared/docs/parentage/UPA2017\\_Final\\_2017sep22.pdf](http://www.uniformlaws.org/shared/docs/parentage/UPA2017_Final_2017sep22.pdf))