TO: Maxine Grad, Chair, House Committee on the Judiciary, and
Richard Sears, Chair, Senate Committee on the Judiciary

FROM: The Parentage Study Committee

DATE: October 24, 2017

RE: Report and Recommendations for Modernizing Vermont's Parentage Law

I. REQUEST FROM THE LEGISLATURE

Last term, the Vermont Legislature enacted Act 31, "An Act Relating to Modernizing Vermont's Parentage Laws," which established a Parentage Study Committee to examine and provide recommendations about how to modernize Vermont's parentage laws in recognition of the changing nature of families in Vermont.

The Committee was directed to review the parenting issues that have come before the Vermont courts in recent years, to examine how other states have addressed issues such as assisted reproduction and de facto parentage, and to make a proposal for updating Vermont's parentage laws to ensure and protect the best interests of the children in Vermont.

II. CURRENT VERMONT LAW REGARDING "PARENTAGE"

More than thirty years ago, in 1984, the Vermont Legislature enacted the "Parentage Proceedings Act." This short, seven-section Act was included as part of the "desertion and support" provisions of Title 15, our Domestic Relations laws (15 V.S.A. §§301-308).

One section of the Act, §308, lists examples of situations in which a person is presumed to be a parent. However, the legislative history of §308 makes it clear that the Legislature's intent in enacting this section was merely to allow for the speedy recovery of child support – not to govern the rights of parentage for children born through alternative reproduction technologies or to same-sex partners. See *Miller-Jenkins v. Miller-Jenkins*, 180 Vt. 441, 459, ¶44 (2006) and *Moreau v. Sylvester* 2014 VT 31, ¶41.

As we near the third decade of the 21st century, it's clear that our parentage law has not kept pace with the myriad ways in which Vermonters become parents these days, including via assisted reproduction, surrogacy, and "psychological " or "de facto" parenting - that is, a person who has a psychological bond with the child and has provided physical, emotional and financial support, but has no other legally recognized connection, either through biology, marriage, statute or court order.

As a result, the trial courts and the Vermont Supreme Court have continually struggled with the issue of how to deal with parental rights and obligations in families that were virtually unheard of three decades ago.

III. RELEVANT VERMONT COURT DECISIONS

Below are some of the Vermont Supreme Court decisions which have grappled with the issue of "who is a parent" in the last twenty years, discussed in chronological order:

1. Adopted child in a non-marital same-sex relationship; no "de facto" parentage:

In *Titchenal v. Dexter*, 166 Vt. 373 (1997), two women decided to have and raise a child together. This was before the civil union or marriage equality laws had been enacted, so the women had no legal connection to one another. One of the woman adopted a child, and her partner was a full co-parent for three years.

When the women's relationship ended, the adoptive parent prevented her ex-partner from seeing the child. The partner asked the courts to grant her visitation rights to the child as a "de facto" parent.

The Vermont Supreme Court rejected her request, saying that, in the absence of any legislation regarding "de facto" parents, the Court could not bestow a judicially created de facto parent status on the partner.

In reaching its decision, the Court urged the Legislature to pass legislation on the issue of who is a parent: "Given the complex social and practical ramifications of expanding the classes of persons entitled to assert parental rights by seeking custody or visitation, the Legislature is better equipped to deal with the problem. Deference to the Legislature is particularly appropriate in this arena because the laws pertaining to parental rights and responsibilities and parent-child contact have been developed over time solely through legislative enactment or judicial construction of legislative enactments."

2. Child support confusion:

In *Jones v. Murphy*, 172 Vt. 86 (2001), a man and woman were married to one another when the woman gave birth to a child, and the husband's name was added to the birth certificate. They divorced a year later, and the family court ordered shared parental rights and responsibilities. Two months later, the husband, wife, and another man underwent genetic testing, and it turned out that the other man was the biological father. The wife filed a parentage action against the biological father. The Supreme Court rejected her request, holding that her husband had already been declared to be the child's father, by virtue of the divorce order.

Justice Dooley pointed out that because Vermont's parentage laws don't deal with these kinds of cases, the woman in this case had the "virtually unfettered choice whether to obtain child support from the biological father or her former husband, and there is no requirement that this decision be based on the best interest of the child."

3. Child born via assisted reproduction:

In *Miller-Jenkins v. Miller-Jenkins* 180 Vt. 441 (2006), a same-sex couple in a civil union had a child using assisted reproduction, and they co-parented the child for a year, until

they broke up. At that point, the birth mother attempted to prevent the other women from seeing the child, but the Vermont Supreme Court upheld the other woman's parental rights, since the child had been born during the civil union. The Court also cited other important factors, such as their decision to have and raise the child together, and the fact that while they were together both parties held the partner out as a parent of the child.

Justice Dooley noted, however, that the women's civil union only created a presumption of parentage under our law, and it was unclear, given the lack of intent expressed in our statutes, what factors should determine legal parentage when it is clear that a child born during a union is not the biological child of both parties to that union. Specifically, he lamented that "we face the problem here of a family with a child created by artificial insemination, and the Legislature has not dealt directly with new reproductive technologies and the families that result from those technologies."

4. Attempt to undo a parentage adjudication:

In *O'Connell-Starkey v. Starkey*, 183 Vt. 10 (2007), a husband and wife were divorced, and the divorce order made provisions regarding parental rights and support, including a requirement that the husband would pay certain college expenses for the child. A year later, the parties signed an amendment to their divorce agreement, declaring that the husband was not the biological father of the child and therefore had no further rights or responsibilities for the child.

The Vermont Supreme Court rejected the parties' amendment, holding that the original divorce decree should stay in place. The parties had apparently thought that they could "undo" the husband's parentage, because there is currently nothing in Vermont law making it clear that an adjudication of parentage cannot be undone.

5. Genetic testing and possibility of three parents:

In *Columbia v. Lawton*, 193 Vt. 165 (2013), a child was born to a woman while she and her boyfriend were together. Two years later, after the couple had broken up, the Office of Child Support sought to collect child support from the man. At that point, the man and woman stipulated that he was the father. Based on this, the court adjudicated the man as the parent of the child.

Soon thereafter, a man who had discovered that he was the child's likely biological father asked the court to order genetic testing. The Supreme Court denied the request, because the other man had already been adjudicated the parent, and Vermont statutes did not allow for the possibility that both men could be adjudicated as parents (and both pay child support).

6. Still no "de facto" parentage:

Seventeen years after the Vermont Supreme Court declined to judicially create a "de facto" parent status in the *Titchenal v. Dexter* case, the Vermont Supreme Court was again asked to recognize a person as a de facto parent, this time in a heterosexual relationship. In this case, *Moreau v. Sylvester* 2014 VT 31 (2014), a woman and her

boyfriend, Mr. Moreau, were in an on-again, off-again relationship for nearly a decade. They never married, but during the period of their relationship, the woman had two children with another man – Mr. Moreau was not the biological father. Nevertheless, he was the children's father figure, helped care for them, and played a significant role in the children's lives.

When at some point the parties' relationship deteriorated and the woman refused to allow Mr. Moreau to have contact with the children, he asked the Supreme Court to declare him to be the children's "de facto" parent. He argued that because of the evolving nature of family dynamics and demographics (which show an increase in children being raised by unmarried adults in the last two decades), the Court should re-examine its holding in *Titchenal*, and judicially create a "de facto parent" status.

Citing the fact that the Legislature had not acted on the issue of de facto parentage since the same-sex de facto parenting decision in *Titchenal* 17 years earlier, the Vermont Supreme Court again declined to judicially create a de facto parent doctrine. The Court stated that "[w]hile some courts have opened their doors to these [de facto parentage] claims, we remain disinclined to follow suit absent an imperative from the General Assembly, lest every domestic break-up with children in the household become[s] a potential battleground for child visitation and custody by ex-paramours, or even mere cohabitants."

Justice Dooley wrote a separate opinion, pleading with the Legislature to deal with the issue, and warning that the courts will eventually have to do so if the Legislature does not act:

"I find it more difficult to favor legislative action over judicial action in the face of years of legislative inaction. 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 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."

Justice Dooley went on to say that "I do not suggest that drafting and enacting such legislation will be easy. Undeniably, it would involve complex and difficult policy choices based on an in-depth understanding of the composition of present-day and future families. 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."

7. Effect of a Voluntary Acknowledgment of Parentage:

In *McGee v. Gonyo*, 201 Vt. 216 (2016), a man and woman signed a Voluntary Acknowledgment of Parentage ("VAP"), claiming that they were both the parents of the child, even though they knew that the man was not the biological father. The parties lived together for about a year after the child was born, and the man helped care for the child during that time. When they broke up, the man sought to confirm his parentage in court.

Although the VAP acted as a presumption of parentage under Vermont's parentage statute, the Supreme Court found that our laws currently only allow "biological" parents to sign a VAP. Since the man was not a biological parent, he had committed a fraud on the court in signing the VAP, and his attempt to acquire parental rights (including the right to spend time with the child) was denied.

Justice Dooley, plainly exasperated by now, wrote: ""Now comes the broken record. The continuing failure to enact a real parentage act is the largest and most significant deficiency in our statutory scheme regulating the rights and responsibilities of family members where the interests of children are involved. I explained some of the consequences of this failure in my concurring opinion in *Moreau*. I also explained that there are models from which we can draw our own modern and complete parentage act, particularly the Uniform Parentage Act. This case is another example of the consequences of that failure. I again urge the Legislature to meet this critical need."

Justice Robinson agreed with Justice Dooley:

"I join Justice Dooley in strongly urging the Legislature to take up these issues. Vermont was once a national leader in applying our laws to promote the best interests of children in the context of evolving family structures.... Given that, it's odd that we are now behind the curve in failing to address a diverse range of challenging family law issues that have arisen as family structures in our society have continued to evolve.

"New legislation concerning parentage would enable the Legislature to identify and communicate its intentions with respect to the various policy issues impacting the best interests of children, would provide clarity for courts struggling with these issues, and would ultimately benefit the children of Vermont."

IV. OTHER STATES AND THE UNIFORM PARENTAGE ACT

The National Conference of Commissioners On Uniform State Laws originally promulgated a "Uniform Parentage Act" ("UPA") in 1973. It revised the UPA in 2002, and just recently updated the UPA again, in July 2017, to address issues of same-sex parents, advancements in assisted reproduction and surrogacy, and "de facto" parents. Since 1973, the National Conference has been urging states to enact comprehensive parentage laws to address the changing ways in which people form families in the modern age.

Unlike Vermont, most other states now recognize some form of "de facto" parents; these states include Massachusetts, New Hampshire, West Virginia, Texas, North and South Carolina, California, Colorado, Kansas, and New Mexico. Most recently, Delaware and Maine have created a de facto parentage status by enacting a version of the UPA.

Several states have also enacted statutes to deal with assisted reproduction and surrogacy, including Delaware, Illinois, Maine, Texas, Utah, and Washington.

This Committee decided that the best way to respond to the Legislature's request was to create a draft bill for the Legislature's review. In creating our proposed bill, we tried to address the concerns raised by the Vermont Supreme Court in the parentage cases it has decided in the last two decades. We also relied heavily on the 2017 UPA and the Maine Parentage Act (which went into effect on July 1, 2016) in crafting our proposed bill.

Ultimately, we decided to draw primarily from the Maine Parentage Act because it was more "user friendly" (easier to follow) than the UPA. We were also mindful of the fact that the Maine statute went through the legislative process, with the input and assistance of experienced family law attorneys, and that it seems to be working well in that state.

V. A SUMMARY OF THE COMMITTEE'S PROPOSED ACT

The Committee's draft Parentage Act contains eight subchapters. Below is a summary of each subchapter.

(The Committee's representative from the Department for Children and Families ("DCF") has indicated that DCF would like further opportunity to explore any impacts of this proposed bill on DCF's programs. DCF will provide additional information on any such impacts to the relevant House and Senate committees as the proposed legislation proceeds through the legislative process.)

1. SUBCHAPTER 1 – TITLE, SCOPE, DEFINITIONS, GENERAL PROVISIONS

This Subchapter provides definitions and other general provisions for the rest of the Act, including who can file a lawsuit seeking an adjudication of parentage. This section also authorizes the court to issue interim orders for child support while a parentage action is pending.

Policy Consideration:

Some states, including Maine, make the child a "necessary party" in parentage lawsuits. The UPA does not require the child to be a party, but instead allows the child to be a party, through his or her legal guardian.

Vermont currently does not require a child to be a party (see 15 V.S.A. §302(A)), and this Committee agreed that there was no reason to change that policy, especially in light of the expense that would be involved in assigning lawyers and guardians ad litem for the child. So, the draft Act provides that the child may, but does not have to be, a party.

Policy Consideration:

Under current Vermont law, a court proceeding to establish parentage of a child cannot be brought any later than three years after the child reaches age 18. See 15 V.S.A. §302(b). The Committee's draft Act does not contain such a limitation. Although the Committee did not feel strongly about this issue, the members of the Committee did note that there may be instances in which determining the parentage of a person who has reached adulthood might be beneficial – perhaps in instances in which an inheritance is involved, for example. Neither the UPA nor the Maine Parentage Act impose any such time limits for determining parentage, so the Committee did not include such a limitation.

2. SUBCHAPTER 2 – ESTABLISHMENT OF PARENTAGE

Subchapter 2 makes it clear that parentage can be established in a myriad of ways, including by giving birth, adopting, signing a voluntary acknowledgment of parentage, admitting to parentage in a court action, being a de facto parent or a genetic parent, or consenting to assisted reproduction or a gestational carrier agreement. All of these categories of parentage are addressed in more detail in subsequent Subchapters.

Policy Consideration:

This Subchapter allows for a court to decide that there can be more than two parents, in certain circumstances, so long as the court finds that this arrangement is in the best interests of the child.

There are a variety of instances in which this might be a good idea. For example, a woman might become pregnant but break up with the biological father before he knows that she is pregnant. After she gives birth, the woman might marry another man, who cares for the child for years as his own, providing financial and emotional support and guidance. If the biological father subsequently finds out that the child is his, and if the court decides that it is in the best interest of the child that the biological father's parentage rights be recognized (because, for example, the biological father is the only one of the three adults who has health insurance and can cover the child if the child is legally his), then this Act would allow for the child to have three parents: the biological mother, the step-father, and the biological father.

The Committee notes that child support and termination of parental rights proceedings might add a degree of complication by the recognition of more than two parents for one child, but the Committee believes that the best interests of the child, rather than any such procedural complications, should be the guiding factor. Moreover, the Committee noted that both the UPA and Maine's parentage statute allow for more than two parents if it is in the best interests of the child.

3. SUBCHAPTER 3 – VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

Subchapter 3 deals with voluntary acknowledgments of parentage ("VAP"s). This Subchapter takes the place of current law (15 V.S.A. §307), and provides a much more detailed process.

This Subchapter allows a birth parent and a presumed parent (whether or not they are married) to sign a VAP or denial of parentage. This Subchapter also sets out the procedure for rescinding or challenging a VAP or denial, and, consistent with federal law, confirms that a signed VAP is enough to establish legal parentage, without the necessity of a court adjudication.

4. SUBCHAPTER 4 – PRESUMED PARENTAGE

More and more, the Vermont courts have been facing situations in which a couple is unmarried, and never sign a VAP, but both adults live with the child, care for and support the child, and hold the child out as their own, and then break up and have a dispute over parentage and concurrent parental rights and obligations (parenting time and child support). Under current law, the courts have been prevented from bestowing parental rights and obligations on the (non-birth/non-adoptive) parent. As a result, the child, who has come to love and rely on this adult, is denied the care and support of this parent figure.

This Subchapter is an important attempt to modernize our parentage laws, to address these kinds of situations. This Subchapter provides that a person is presumed to be a parent of a child if one of four situations exists: (1) the person is married to the birth parent, (2) the person divorced the birth parent and a child was born less than 300 days later, (3) the person got married to the birth parent after the child was born and is named on the birth certificate, or (4) the person resided in the same household with the child for the first two years of the child's life, and held out the child as the person's child, even though there is no marriage or signed VAP (this is the so-called "holding out" category).

5. SUBCHAPTER 5 – DE FACTO PARENTAGE

This Subchapter is another important improvement on our current law. This Subchapter allows a person to be adjudicated a parent if the person shows, by clear and convincing evidence, that he or she has "undertaken a permanent, unequivocal, committed and responsible parental role" in the child's life, by living with the child for a significant period of time, and consistently caring for the child, and if the court finds that it is in the child's best interest to declare this person to be a parent of the child.

As pointed out above, adjudicating someone to be a de facto parent of a child does not require that another parent's parental rights be terminated; in other words, the court may find that it is sometimes in the best interest of the child for the child to have more than two parents. This is entirely consistent with formations of some modern families.

6. SUBCHAPTER 6 – GENETIC PARENTAGE

Subchapter 6 deals with genetic testing to establish parentage. It takes the place of our current law (15 V.S.A. §304), and is more detailed.

As with our current law, this Subchapter identifies who can request genetic testing, who pays for it, how the results are to be used in court, the standards for adjudicating parentage based on genetic tests, and the circumstances under which the court can deny a request for genetic testing.

This Subchapter also provides that if a man is accused or convicted of sexually assaulting a woman who gives birth as a result of the assault, the woman can ask the court to preclude the establishment of the assailant's parentage (and thus prevent him from exercising parenting rights or seeing the child).

7. SUBCHAPTER 7 – PARENTAGE BY ASSISTED REPRODUCTION

It is becoming more and more common for Vermonters to use assisted reproduction to help them have a child. Since the birth of the first in vitro fertilization (IVF) baby in 1978, exponential advances in reproductive medicine have made parenthood possible for people who would otherwise be unable to achieve pregnancy. Northeastern Reproductive Medicine in Colchester, Vermont, has employed Assisted Reproductive Technologies (ART) to help Vermont families achieve more than 470 pregnancies in the last three years alone. These numbers do not include families who utilize the University of Vermont Medical Center, and Vermont citizens who travel out of state for fertility treatments.

The use of ART, including the use of third parties such as sperm and egg donors, and gestational carriers, has created a host of legal issues that need to be addressed by the legislature. Vermont's statutes have not been updated to address parentage in the age of assisted reproduction.

Subchapter 7 recognizes families formed using ART. This Subchapter addresses the parental rights of the intended parents and the "donor" (a person who provides gametes or embryos), and provides for what happens if the intended parents divorce or one of them dies while the ART process is underway. The Subchapter also allows for the intended parents to obtain a birth order, either before or after the child's birth, declaring the intended parents to be the legal parents of the child.

Policy Consideration:

The definition of "assisted reproduction" in the proposed Act excludes sexual intercourse with a donor. For some people, this method of conception may be preferable. Under Quebec's parentage statute, assisted reproduction can occur both through insemination with donor semen and sexual intercourse: "A parental project involving assisted procreation exists from the moment a person alone decides or spouses by mutual consent decide, in order to have a child, to resort to the genetic material of a person who is not party to the parental project." Under this Quebec law, the donor can seek to establish parentage during the first year of the child's life.

8. SUBCHAPTER 8 – PARENTAGE BY GESTATIONAL CARRIER AGREEMENT

Subchapter 8 addresses a modern method of becoming parents: agreements between intended parents and a gestational carrier (that is, a person who agrees to carry an embryo to term for the intended parents, sometimes referred to as a "surrogate").

Subchapter 8 contains important provisions to protect of the rights of children, gestational carriers and intended parents. It clearly spells out the requirements for eligibility to be a gestational carrier and an intended parent, as well as the necessary elements for an enforceable

gestational carrier agreement. It also provides for the all-important ability of the parties to obtain a pre-birth order of parentage, effective upon the birth of the child.

The Subchapter allows for the gestational carrier to be paid a reasonable consideration in addition to reasonable expenses. It also clearly ensures that the gestational carrier has total control over her body; § 802(5) provides that all gestational carrier agreements "must permit the surrogate to make all health and welfare decisions regarding herself and her pregnancy. This act does not enlarge or diminish the gestational carrier's right to terminate her pregnancy."

Finally, this Subchapter provides an avenue for consideration of genetic testing results if there is a basis for believing that the child might be genetically related to the surrogate.

Policy Consideration:

The UPA requires gestational carrier agreements to be sanctioned by the courts, while the Maine Parentage Act adopts the approach to determining parentage that relies primarily on private contracts, rather than litigation. The Committee feels strongly that the Maine approach is the appropriate approach. Vermonters have been entering into gestational carrier agreements for years now, using private contracts, without having to involve the court system. Requiring court approval would be both expensive and time-consuming, and would also put an unnecessary burden on the already-overwhelmed family court system.

Policy Consideration:

Both the UPA and the Maine Parentage Act require the gestational carrier to have previously given birth to a child before being allowed to become a gestational carrier. The Committee felt that, while it would be preferable that the gestational carrier have given birth previously, our law should not make this a requirement. Such a limitation would severely limit gestational carrier agreements in Vermont. For example, it may make it impossible for a sister of an infertile woman to volunteer to carry a child for the infertile sister. Therefore, the Committee believes that this requirement should not be included in the law.

Policy Consideration:

This Subchapter provides for "gestational" surrogacy; that is, surrogates whose genetic material (gametes) is <u>not</u> used in creating an embryo. There is another type of surrogacy: "genetic" surrogacy. In a genetic surrogacy, the surrogate contributes gametes (genetic material) that result in an embryo.

The Uniform Parentage Act has provisions for genetic surrogacy, but the Maine Parentage Act does not, unless the genetic surrogate is a family member. The Committee determined that genetic surrogacy is extremely rare, is fraught with legal risk to all sides, and has a much greater potential for protracted litigation over parental rights and obligations. The Committee therefore decided to follow Maine's law, and prohibit genetic carrier agreements unless the genetic carrier is a family member.

VI. CONCLUSION

The Committee recognizes that this is a complicated topic. The Committee's members collectively spent hundreds of hours researching and drafting the proposed Act. The Committee would be happy to speak with Legislators about the draft Act, and about the issue generally, at any time. Finally, the Committee members thank the Legislature for providing us with the opportunity to tackle this important and long-overdue issue.

Respectfully submitted,

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* These individuals assisted the Committee and their work is gratefully acknowledged
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15C V.S.A. Chapter 1

Vermont Parentage Act

VERMONT PARENTAGE ACT

15C V.S.A. CHAPTER 1

SUBCHAPTER1: SHORT TITLE, SCOPE, DEFINITIONS AND GENERAL PROVISIONS

§ 101 SHORT TITLE; REPEAL; TRANSITIONAL PROVISION

1. **Title.** This chapter may be known and cited as "the Vermont Parentage Act."

2. **Repeal of prior act.** 15 V.S.A. §§301-308 are hereby repealed.

3. **Transitional provision.** This chapter applies to a pending proceeding to adjudicate parentage commenced before the effective date of this chapter, for an issue on which a judgment has not been rendered.

§ 102 DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Acknowledged parent.** "Acknowledged parent" means an individual who has established a parent-child relationship under subchapter 3.

2. **Adjudicated parent.** "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.** "Alleged genetic parent" means an individual who is alleged to be, or alleges that the individual 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. an individual whose parental rights have been terminated or declared not to exist; or

C. a donor.

4. **Assisted reproduction.** "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse and includes but is not limited to:

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. "Birth" includes stillbirth.

6. **Child.** "Child" means an individual of any age whose parentage may be determined under this chapter.

7. **Donor.** "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 Subchapter 8.

B. a parent under Subchapter 7 or an intended parent under Subchapter 8.

8. **Embryo.** "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 woman under conditions in which gestation may be reasonably expected to occur.

9. **Gamete.** "Gamete" means a sperm, egg or any part of a sperm or egg.
Genetic population group. "Genetic population group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.

10. **Gestational carrier.** "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 subchapter 8, is a gestational carrier.

11. **Gestational carrier agreement.** "Gestational carrier agreement" means a contract between an intended parent or parents and a gestational carrier intended to result in a live birth.

12. **Intended parent.** "Intended parent" means a person, whether married, unmarried, who manifests the intent to be legally bound as a parent of a child resulting from assisted reproduction or a gestational carrier agreement.

13. **Marriage.** "Marriage" includes civil union, and "married" includes "joined in civil union" under this Chapter. Additionally, "marriage" applies to 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.

14. **Parent.** "Parent" means an individual who has established parentage that meets the requirements of this chapter.

15. **Parentage.** "Parentage" means the legal relationship between a child and a parent as established in this chapter.

16. **Presumed parent.** "Presumed parent" means a person who pursuant to §401 is recognized as the parent of a child.

17. **Record.** "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.

18. **Sign.** "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.

19. **Signatory.** "Signatory" means an individual who signs a record and is bound by its terms.

20. **Spouse.** "Spouse" includes a partner in a civil union under this Chapter. .

§ 103 SCOPE AND APPLICATION

1. **Scope.** This chapter applies to determination of parentage in this State.

2. **Choice of law.** The court shall apply the law of this State to adjudicate parentage.

3. **Effect on parental rights.** This chapter 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 chapter.

§ 104 PARENTAGE PROCEEDING

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

2. **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.

3. **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 section 708 and section 804 shall be commenced in the probate division of the superior court.

4. **No right to jury.** There is no right to demand a jury trial in an action to determine parentage.

5. **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 must be placed in the court records relating to the adjudication. The record of a person's social security number is confidential and is not open to the public. 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. **Child.** The child;

2. **Person giving birth.** 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 §803(1)(A);

3. **Person whose parentage to be adjudicated.** A person whose parentage is to be adjudicated;

4. **Parent**. An individual who is a parent under this act;

5. **The Department for Children and Families**, including the Office of Child Support; or

6. **Representative of individual.** A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated or a minor.

§ 106 NOTICE OF PROCEEDING.

1. A petitioner under this chapter shall give notice of the proceeding to adjudicate parentage to the following:

A. the person who gave birth to the child unless a court has adjudicated that the person is not a parent;

B. an individual who is a parent of the child under this chapter;

C. a presumed, acknowledged, or adjudicated parent of the child;

D. an individual whose parentage of the child is to be adjudicated; and

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

2. An individual entitled to notice under subsection (1), and the Office of Child Support, where the Office is involved pursuant to subsection (1)(E), has a right to intervene in the proceeding.

3. Lack of notice required by subsection 1 does not render a judgment void. Lack of notice does not preclude an individual entitled to notice under subsection 1 from bringing a proceeding under this chapter.

4. This section shall not apply to petitions for birth orders under subchapter 7 and subchapter 8.

§ 107 FORM OF NOTICE

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

§ 108 PERSONAL JURISDICTION

1. **Personal jurisdiction.** An individual may not be adjudicated to be a parent unless the court has personal jurisdiction over the individual.

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

3. **Adjudication.** Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.

§ 109 VENUE

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

1. **Child.** The child resides or is present or, for purposes of subchapter 7 or 8, is or will be born;

2. **Parent.** Any parent or intended parent resides;

3. **Respondent.** The respondent resides or is present if the child does not reside in this State;

4. **Estate proceeding.** A proceeding for probate or administration of the parent or alleged parent's estate has been commenced; or

5. **Child protection proceeding.** A child protection proceeding with respect to the child has been commenced.

§ 110 JOINDER OF PROCEEDINGS

1. **Joinder permitted.** Except as otherwise provided in subsection 2, 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.

2. **Joinder not permitted.** A respondent may not join a proceeding described in subsection 1 with a proceeding to adjudicate parentage brought as part of an interstate child support enforcement action under Title 15B.

§ 111 ORDERS

1. **Interim order for support.** In a proceeding under this chapter, 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:

A. A presumed, acknowledged or adjudicated parent of the child;

B. Petitioning to have parentage adjudicated;

C. Identified as the genetic parent through genetic testing under subchapter 6;

D. An alleged genetic parent who has declined to submit to genetic testing;

E. Shown by a preponderance of evidence to be a parent of the child;

F. The person who gave birth to the child, other than a gestational carrier under subchapter 8; or

G. A parent under this chapter.

2. **Interim order for parental rights and responsibilities.** In a proceeding under this chapter, the court may make an interim order regarding parental rights and responsibilities on a temporary basis.

3. **Final orders.** Final orders concerning child support or parental rights and responsibilities are governed by Title 15.

§ 112 ADMISSION OF PARENTAGE AUTHORIZED

1. **Admission of parentage.** A respondent in a proceeding to adjudicate parentage may admit to the parentage of a child by filing a pleading to that effect or by admitting parentage under penalty of perjury when making an appearance or during a hearing.

2. **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, as long as:

1. **Served with notice.** The person was served with notice of the proceeding; and

2. **Found to be parent.** The person is found by the court to be the parent of the child.

§ 114 ORDER ADJUDICATING PARENTAGE

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

2. **Identify child.** A final order under subsection 1 must identify the child by name and date of birth.

3. **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.

4. **Amended birth registration.** If the final order under subsection 1 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

1. **Determination binding; signatories and parties.** Except as otherwise provided in subsection 2, a determination of parentage is binding on:

A. All signatories to an acknowledgment of parentage or denial of parentage as provided in subchapter 3;

B. All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of Section 108.

2. **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 the court acts under circumstances that satisfy the jurisdictional requirements of section 108 and 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.

3. **Determination a defense.** Except as otherwise provided in this chapter, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

4. **Challenge to adjudication.**

A. **Challenge by 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.

B. **Challenge by a person not a party to an adjudication.** If a child has an adjudicated parent, the following rules apply to a proceeding to challenge the adjudication of parentage brought by an individual, other than the child, who has standing under §105 and was not a party to the adjudication and did not receive notice under §106:

(1) The individual must commence the proceeding not later than two years after the effective date of the adjudication.

(2) The court may permit the proceeding only if the court finds that permitting the proceeding is in the best interest of the child.

(3) If the court permits the proceeding, the court shall adjudicate parentage under §206.

5. **Child not bound.** A child is not bound by a determination of parentage under this chapter unless:

A. The determination was based on an unrescinded acknowledgment of parentage and the acknowledgment is consistent with the results of genetic testing;

B. The determination was based on a finding consistent with the results of genetic testing, and the court makes a finding;

C. The determination of parentage was made under subchapter 7 or 8; or

D. The child was a party or was represented by an attorney, guardian ad litem, or similar person in the proceeding.

§ 116 FULL FAITH AND CREDIT

A court of this State shall give full faith and credit to a determination of parentage, including but not limited to an acknowledgment of parentage, from another state if the determination is valid and effective in accordance with the law of the other state.

SUBCHAPTER2: ESTABLISHMENT OF PARENTAGE

§ 201 ESTABLISHMENT OF PARENTAGE

Parentage is established by:

1. **Birth.** Giving birth to the child, except as otherwise provided in subchapter 8;

2. **Adoption.** Adoption of the child pursuant to Title 15A.

3. **Acknowledgment.** An effective voluntary acknowledgment of parentage under subchapter 3;

4. **Adjudication.** An adjudication based on an admission under Section 112;

5. **Presumption.** An unrebutted presumption under subchapter 4;

6. **De facto parentage.** An adjudication of de facto parentage, under subchapter 5;

7. **Genetic parentage.** An adjudication of genetic parentage under subchapter 6;

8. **Assisted reproduction.** Consent to assisted reproduction under subchapter 7; and

9. **Gestational carrier agreement.** Consent to a gestational carrier agreement under subchapter 8 by the intended parent or parents.

§ 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 child's birth.

§ 203 CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE

Unless parental rights are terminated, parentage established under this chapter applies for all purposes, except as otherwise specifically provided by other law of this State.

§ 204 DETERMINATION OF MATERNITY AND PATERNITY

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

§ 205 NO LIMITATION ON CHILD

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

§ 206 ADJUDICATING COMPETING CLAIMS OF PARENTAGE.

1. **Competing claims of parentage.** Except as otherwise provided in §616, in a proceeding to adjudicate competing claims of parentage, or challenges to a child's parentage by two or more individuals, the court shall adjudicate parentage in the best interest of the child, based on:

A. The age of the child;

B. The length of time during which each individual assumed the role of parent of the child;

C. The nature of the relationship between the child and each individual;

D. the harm to the child if the relationship between the child and each individual is not recognized;

E. the basis for each individual's claim to parentage of the child; and

F. other equitable factors arising from the disruption of the relationship between the child and each individual or the likelihood of other harm to the child.

2. **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 interest of the child to do so. A finding of best interests of the child under this paragraph does not require a finding of unfitness of any parent or individual seeking an adjudication of parentage.

SUBCHAPTER3:VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

§ 301 ACKNOWLEDGMENT OF PARENTAGE

The individual who gave birth to a child and an individual, who is the alleged genetic parent of the child, an intended parent under subchapter 7 or subchapter 8, or a presumed parent under subchapter 4 may sign an acknowledgment of parentage to establish parentage of the child.

§ 302 EXECUTION OF ACKNOWLEDGMENT OF PARENTAGE

1. **Requirements.** An acknowledgment of parentage must:

A. Be in a record;

B. Be signed by the individual who gave birth and by an individual seeking to establish a parent-child relationship, and the signatures must be witnessed by at least one individual or attested by a notary;

C. State that:

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

(2) There is no other acknowledged parent, adjudicated parent or individual who is an intended parent under subchapter 7 or subchapter 8 other than the individual who gave birth to the child; and

D. State that 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 and is barred 2 years after the effective date of the acknowledgement under section 304.

2. **Notice.** Before individuals may sign an acknowledgment of parentage, the signatories must be given written notice of the alternatives to, the legal consequences of and the rights and responsibilities that arise from signing the acknowledgment.

3. **Acknowledgment void.** An acknowledgment of parentage is void if, at the time of signing:

A. An individual other than the individual seeking to establish parentage is a presumed parent, unless a denial of parentage in a signed record is filed with the Department of Health; or

B. An individual, other than the individual who gave birth, is an acknowledged, admitted, or adjudicated parent, or an intended parent under subchapter 7 or subchapter 8.

§ 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 is valid only if:

1. **Acknowledgment.** An acknowledgment of parentage by another individual is filed pursuant to this subchapter;

2. **Under penalty of perjury.** The denial is in a record and is attested by a notary; and

3. **Person executing.** The person executing the denial has not previously:

A. Acknowledged parentage, unless the previous acknowledgment has been rescinded pursuant to section 307 or successfully challenged pursuant to section 308; or

B. Been adjudicated to be the parent of the child.

§ 304 RULES FOR ACKNOWLEDGEMENT OR DENIAL OF PARENTAGE

1. **Acknowledgment and denial.** An acknowledgment of parentage and related denial of parentage under this subchapter must be filed with the Department of Health and may be contained in a single document or may be signed in counterparts and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.

2. An acknowledgement of parentage or denial of parentage may be signed before or after the birth of a child.

3. **Effective date.** Subject to subsection 1, an acknowledgment of parentage or denial of parentage takes effect on the birth of the child or filing of the document with the Department of Health, whichever occurs later.

4. **Signed by minor.** An acknowledgment of parentage or denial of parentage signed by a minor is valid if it is otherwise in compliance with this chapter.

§ 305 EQUIVALENT TO ADJUDICATION; NO RATIFICATION REQUIRED

1. **Acknowledgment.** Except as otherwise provided in section 307 and section 308(1), a valid acknowledgment of parentage under section 301 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.

2. **No Ratification.** Judicial or administrative ratification is neither permitted nor required for an unrescinded or unchallenged acknowledgment.

3. **Denial.** Except as otherwise provided in section 307 and 308, subsection 1, a valid denial of parentage under section 303 filed with the Department of Health in conjunction with a valid acknowledgment of parentage under section 301 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.

§ 306 NO FILING FEE

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

§ 307 TIMING OF RESCISSION

1. **Administrative and Judicial Rescission.** A signatory may rescind an acknowledgment of parentage or denial of parentage under this subchapter by:

A. filing with the Department of Health a rescission which is witnessed by at least one individual or attested by a notary within 60 days after the effective date of the acknowledgment or denial; or

B. commencing a court proceeding before the earlier of 60 days after the effective date of the acknowledgment or denial, as provided in section 304, or the date of the first court hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding seeking child support.

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

§ 308 CHALLENGE TO ACKNOWLEDGMENT AFTER EXPIRATION OF PERIOD FOR RESCISSION

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

A. On the basis of fraud, duress or material mistake of fact; and

B. Within one year after the acknowledgment or denial is effective under Section 304.

2. **Challenge by person not a signatory.** If an acknowledgment of parentage has been made in accordance with this subchapter, an individual who is neither the child nor a signatory to the acknowledgment of parentage and who seeks to challenge the validity of the acknowledgment and adjudicate parentage must commence a proceeding not later than two years after the effective date of the acknowledgment, as provided in section 304, unless the individual did not know and could not reasonably have known of the individual's potential parentage on account of material misrepresentation or concealment, in which case the proceeding must be commenced no later than two years after discovery.

3. **Burden of proof.** A party challenging an acknowledgment of parentage or denial of parentage pursuant to this section has the burden of proof by clear and convincing evidence.

4. **Consolidation:** A court proceeding in which the validity of an acknowledgement of parentage is being challenged shall be consolidated with any other pending court actions regarding the child.

§ 309 PROCEDURE FOR RESCISSION OR CHALLENGE

1. **Every signatory party.** Every signatory to an acknowledgment of parentage and any related denial of parentage under this subchapter must be made a party to a proceeding under section 307 or 308 to rescind or challenge the acknowledgment or denial.

2. **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.

3. **Suspension of legal responsibilities.** Except for good cause shown, during the pendency of a proceeding under section 307 or 308 to rescind or challenge an acknowledgment of parentage or denial of parentage, the court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

4. **Proceeding to rescind or challenge.** A proceeding under section 307 or 308 to rescind or challenge an acknowledgment of parentage or denial of parentage must be conducted as a proceeding to adjudicate parentage under subchapter 1.

5. **Amendment to birth record.** At the conclusion of a proceeding under section 307 or 308 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

To facilitate compliance with this subchapter, the Department of Health shall prescribe forms for the acknowledgment of parentage and the denial of parentage. 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 as provided 18 V.S.A. § 5002.

§ 312 ADOPTION OF RULES

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

SUBCHAPTER4: PRESUMED PARENTAGE

§ 401 PRESUMPTION OF PARENTAGE

1. An individual is presumed to be a parent of a child if, except as otherwise provided under subchapter 8 or otherwise in this chapter:

A. the individual and the person who gave birth to the child are married to each other and the child is born during the marriage, whether the marriage is or could be declared invalid; or

B. the individual 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, whether the marriage is or could be declared invalid; or

C. the individual and the person who gave birth to the child married each other after the birth of the child, whether the marriage is or could be declared invalid, and the individual at any time asserted parentage of the child and the individual agreed to be and is named as a parent of the child on the birth certificate of the child; or

D. the individual 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 openly held out the child as the individual's child.

2. A presumption of parentage under this section may be overcome, and competing claims to parentage may be resolved, only by an adjudication by a court or a valid denial of parentage under subchapter 3.

§ 402 CHALLENGE TO PRESUMED PARENT

1. **Two-year limitation.** Except as provided in subsection 2, a proceeding to challenge the parentage of an individual whose parentage is presumed under section 401 must be commenced not later than two years after the birth of the child; otherwise the presumption cannot be rebutted.

2. **Later than 2 years.** A proceeding to challenge the parentage of an individual whose parentage is presumed under section 401 may be commenced more than two years after the birth of the child in the following situations.

A. A presumed parent under section 401, subsection 1 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 subsection 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 subsection within two years after discovering the potential genetic parentage. If the individual is adjudicated to be the genetic parent of the child, the court may not disestablish a presumed parent and, consistent with section §203, subsection 2, the court shall determine parental rights and responsibilities of the parents in accordance with Title 15 §665 et seq.

§ 403 MULTIPLE PRESUMPTIONS

If two or more conflicting presumptions arise under this subchapter, the court shall adjudicate parentage and determine parental rights and responsibilities in accordance with section Title 15 §665 et seq..

SUBCHAPTER5: DE FACTO PARENTAGE

§ 501 DE FACTO PARENTAGE

1. **De facto parentage.** The court may adjudicate a person to be a de facto parent.

2. **Standing to seek de facto parentage.** A person seeking to be adjudicated a de facto parent of a child under this subchapter must establish standing to maintain the action in accordance with the following:

A. A person seeking to be adjudicated a de facto parent of a child shall file with the initial pleadings an affidavit alleging under oath specific facts to support the existence of a de facto parent relationship with the child as set forth in subsection 3. The pleadings and affidavit must be served upon all parents and legal guardians of the child and any other party to the proceeding.

B. An adverse party, parent or legal guardian who files a pleading in response to the pleadings in paragraph A shall also file an affidavit in response, serving all parties to the proceeding with a copy.

C. The court shall determine on the basis of the pleadings and affidavits under paragraphs A and B whether the person seeking to be adjudicated a de facto parent has presented prima facie evidence of the requirements set forth in subsection 3. The court may in its sole discretion, if necessary and on an expedited basis, hold a hearing to determine disputed facts that are necessary and material to the issue of standing.

D. If the court's determination under paragraph C is in the affirmative, the party claiming de facto parentage has standing to proceed to adjudication under subsection 3.

3. **Adjudication of de facto parent status.** The court shall adjudicate a person to be a de facto parent if the court finds by clear and convincing evidence that the person has fully and completely undertaken a permanent, unequivocal, committed and responsible parental role in the child's life. Such a finding requires a determination by the court that:

A. The person has resided with the child for a significant period of time;

B. The person has engaged in consistent caretaking of the child;

C. A bonded and dependent relationship has been established between the child and the person, the relationship was fostered or supported by another parent of the child and the person and the other parent have understood, acknowledged or accepted that or behaved as though the person is a parent of the child;

D. The person has accepted full and permanent responsibilities as a parent of the child without expectation of financial compensation; and

E. The continuing relationship between the person and the child is in the best interest of the child.

4. **Orders.** The court may enter the following orders as appropriate.

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

B. Adjudication of a person under this subchapter as a de facto parent establishes parentage, and the court shall determine parental rights and responsibilities in accordance with 15 V.S.A. §665 et seq. The court shall make appropriate orders for the financial support for the child in accordance with the child support guidelines under 15 V.S.A. chapter 11 subchapter 3A. An order requiring the payment of support to or from a de facto parent does not relieve any other parent of the obligation to pay child support unless otherwise ordered by a court.

5. **Other parents.** The adjudication of a person under this subchapter as a de facto parent does not disestablish the parentage of any other parent.

SUBCHAPTER6: GENETIC PARENTAGE

§ 601 SCOPE OF SUBCHAPTER

This subchapter governs procedures and requirements of genetic testing and genetic testing results of an individual to determine parentage and adjudication of parentage based on genetic testing, whether the individual 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 an individual who is a parent by operation of law under subchapter 7 or subchapter 8, or to establish the parentage of an individual who is a donor.

§ 602 REQUIREMENTS FOR GENETIC TESTING

Genetic testing must 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 United States Department of Health and Human Services. For purposes of this chapter, "genetic testing" is defined in Title 18, section 9331(7).

§ 603 COURT ORDER FOR TESTING

1. **Order to submit to genetic testing.** Except as provided in section 615 or as otherwise provided in this chapter, the court may order a child and other designated individuals to submit to genetic testing if the request for testing is made by motion.

2. **Presumption of genetic parentage.** Genetic testing of the person who gave birth to a child is not required and may not be ordered to prove that such person is the genetic parent, unless there is a reasonable, good faith basis to dispute genetic parentage.

3. **In utero testing.** If a request for genetic testing of a child is made before birth, the court may not order in utero testing.

4. **Concurrent or sequential testing.** If two or more individuals are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

§ 604 GENETIC TESTING RESULTS

1. **Results identify as genetic parent.** Under this chapter, a person is identified as a genetic parent of a child if the genetic testing of the person complies with this subchapter and the results of testing disclose that the individual has at least a 99% probability of parentage as determined by the testing laboratory.

2. **Identification of genetic parent.** 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 under subchapter 3 or by admission under Section 112, presumed parentage under subchapter 4, de facto parentage under subchapter 5, and parentage by intended parents under subchapter 7 or subchapter 8.

3. **Rebuttal.** A person identified under subsection 1 as a genetic parent of a child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this subchapter that:

A. Excludes the person as a genetic parent of the child; or

B. Identifies an individual other than the person who gave birth as the possible genetic parent of the child.

§ 605 REPORT OF GENETIC TESTING

1. **Report; self-authenticating.** A report of genetic testing must 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 subchapter is self-authenticating.

2. **Production.** Any party in possession of results of genetic testing shall provide such results to all the other parties upon receipt of the results, and no later than 15 days before any hearing at which the results may be admitted into evidence.

§ 606 ADMISSIBILITY OF RESULTS OF GENETIC TESTING; EXPENSES

1. **Production of Results; Notice.** Unless waived by the parties, any party intending to rely on the results of genetic testing must:

A. Make the test results available to the other parties at least 15 days prior to any hearing at which the results may be introduced into evidence;

B. Give notice of the intent to use the test results at the hearing; and

C. Give the other parties notice of this statutory section including the need to object in a timely fashion.

2. **Objection.** Any motion objecting to genetic test results must be made in writing to the court and to the party intending to introduce the evidence not less than five 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.

3. **Results inadmissible; exceptions.** If a child has a presumed parent, acknowledged parent or adjudicated parent, the results of genetic testing are admissible to adjudicate parentage only:

A. With the consent of each person who is a parent of the child under this chapter, unless the court otherwise orders under section 615; or

B. Pursuant to an order of the court under section 603.

3. **Copies of bills and records as evidence.** Copies of bills and records of expenses paid for prenatal care, childbirth, postnatal care and genetic testing are admissible as evidence without requiring third party foundation testimony and are prima facie evidence of amounts incurred for those expenses or testing on behalf of the child

§ 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, the court or agency may not order additional testing unless the party provides advance payment for the testing.

§ 608 CONSEQUENCES OF DECLINING GENETIC TESTING

1. **Adjudication contrary to position.** If an individual 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 individual.

2. **Testing of person giving birth; unavailable or declines.** Genetic testing of the individual 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 individual 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

1. **Parentage based on genetic testing.** If the court adjudicates parentage based on genetic testing, the following apply:

A. Unless the results of genetic testing are admitted to rebut other results of genetic testing:

(1) If genetic testing results pursuant to section 604 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; and

(2) If genetic testing results pursuant to section 604 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 chapter.

B. If the court finds that genetic testing under section 604 neither identifies nor excludes a person as the genetic parent of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing and other evidence are admissible to adjudicate the issue of parentage.

2. **Inadmissible evidence.** Testimony relating to sexual relations or possible sexual relations of the person giving birth at a time other than the probable time of conception of the child is inadmissible in evidence.

§ 610 COSTS OF GENETIC TESTING

1. **Payment for the costs advanced.** The payment for the costs, if any, of initial genetic testing must be advanced:

A. By the Office of Child Support in a proceeding in which the Office is providing services, if the Office requests such testing;

B. By the individual who made the request for genetic testing;

C. As agreed by the parties; or

D. As ordered by the court.

2. **Costs borne by parent.** Notwithstanding subsection (1), a person who challenges a presumption, acknowledgment or admission of parentage shall bear the cost for any genetic testing requested by such person.

3. **Reimbursement.** In cases in which the payment for the costs of initial genetic testing is advanced pursuant to subsection 1, 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

1. **Specimen not available; submission of specimens.** Subject to subsection 2, if a genetic testing specimen is not available from an alleged genetic parent of a child, for good cause and under circumstances the court finds to be just, the court may order the following individuals to submit specimens for genetic testing:

A. The parents of the alleged genetic parent;

B. a sibling of the alleged genetic parent;

C. another child of the alleged genetic parent and the individual who gave birth to that other child; and

D. another relative of the alleged genetic parent necessary to complete genetic testing.

2. **Finding required.** Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual from whom a genetic sample is requested.

§ 612 DECEASED PERSON

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

§ 613 IDENTICAL SIBLING

1. **Genetic testing of sibling.** The court may order genetic testing of a sibling of a person if the person is commonly believed to have an identical sibling and evidence suggests that the sibling may be the genetic parent of the child.

2. **Non-genetic evidence.** If more than one sibling is identified as a genetic parent of the child, the court may rely on non-genetic evidence to adjudicate which sibling is a genetic parent of the child under this subchapter.

§ 614 CONFIDENTIALITY OF GENETIC TESTING

1. **Release of report.** A report of genetic testing for parentage is confidential and may not be released except as provided in this chapter.

2. **Intentional release of identifiable specimen.** An individual who intentionally releases a report of genetic testing or the genetic material of another person for a purpose not relevant to a proceeding regarding parentage, without a court order or the written permission of the individual who furnished the genetic material, shall be imprisoned not more than one year or fined not more than $10,000, or both.

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

1. **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 the court determines that:

A. The conduct of the parties estops a party from denying parentage; or

B. 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 interest of the child.

2. **Factors.** In determining whether to deny a motion seeking an order for genetic testing under this chapter or a request for admission of such test results at trial, the court shall consider the best interest of the child, including the following factors, if relevant:

A. 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;

B. The length of time during which the parent has assumed a parental role for the child;

C. The facts surrounding discovery that genetic parentage is at issue;

D. The nature of the relationship between the child and the parent;

E. The age of the child;

F. Any adverse effect on the child that may result if parentage is successfully disproved;

G. The nature of the relationship between the child and any alleged parent;

H. 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

I. Factors in addition to those in paragraphs A to H that may affect the equities arising from the disruption of the relationship between the child and the parent or the chance of other adverse effect to the child.

3. **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 this section, "sexual assault" means a conviction for a crime under Title 13, Chapter 72.

B. 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.

C. This section does not apply if:

(1) the person alleged to have committed a sexual assault has previously been adjudicated to be a parent of the child; or

(2) after the birth of the child, the person alleged to have committed a sexual assault established a bonded and dependent relationship with the child which is parental in nature.

D. The person giving birth must file a pleading making an allegation under subsection B not later than two years after the birth of the child, unless Section 309 or 611 applies, and may file the pleading only in a proceeding to establish parentage.

E. An allegation under subsection B. may be proved by either:

(1) evidence that the person alleged to have committed a sexual assault was convicted of a sexual assault, or a comparable crime, against the person giving birth, and that the child was born not later than 300 days after the sexual assault; or

(2) clear-and-convincing evidence that the sexual assault was committed, and that the child was born not later than 300 days after the sexual assault.

F. If the court finds that an allegation under subsection B. has been proved and neither condition of subsection C. is satisfied, 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 as requested by the person giving birth if the court determines that the amendment is in the best interest of the child; and

(3) requiring that the person alleged to have committed a sexual assault pay child support, birth-related costs, or both, unless the person giving birth requests otherwise and the court determines that granting the request is in the best interest of the child.

SUBCHAPTER7: PARENTAGE BY ASSISTED REPRODUCTION

§ 701 SCOPE OF SUBCHAPTER

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

§ 702 PARENTAL STATUS OF DONOR

1. **Donor not a parent.** A donor is not a parent of a child conceived through assisted reproduction.

2. **Exceptions.** Notwithstanding subsection 1:

A. 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

B. A person who provides a gamete or gametes or an embryo or embryos 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 gamete(s) or embryo(s) is intended to be a parent.

§ 703 PARENTAGE OF CHILD OF ASSISTED REPRODUCTION

A person who consents under section 704 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

1. **Written consent.** Consent by a person who intends to be a parent of a child born through assisted reproduction must be set forth in a signed record that is executed by each intended parent and provides that the signatories consent to use of assisted reproduction to conceive a child with the intent to parent the child.

2. **Lack of written consent; parentage.** Failure of a person to sign a consent required by subsection 1 before or after birth of the child does not preclude a finding of parentage if:

A. the person or the person who gave birth to the child proves by a preponderance of the evidence the existence of an agreement entered into before conception or birth that they both intended to be the parents of the child; or

B. if consent can be proved by other means by a preponderance of the evidence and the consenting individual resided with the child after birth and undertook to develop a parental relationship with the child; or

C. as provided in this chapter.

3. **Consent form.** Consent under subsection 1 executed via a consent form made available by the Department of Health must be accepted and relied upon for purposes of issuing a birth record.

§ 705 CHALLENGE TO CONSENT BY SPOUSE

1. Except as otherwise provided in subsection 2, an individual who, at the time of the child's birth, is the spouse of the person who gave birth to the child by assisted reproduction, may not challenge the individual's parentage of the child unless:

A. not later than two years after the birth of the child, the individual commences a proceeding to adjudicate the individual's parentage of the child; and

B. the court finds that the individual did not consent to the assisted reproduction, before, on, or after birth of the child, or that the individual withdrew consent under Section 706.

2. A proceeding to adjudicate a spouse's parentage of a child born by assisted reproduction may be commenced at any time if the court determines:

A. the spouse neither provided a gamete for, nor consented to, the assisted reproduction;

B. the spouse and the woman who gave birth to the child have not cohabited since the probable time of assisted reproduction; and

C. the spouse never openly held out the child as the spouse's child.

3. This section applies to a spouse's dispute of parentage even if the spouses' marriage is declared invalid after assisted reproduction occurs.

§ 706 EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL OF CONSENT

1. **Dissolution of marriage prior to transfer or implantation.** 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.

2. **Withdrawal of consent prior to transfer or implantation.** The consent of a person to assisted reproduction under section 704 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

1. **Establishment of deceased person's parentage of child not precluded.** 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 subchapter.

2. **Record or evidence of intent.** 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.

3. **Exceptions.** Notwithstanding subsection (2), a person is a parent of a child conceived by assisted reproduction under subsection (2) 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

1. **Proceeding for birth order.** Before or after the birth of the resulting child, a party consenting to assisted reproduction, a person who is a parent pursuant to sections 702- 704 , the intended parent or parents or the person giving birth may commence a proceeding in the Probate Division to obtain an order:

A. 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;

B. Sealing the record from the public to protect the privacy of the child and the parties; or

C. For any relief that the court determines necessary and proper.

2. **State not a necessary party.** Neither the State nor the Department of Health is a necessary party to a proceeding under subsection 1.

3. The intended parent or parents and any resulting child shall have access to the court records at any time.

§ 709 LABORATORY ERROR

If due to a laboratory error the resulting 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.

SUBCHAPTER8: PARENTAGE BY GESTATIONAL CARRIER AGREEMENT

§ 801 ELIGIBILITY TO ENTER GESTATIONAL CARRIER AGREEMENT

1. **Eligibility of gestational carrier.** In order to execute an agreement to act as a gestational carrier, a person must:

A. Be at least 21 years of age;

B. Have completed a medical evaluation that includes a mental health consultation;

C. 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

D. 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.

2. **Eligibility of intended parent or parents.** 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, must:

A. Be at least 21 years of age;

B. Have completed a medical evaluation and mental health consultation; and

C. 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 AUTHORIZED

1. **Written agreement.** A prospective gestational carrier who is eligible pursuant to section 801, that person's spouse, and the intended parent or parents may enter into a written agreement that:

A. The prospective gestational carrier agrees to pregnancy by means of assisted reproduction;

B. 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

C. The intended parent or parents will be the parents of any resulting child.

2. **Intended parents.** The intended parent or parents must be parties to a gestational carrier agreement.

3. **Enforceable.** A gestational carrier agreement is enforceable only if it meets the following requirements:

A. The agreement must be in writing and signed by all parties.

B. The agreement must require no more than a one-year term to achieve pregnancy.

C. At least one of the parties must be a resident of this State.

D. The agreement must be executed before the commencement of any medical procedures other than the medical evaluations required by section 801 and, in every instance, before transfer of embryos.

E. The gestational carrier and the intended parent or parents must meet the eligibility requirements of section 801.

F. If any party is married, the party's spouse also must be required to execute the agreement.

G. The gestational carrier and the intended parent or parents must 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 must state that the agreement meets the requirements of this chapter and must 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.

H. The parties to the agreement must sign a written acknowledgment of having received a copy of the agreement.

I. The signature of each party to the agreement must be notarized, acknowledged or attested by a person authorized to take oaths in accordance with the laws of the jurisdiction where it is executed, or each party's signature must be witnessed by two persons who are not parties to the agreement.

J. The agreement must expressly provide that the gestational carrier:

(1) Will undergo assisted reproduction and attempt to carry and give birth to any resulting child;

(2) 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

(3) Must acknowledge the exclusive parentage of the intended parent or parents of all resulting children;

K. If the gestational carrier is married, the carrier's spouse:

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

(2) 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

(3) Must acknowledge the exclusive parentage of the intended parent or parents of all resulting children;

L. The gestational carrier has 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;

M. The intended parent or parents must:

(1) 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

(2) Assume responsibility for the financial support of all resulting children immediately upon the birth of the children; and

N. All parties must provide records related to the medical evaluations conducted pursuant to section 801.

4. **Reasonable consideration and expenses.** Except as provided in section 809, a gestational carrier agreement may provide for payment of consideration and reasonable expenses, which, if paid to a prospective gestational carrier, must be negotiated in good faith between the parties.

5. **Decision of gestational carrier.** The agreement must permit the gestational carrier to make all health and welfare decisions regarding the gestational carrier's health and pregnancy, and may not enlarge or diminish the gestational carrier's right to terminate the pregnancy.

§ 803 PARENTAGE; PARENTAL RIGHTS AND RESPONSIBILITIES

If a gestational carrier agreement satisfies the requirements of this chapter:

1. **Parentage.** The intended parent or parents are by operation of law 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.

A. Neither the gestational carrier nor the gestational carrier's spouse, if any, is the parent of the resulting child. Notwithstanding if genetic testing under § 808(4) indicates a genetic relationship between the gestational carrier and the child, parentage shall be determined by the Family Division.

B. 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;

2. **Parental rights and responsibilities.** Parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the resulting child; and

3. **Laboratory error.** 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

1. **Action for birth order.** Pursuant to a valid gestational carrier agreement under this subchapter, before or after the birth of the resulting child a party to the gestational carrier agreement may commence a proceeding in the Probate Division to obtain an order:

A. 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;

B. 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;

C. Sealing the record from the public to protect the privacy of the child and the parties; or

D. For any relief that the court determines necessary and proper.

2. **State not a necessary party.** Neither the State nor the Department of Health is a necessary party to a proceeding under subsection 1.

3. 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 Title 15, Section 1071, the court conducting a proceeding under this subchapter 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

1. **Termination of agreement; parties.** 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.

2. **Obligations upon termination; no liability to gestational carrier.** Upon termination of the gestational carrier agreement under subsection 1, 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

1. Unless a gestational carrier agreement expressly provides otherwise:.

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

B. the divorce, dissolution, annulment, or legal separation of the gestational carrier after the agreement has been signed by all parties does not affect the validity of the agreement.

2. Unless a gestational carrier agreement expressly provides otherwise:

A. the marriage of an intended parent after the agreement has been signed by all parties does not affect the validity of a gestational carrier agreement, the consent of the spouse of the intended parent is not required, and the spouse of the intended parent is not a parent of a child conceived by assisted reproduction under the agreement based on the agreement; and

B. the divorce, dissolution, annulment, or legal separation, of an intended parent after the agreement has been signed by all parties does not affect the validity of the agreement, and except as otherwise provided in section 803, the intended parents are the parents of the child.

§ 808 EFFECT OF NONCOMPLIANCE; STANDARD OF REVIEW; REMEDIES

1. **Not enforceable.** Except as otherwise provided, a gestational carrier agreement that does not meet the requirements of this subchapter is not enforceable.

2. **Standard of review.** In the event of noncompliance with the requirements of this subchapter or with a gestational carrier agreement, a 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.

3. **Remedies.** Except as expressly provided in a gestational carrier agreement and in subsection 4, 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.

4. **Genetic testing.** If the parentage of a child born to a gestational carrier is alleged not to be the result of assisted reproduction, and this question is relevant to the determination of parentage, the court may order genetic testing.

5. **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 birth of the child.

§ 809 LIABILITY FOR PAYMENT OF GESTATIONAL CARRIER HEALTH CARE COSTS

1. **Liability for health care costs.** 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.

2. **Agreement.** A gestational carrier agreement must 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 1.

3. **Effect on insurance coverage.** 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.

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