

HOUSE No. 1713

The Commonwealth of Massachusetts

PRESENTED BY:

Sarah K. Peake and Hannah Kane

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to ensure legal parentage equality.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>1/11/2023</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>1/20/2023</i>
<i>Adam Scanlon</i>	<i>14th Bristol</i>	<i>1/23/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/23/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>1/26/2023</i>
<i>Steven Owens</i>	<i>29th Middlesex</i>	<i>1/26/2023</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>1/26/2023</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>1/27/2023</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>1/27/2023</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>1/27/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/27/2023</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>1/27/2023</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>1/30/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/30/2023</i>
<i>Adrienne Pusateri Ramos</i>	<i>14th Essex</i>	<i>1/31/2023</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/31/2023</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>2/2/2023</i>
<i>Michael P. Kushmerek</i>	<i>3rd Worcester</i>	<i>2/2/2023</i>

<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>2/3/2023</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>2/6/2023</i>
<i>Sally P. Kerans</i>	<i>13th Essex</i>	<i>2/6/2023</i>
<i>William J. Driscoll, Jr.</i>	<i>7th Norfolk</i>	<i>2/7/2023</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>2/7/2023</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/14/2023</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/14/2023</i>
<i>Tricia Farley-Bouvier</i>	<i>2nd Berkshire</i>	<i>2/14/2023</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>2/14/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>2/14/2023</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>2/14/2023</i>
<i>Rodney M. Elliott</i>	<i>16th Middlesex</i>	<i>2/14/2023</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>	<i>2/14/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>3/2/2023</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>3/2/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>3/2/2023</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>3/6/2023</i>

HOUSE No. 1713

By Representatives Peake of Provincetown and Kane of Shrewsbury, a petition (accompanied by bill, House, No. 1713) of Sarah K. Peake, Hannah Kane and others for legislation to provide that every child have the same rights and protections under law as any other child without regard to the marital status, gender, gender identity, or sexual orientation of the parent or parents. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to ensure legal parentage equality.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The title of chapter 209C of the General Laws is hereby amended by
2 striking out the words “CHILDREN BORN OUT OF WEDLOCK” in that title and inserting in
3 place thereof the following words:-- “NONMARITAL CHILDREN AND PARENTAGE OF
4 CHILDREN”.

5 SECTION 2. Chapter 209C of the General Laws is hereby amended by inserting after
6 section 1 the following section 1A:- (a) It is the public policy of the Commonwealth that every
7 child has the same rights and protections under law as any other child without regard to the
8 marital status, gender, gender identity, or sexual orientation of the parent or parents or the
9 circumstances of the birth of the child, including whether the child was born as a result of
10 assisted reproduction or surrogacy. (b) a parent-child relationship is established between a person
11 and a child if (i) Birth: the person gives birth to the child, except as otherwise provided in

12 sections 28A-28Q; (ii) Presumption: there is a presumption of parentage under section 6, unless
13 the presumption is overcome in a judicial proceeding or a valid denial of parentage is made; (iii)
14 Adjudication: the individual is adjudicated a parent of the child by a court with jurisdiction; (iv)
15 Adoption: the individual adopts the child pursuant to chapter 210; (v) Acknowledgment: the
16 individual acknowledges parentage of the child under this chapter unless the acknowledgment is
17 rescinded or successfully challenged; (vi) De Facto Parentage: the individual is adjudicated a de
18 facto parent of the child under section 25; (vii) Assisted reproduction: the individual's parentage
19 of the child is established under section 27; (viii) Surrogacy: the individual's parentage of the
20 child is established under sections 28A-28Q. (c) For the purpose of this chapter, the term "child
21 born out of wedlock" includes the term nonmarital child; the term "man" or "father" includes a
22 parent of any gender; the term "woman" or "mother" includes the term "parent who gave birth;
23 the term "putative father" includes the term "alleged genetic parent" and does not include a
24 presumed parent, an individual whose parental rights have been terminated or declared not to
25 exist or a donor" any reference to "paternity" includes the term "parentage;" any reference to
26 "nonpaternity" includes the term "nonparentage;" any reference to "voluntary acknowledgement
27 of paternity" includes the term "voluntary acknowledgment of parentage;" and any reference to
28 "husband" or "wife" includes the term "spouse."

29 SECTION 3. Section 5 of chapter 209C is hereby amended in line 50 by inserting after
30 the word "chapter" the following sentence:- Voluntary acknowledgments of parentage may also
31 be executed pursuant to this chapter by the person who gave birth and a person who is either a
32 presumed parent pursuant to section 6 or an intended parent pursuant to section 27.

33 SECTION 4. Section 6 of chapter 209C is hereby amended in line 39 by adding the
34 following subsection:-

35 (d) A presumption of parentage under this section may be overcome, and competing
36 claims to parentage may be resolved, only by a valid denial of parentage under section 11 of this
37 chapter or as follows:

38 (1) A presumption of parentage cannot be overcome after the child attains 2 years of age
39 unless the court determines: (i) the presumed parent is not a genetic parent, never resided with
40 the child, and never held out the child as the presumed parent's child; or (ii) the child has more
41 than 1 presumed parent.

42 (2) A proceeding to challenge a presumption by an alleged genetic parent who is not a
43 presumed parent may be permitted by a court only if the alleged genetic parent proves, by clear
44 and convincing evidence, that the alleged genetic parent has a substantial parent-child
45 relationship with the child. If the court permits the proceeding, the court shall adjudicate
46 parentage under section 26.

47 (3) The following rules apply in a proceeding to adjudicate a presumed parent's
48 parentage of a child if the individual who gave birth to the child is the only other individual with
49 a claim to parentage of the child: (i) If no party to the proceeding challenges the presumed
50 parent's parentage of the child, the court shall adjudicate the presumed parent to be a parent of
51 the child; (ii) If the presumed parent is identified as a genetic parent of the child and that
52 identification is not successfully challenged, the court shall adjudicate the presumed parent to be
53 a parent of the child; (iii) If the presumed parent is not identified as a genetic parent of the child
54 and the presumed parent or the individual who gave birth to the child challenges the presumed
55 parent's parentage of the child, the court shall adjudicate the parentage of the child in the best
56 interest of the child based on the factors of section 26.

57 (4) Subject to other limitations in this part, if in a proceeding to adjudicate a presumed
58 parent's parentage of a child, another individual in addition to the individual who gave birth to
59 the child asserts a claim to parentage of the child, the court shall adjudicate parentage under
60 section 26.

61 SECTION 5. Section 11 of chapter 209C is hereby amended in line 2 by inserting after
62 the word "father" the following:- presumed parent or intended parent pursuant to section 27.

63 SECTION 6. Section 11 of chapter 209C is hereby amended by striking out, in line 3, the
64 words "mother of the child" and inserting in place thereof the following words:- individual who
65 gave birth to the child.

66 SECTION 7. Section 11 of chapter 209C is hereby amended in lines 21-22 by striking
67 "such putative father and mother and shall have the same force and effect as a judgment of
68 paternity" and inserting the following:- "both parents and shall have the same force and effect as
69 a judgment of parentage".

70 SECTION 8. Section 11 of chapter 209C is hereby amended in line 48 by striking "shall"
71 and inserting the following:- may.

72 SECTION 9. Section 11 of chapter 209C is hereby amended in line 83 by inserting after
73 the word "executed" the following sentence:-A voluntary acknowledgement of parentage that
74 complies with this section and section 5 and is filed with the registrar of vital records and
75 statistics or the court is equivalent to an adjudication of parentage of the child and confers on the
76 acknowledged parent all rights and duties of a parent. The court shall give full faith and credit to
77 a voluntary acknowledgment of parentage that is effective in another state if the
78 acknowledgment was in a signed record and otherwise complies with the laws of the other state.

79 SECTION 10. Chapter 209C of the General Laws is hereby amended by inserting after
80 section 24 the following section 25:

81 Section 25. De Facto Parentage

82 (a) This section shall apply to nonmarital and marital children. A proceeding to establish
83 parentage of a child under this section may be commenced only by an individual who:

84 (i) is alive when the proceeding is commenced; and

85 (ii) claims to be a de facto parent of the child.

86 (b) An individual who claims to be a de facto parent of a child shall commence a
87 proceeding to establish parentage of a child under this section:

88 (i) before the child attains 18 years of age; and

89 (ii) while the child is alive.

90 (c) The following rules govern standing of an individual who claims to be a de facto
91 parent of a child to maintain a proceeding under this section:

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

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

98 (iii) The court shall determine, based on the pleadings under subsections c(i) and c(ii) ,
99 whether the individual has alleged facts sufficient to satisfy by a preponderance of the evidence
100 each of the requirements of paragraphs (i) through (vii) of subsection (d). Upon request made by
101 a party entitled to notice, the court may hold a hearing on the issue of standing. Whether the
102 hearing is an evidentiary hearing is in the discretion of the court. The court may enter an interim
103 order concerning contact between the child and an individual with standing seeking adjudication
104 under this section as a de facto parent of the child.

105 (d) In a proceeding to adjudicate parentage of an individual who claims to be a de facto
106 parent of the child, if there is only 1 other individual who is a parent or has a claim to parentage
107 of the child, the court shall adjudicate the individual who claims to be a de facto parent to be a
108 parent of the child if the individual demonstrates by clear-and convincing evidence that:

109 (i) the individual resided with the child as a regular member of the child's household for a
110 significant period of time based on the age of the child;

111 (ii) the individual engaged in consistent caretaking of the child which may include
112 regularly taking responsibility for the child's needs such as care, guidance, education and health,
113 and making day-to-day decisions regarding the child individually or cooperatively with another
114 parent;

115 (iii) the individual undertook full and permanent responsibilities of a parent of the child
116 without expectation or payment of financial compensation. If an individual undertook the
117 responsibilities of a parent of the child due to a parent of that child being deployed in the
118 military, there shall be a presumption that such arrangements were intended to be temporary for
119 the duration of the parent's military deployment;

120 (iv) the individual held out the child as the individual's child;

121 (v) the individual established a bonded and dependent relationship with the child which is
122 parental in nature;

123 (vi) a parent of the child fostered or supported the bonded and dependent relationship
124 required under paragraph (v). Consent to guardianship, execution of a caregiver affidavit,
125 execution of a Military Family Care Plan, or other caretaking agreement by a parent serving in
126 the military shall not be considered as evidence that a parent fostered or supported the bonded
127 and dependent relationship required under (v); and

128 (vii) continuing the relationship between the individual and the child is in the best interest
129 of the child. In considering this factor, the court shall consider evidence of past or present abuse
130 by the individual toward a parent or the child as a factor contrary to the best interests of the child.
131 For the purpose of this section, "abuse" shall have the same meaning as provided in section 31 of
132 chapter 208 and section 10(e) of this chapter.

133 (e) A parent of the child may use evidence of duress, coercion, or threat of harm to
134 contest an allegation that the parent fostered or supported a bonded and dependent
135 relationship as

136 provided in subsection (d)(vi) of this section or that continuing the relationship between
137 the individual and the child is in the best interests of the child as provided in subsection d(vii) of
138 this section. Such evidence may include, but not be limited to, whether, within the prior ten
139 years, the individual seeking to be adjudicated a de facto parent (1) has been convicted of a crime
140 involving violence against a parent of the child or the child including but not limited to rape,

141 assault with intent to commit rape, indecent assault and battery, assault or assault and battery on
142 a family or household member; (2) was the subject of a final abuse prevention order pursuant to
143 Chapter 209A or section 34B or 34C of Chapter 208 because the individual was found to have
144 committed abuse against the child or a parent of the child; (3) was substantiated for abuse against
145 the child by the Department of Children and Families; or (4) there exists other credible evidence
146 of abuse by the individual against a parent of the child or the child.

147 (f) Subject to other limitations in this section, if in a proceeding to adjudicate parentage
148 of an individual who claims to be a de facto parent of the child, there is more than 1 other
149 individual who is a parent or has a claim to parentage of the child and the court determines that
150 the requirements of subsection (d) are satisfied, the court shall adjudicate parentage under section
151 26 of this chapter.

152 (g) The adjudication of an individual as a de facto parent under this section does not
153 disestablish the parentage of any other parent.

154 SECTION 11. Chapter 209C of the General Laws is hereby amended by inserting the
155 following section 26:

156 Section 26. Competing Claims of Parentage

157 (a) In a proceeding to adjudicate competing claims of, or challenges under this chapter to,
158 parentage of a child by 2 or more individuals, the court shall adjudicate parentage in the best
159 interest of the child, based on:

160 (i) the age of the child;

161 (ii) the length of time during which each individual assumed the role of parent of the
162 child;

163 (iii) the nature of the relationship between the child and each individual;

164 (iv) the harm to the child if the relationship between the child and each individual is not
165 recognized;

166 (v) the basis for each individual's claim to parentage of the child; and

167 (vi) other equitable factors arising from the disruption of the relationship between the
168 child and each individual or the likelihood of other harm to the child.

169 (b) If an individual challenges parentage based on the results of genetic testing, in
170 addition to the factors listed in subsection (a), the court shall consider:

171 (i) the facts surrounding the discovery that the individual might not be a genetic parent of
172 the child; and

173 (ii) the length of time between the time that the individual was placed on notice that the
174 individual might not be a genetic parent and the commencement of the proceeding.

175 (c) The court may adjudicate a child to have more than 2 parents if the court finds that it
176 is in the best interests of the child to do so. A finding of best interests of the child under this
177 subsection does not require a finding of unfitness of any parent or person seeking an adjudication
178 of parentage.

179 SECTION 12. Chapter 209C of the General Laws is hereby amended by inserting the
180 following section 27:

181 Section 27. Parentage by Assisted Reproduction

182 (a) This section shall apply to nonmarital and marital children. This section shall not
183 apply to the birth of a child conceived by sexual intercourse or assisted reproduction by
184 surrogacy agreement under sections 28A-28Q.

185 (b) Venue for a proceeding to adjudicate parentage under this section is in the county
186 of this state in which: (i) the child resides or is or will be born; (ii) any parent or intended parent
187 resides; or (iii) a proceeding has been commenced for administration of the estate of an
188 individual who is or may be a parent under this chapter.

189 (c) The following terms shall have the following meanings:

190 (i) “Assisted reproduction”, a method of causing pregnancy other than sexual
191 intercourse and includes, but is not limited to, artificial insemination as well as intrauterine,
192 intracervical, or vaginal insemination; donation of gametes; donation of embryos; in vitro
193 fertilization and transfer of embryos; and intracytoplasmic sperm injection.

194 (ii) “Donor”, an individual who provides a gamete or embryo intended for assisted
195 reproduction or gestation, whether or not for consideration. This term does not include a person
196 who consents to assisted reproduction with the intent to be a parent of the resulting child.

197 (iii) “Intended parent”, an individual, whether married or unmarried, who manifests an
198 intent to be legally bound as a parent of a child resulting from assisted reproduction.

199 (d) A donor is not a parent of a child conceived through assisted reproduction by
200 virtue of the donor’s genetic connection. A donor may not establish the donor's parentage by

201 signing an acknowledgment of parentage pursuant to this chapter. A donor shall not be entitled to
202 notice.

203 (e) An individual who consents to assisted reproduction under subsection (f) with the
204 intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.

205 (f) Consent to assisted reproduction described in subsection (e) may be established
206 either by a record signed by the individual giving birth to a child conceived by assisted
207 reproduction and by an individual who intends to be a parent of the child before, on, or after the
208 birth of the child or if a court finds by a preponderance of the evidence that (i) prior to
209 conception or birth of the child, the parties agreed that they would be parents of the child; or (ii)
210 the individual who seeks to be a parent of the child voluntarily participated in and consented to
211 the assisted reproduction that resulted in the conception of the child.

212 (g) Except as otherwise provided herein, an individual who, at the time of a child's
213 birth, is the spouse of the person who gave birth to the child by assisted reproduction may not
214 challenge the spouse's parentage of the child unless not later than 2 years after the birth of the
215 child, the spouse commences a proceeding to adjudicate their own parentage of the child, and the
216 court finds the spouse did not consent to the assisted reproduction, before, on, or after birth of the
217 child, or withdrew consent under subsection i. A proceeding by a spouse to challenge their own
218 parentage of a child born by assisted reproduction may be commenced at any time if the court
219 determines that the spouse neither provided a gamete for, nor consented to, the assisted
220 reproduction; the spouse and the person who gave birth to the child have not cohabited since the
221 probable time of assisted reproduction; and the spouse never openly held out the child as their
222 child. This subsection applies to a spouse's dispute of parentage even if the spouse's marriage is

223 declared invalid after assisted reproduction occurs. The person giving birth shall not challenge a
224 spouse's parentage under this section.

225 (h) A married individual who has commenced an action for divorce may, after at least
226 60 days has elapsed since service of the complaint, proceed with assisted reproduction pursuant
227 to this section and the spouse shall not be a parent of any child born as a result of the assisted
228 reproduction unless the spouse consents in a record to be a parent of a child born as a result of
229 assisted reproduction after commencement of a divorce action. A married individual proceeding
230 with assisted reproduction pursuant to this section shall not utilize gametes of the spouse unless
231 the spouse consents in a record to the use of the spouse's gametes for assisted reproduction by
232 the married person after commencement of a divorce action.

233 (i) An individual who consents under subsection e to assisted reproduction may
234 withdraw consent any time before a transfer or implantation of gametes or embryos that results
235 in a pregnancy, by giving notice in a record of the withdrawal of consent to the person who
236 agreed to give birth to a child conceived by assisted reproduction and to any clinic or health-care
237 provider who may be facilitating the assisted reproduction. Failure to give notice to a clinic or
238 health-care provider does not affect a determination of parentage under this section. An
239 individual who withdraws consent under this subsection is not a parent of the child under this
240 subsection.

241 (j) (i) If an individual who intends to be a parent of a child conceived by assisted
242 reproduction dies during the period between the transfer or implantation of a gamete or embryo
243 and the birth of the child, the individual's death does not preclude the establishment of the
244 individual's parentage of the child if the individual otherwise would be a parent of the child

245 under this chapter. (ii) If an individual who consented in a record to assisted reproduction by a
246 person who agreed to give birth to a child dies before a transfer or implantation of gametes or
247 embryos, the deceased individual is a parent of a child conceived by the assisted reproduction
248 only if either the individual consented in a record that if assisted reproduction were to occur after
249 the death of the individual, the individual would be a parent of the child; or the individual's
250 intent to be a parent of a child conceived by assisted reproduction after the individual's death is
251 established by a preponderance of the evidence; and either the embryo is in utero not later than
252 36 months after the individual's death; or the child is born not later than 45 months after the
253 individual's death.

254 (k) If due to a laboratory error the child is not genetically related to either the
255 intended parent or parents or any donor who donated to the intended parent or parents, the
256 intended parent or parents are the parents of the child unless otherwise determined by the court.

257 (l) Genetic testing, including genetic marker testing pursuant to section 11 of chapter
258 209C, shall not be used (i) to challenge the parentage of an individual who is a parent under this
259 section; or (ii) to establish the parentage of an individual who is a donor.

260 (m) (i) An individual giving birth or an individual who is or claims to be a parent
261 under this section may commence a proceeding prior to or after the birth of a child to obtain a
262 judgment (a) Declaring that the intended parent or parents are the parent or parents of the
263 resulting child immediately upon birth of the child and ordering that parental rights and
264 responsibilities vest exclusively in the intended parent or parents immediately upon birth of the
265 child; and (b) Designating the contents of the birth certificate and directing the department of
266 public health to designate the intended parent or parents as the parent or parents of the resulting

267 child. (ii) A judgment issued before the birth of the resulting child does not take effect unless and
268 until the birth of the resulting child. Nothing in this subsection shall be construed to limit the
269 court's authority to issue other orders under any other provision of the general laws. (iii) Neither
270 the state, the department of public health nor the hospital where the child is or expected to be
271 born shall be a necessary party to a proceeding under this section. (iv) The burden of proof in
272 proceedings under this section shall be by a preponderance of the evidence.

273 (n) On request of a party, the court may close a proceeding under this article to the
274 general public. All complaints, pleadings, papers or documents filed pursuant to this section,
275 including docket entries, shall not be available for inspection, unless a judge of probate and
276 family court of the county where such records are kept, for good cause shown, shall otherwise
277 order or unless requested by the child or the parties. All such complaints, pleadings, papers or
278 documents shall be segregated.

279 (o) In a proceeding under this section, the court shall issue a final judgment
280 adjudicating whether a person alleged or claiming to be a parent is the parent of a child. On
281 request of a party and consistent with law of this state other than this section, the court in a
282 proceeding under this section may order the name of the child changed. If the final judgment is at
283 variance with the child's birth certificate, the court shall order the department of public health to
284 issue an amended birth certificate.

285 SECTION 13. Chapter 209C of the General Laws is hereby amended by inserting after
286 section 27 the following sections:

287 Section 28A. Parentage by Consent to Surrogacy Agreement

288 (a) This section shall apply to nonmarital and marital children. This section shall not
289 apply to the birth of a child conceived by sexual intercourse.

290 (b) Venue for proceedings under sections 28A through 28Q is in the county of this
291 state in which: (i) the child resides or is born or expected to be born; (ii) a parent or intended
292 parent resides; (iii) an individual acting as a surrogate resides; or (iv) a proceeding has been
293 commenced for administration of the estate of an individual who is or may be a parent under this
294 chapter.

295 (c) The following terms shall have the following meanings:

296 (i) “Assisted reproduction”, a method of causing pregnancy other than sexual
297 intercourse and includes, but is not limited to, artificial insemination as well as intrauterine,
298 intracervical, or vaginal insemination; donation of gametes; donation of embryos; in vitro
299 fertilization and transfer of embryos; and intracytoplasmic sperm injection.

300 (ii) “Intended parent”, an individual, whether married or unmarried, who manifests an
301 intent to be legally bound as a parent of a child resulting from assisted reproduction.

302 (iii) “Genetic surrogate”, an individual who is at least 21 years of age, is not an
303 intended parent and who agrees to become pregnant through assisted reproduction using the
304 individual’s own gamete, under a genetic surrogacy agreement as provided in this chapter.

305 (iv) “Gestational surrogate”, an individual who is at least 21 years of age, is not an
306 intended parent and who agrees to become pregnant through assisted reproduction using gametes
307 that are not the individual’s own, under a gestational surrogacy agreement as provided in this
308 chapter.

309 (v) “Surrogacy agreement”, an agreement between one or more intended parents and
310 an individual who is not an intended parent in which the person agrees to become pregnant
311 through assisted reproduction and which provides that each intended parent is a parent of a child
312 conceived under the agreement. Unless otherwise specified, surrogacy agreement refers to both a
313 gestational surrogacy agreement and a genetic surrogacy agreement.

314 Section 28B. Eligibility

315 (a) To execute an agreement to act as a gestational or genetic surrogate, an individual
316 shall: (i) be at least 21 years of age; (ii) previously have given birth to at least one child; (iii)
317 complete a medical evaluation related to the surrogacy arrangement by a licensed medical
318 doctor; (iv) complete a mental health consultation by a licensed mental health professional; and
319 (v) have independent legal representation of the individual’s choice throughout the surrogacy
320 agreement regarding the terms of the surrogacy agreement and the potential legal consequences
321 of the agreement and that is paid for by the intended parent or parents.

322 (b) To execute a surrogacy agreement as an intended parent, whether or not
323 genetically related to the child, an individual shall: (i) be at least 21 years of age; (ii) complete a
324 mental health consultation by a licensed mental health professional; and (iii) have independent
325 legal representation of the intended parent’s choice throughout the surrogacy agreement
326 regarding the terms of the surrogacy agreement and the potential legal consequences of the
327 agreement.

328 Section 28C. Process Requirements

329 A surrogacy agreement shall be executed in compliance with the following rules:

330 (a) At least 1 party shall be a resident of the Commonwealth or, if no party is a
331 resident of the Commonwealth, at least 1 medical evaluation or procedure or mental health
332 consultation under the agreement shall occur in this state, or the birth is anticipated to or does
333 occur in this state.

334 (b) An individual acting as a surrogate and each intended parent shall meet the
335 requirements of section 28B.

336 (c) Each intended parent, the individual acting as surrogate, and spouse, if any, of the
337 individual acting as surrogate shall be parties to the agreement.

338 (d) The agreement shall be in a record signed by each party listed in paragraph (c).

339 (e) The individual acting as a surrogate and each intended parent shall receive a copy
340 of the agreement.

341 (f) The signature of each party to the agreement shall be attested by a notary or
342 witnessed. (g) The individual acting as surrogate and, if married, the spouse of the individual
343 acting as surrogate and the intended parent or parents shall have independent legal representation
344 throughout the surrogacy agreement regarding the terms of the surrogacy agreement and the
345 potential legal consequences of the agreement paid for by the intended parent or parents, and
346 each counsel shall be identified in the surrogacy agreement. A single attorney for the individual
347 acting as surrogate and the individual's spouse, if married, and a single attorney for the intended
348 parents is sufficient to meet this requirement, provided the representation otherwise conforms to
349 the Rules of Professional Conduct.

350 (h) The intended parent or parents shall pay for independent legal representation for
351 the individual acting as surrogate and the individual's spouse, if any.

352 (i) The agreement shall be executed before a medical procedure occurs related to
353 attempting to achieve a pregnancy in the individual acting as surrogate, other than the medical
354 evaluation and mental health consultation required by section 28B.

355 Section 28D. Agreement Content Requirements

356 A surrogacy agreement shall comply with the following requirements:

357 (a) An individual acting as surrogate agrees to attempt to become pregnant by means
358 of assisted reproduction.

359 (b) Except as otherwise provided in sections 28J, 28N, and 28O, the individual acting
360 as surrogate and the surrogate's spouse or former spouse, if any, have no claim to parentage of a
361 child conceived by assisted reproduction under the surrogacy agreement.

362 (c) The surrogate's spouse, if any, shall acknowledge and agree to comply with the
363 obligations imposed on the individual acting as surrogate by the surrogacy agreement.

364 (d) Except as otherwise provided in sections 28H, 28K, 28N, and 28O, the intended
365 parent or, if there are 2 intended parents, each one jointly and severally, immediately on birth of
366 the child shall be the exclusive parent or parents of the child, regardless of the number of
367 children born or gender or condition of each child.

368 (e) Except as otherwise provided in sections 28H, 28K, 28N, and 28O, the intended
369 parent or, if there are 2 intended parents, each parent jointly and severally, immediately on birth

370 of the child shall assume responsibility for the financial support of the child, regardless of the
371 number of children born or the gender or condition of each child.

372 (f) The intended parent or parents are liable, and the surrogacy agreement shall
373 include information providing that the intended parent or parents shall be responsible for paying,
374 for the surrogacy-related expenses of the individual acting as surrogate, including expenses for
375 health care provided for assisted reproduction, prenatal care, labor and delivery and for the
376 medical expenses of the resulting child that are not paid by insurance. This subsection shall not
377 be construed to supplant any health insurance coverage that is otherwise available to the
378 individual acting as surrogate or an intended parent for the coverage of health care costs. This
379 subsection shall not change the health insurance coverage of the individual acting as surrogate or
380 the responsibility of the insurance company to pay benefits under a policy that covers an
381 individual acting as surrogate.

382 (g) The surrogacy agreement shall not infringe on the rights of the individual acting
383 as surrogate to make all health and welfare decisions regarding the person, the person's body and
384 the person's pregnancy throughout the duration of the surrogacy arrangement, including during
385 attempts to become pregnant, pregnancy, delivery and post-partum. The agreement shall not
386 infringe upon the right of the individual acting as surrogate to autonomy in medical decision
387 making by, including, but not limited to, requiring the individual acting as surrogate to undergo a
388 scheduled, nonmedically indicated caesarean section or to undergo multiple embryo transfer.
389 Except as otherwise provided by law, any written or oral agreement purporting to waive or limit
390 the rights described in this subsection are void as against public policy.

391 (h) The surrogacy agreement shall include information about each party's right under
392 this article to terminate the surrogacy agreement.

393 (i) A right created under a surrogacy agreement is not assignable and there is no
394 third- party beneficiary of the agreement other than the child.

395 (j) A surrogacy agreement may provide for (i) payment of consideration and
396 reasonable expenses and (ii) reimbursement of specific expenses if the agreement is terminated
397 under this chapter.

398 Section 28E. Effect of subsequent change of marital status on agreement

399 Unless a surrogacy agreement expressly provides otherwise:

400 (a) The marriage of an individual acting as surrogate after the surrogacy agreement is
401 signed by all parties shall not affect the validity of the agreement, the spouse's consent to the
402 surrogacy agreement is not required, and the surrogate's spouse is not a presumed parent of a
403 child conceived by assisted reproduction under the surrogacy agreement.

404 (b) The divorce or annulment of the individual acting as surrogate after the surrogacy
405 agreement is signed by all parties shall not affect the validity of the surrogacy agreement.

406 (c) The marriage of an intended parent after the agreement is signed by all parties
407 shall not affect the validity of a surrogacy agreement, the consent of the spouse of the intended
408 parent is not required, and the spouse of the intended parent is not, based on the surrogacy
409 agreement, a parent of a child conceived by assisted reproduction under the surrogacy
410 agreement.

411 (d) The divorce or annulment of an intended parent after the surrogacy agreement is
412 signed by all parties shall not affect the validity of the surrogacy agreement and the intended
413 parents are the parents of the child.

414 Section 28F. Exclusive Continuing Jurisdiction

415 During the period after the execution of a surrogacy agreement until the occurrence of the
416 earlier of the date of termination of a surrogacy agreement pursuant to the agreement terms or 90
417 days after the birth of a child conceived by assisted reproduction under the surrogacy agreement,
418 a court of this state conducting a proceeding under this chapter has exclusive, continuing
419 jurisdiction over all matters arising out of the agreement. This section does not give the court
420 jurisdiction over a child custody or child support proceeding if jurisdiction is not otherwise
421 authorized by the law of this state other than this chapter.

422 Section 28G. Termination of Gestational Surrogacy Agreement

423 (a) A party to a gestational surrogacy agreement may terminate the agreement, at any
424 time before an embryo transfer, by giving notice of termination in a record to all other parties. If
425 an embryo transfer does not result in a pregnancy, a party may terminate the agreement at any
426 time before a subsequent embryo transfer.

427 (b) Unless a gestational surrogacy agreement provides otherwise, on termination of the
428 agreement under subsection (a), the parties are released from the agreement, except that each
429 intended parent remains responsible for expenses that are reimbursable under the agreement and
430 incurred by the individual acting as gestational surrogate through the date of termination of the
431 agreement.

432 (c) Except in a case involving fraud, neither an individual acting as gestational surrogate
433 nor the surrogate's spouse or former spouse of the person acting as surrogate, if any, is liable to
434 the intended parent or parents for a penalty or liquidated damages, for terminating a gestational
435 surrogacy agreement under this section.

436 Section 28H. Parentage under gestational surrogacy agreement

437 (a) Except as otherwise provided in subsection (c) or section 28I(b) or 28K, on birth of a
438 child conceived by assisted reproduction under a gestational surrogacy agreement, each intended
439 parent is, by operation of law, a parent of the child. Parental rights shall vest exclusively in the
440 intended parent or parents immediately upon birth of the resulting child.

441 (b) Except as otherwise provided in subsection (c) or section 28K, neither an individual
442 acting as gestational surrogate nor the surrogate's spouse or former spouse, if any, is a parent of
443 the child.

444 (c) If a child is alleged to be a genetic child of the individual who agreed to be a
445 gestational surrogate, the court shall, upon finding sufficient evidence, order genetic testing of
446 the child. If the child is a genetic child of the individual who agreed to be a gestational surrogate,
447 parentage shall be determined in accordance with sections 1 through 27 of this chapter.

448 (d) Except as otherwise provided in subsection (c) or subsection (b) of section 28I or
449 section 28J, if, due to a clinical or laboratory error, a child conceived by assisted reproduction
450 under a gestational surrogacy agreement is not genetically related to an intended parent or a
451 donor who donated to the intended parent or parents, each intended parent, and not the individual
452 acting as gestational surrogate and the surrogate's spouse or former spouse, if any, is a parent of
453 the child.

454 Section 28I. Parentage of deceased intended parent under gestational surrogacy
455 agreement

456 (a) Section 28H applies to an intended parent even if the intended parent died during the
457 period between the transfer of a gamete or embryo and the birth of the child.

458 (b) Except as otherwise provided in section 28K, an intended parent is not a parent of a
459 child conceived by assisted reproduction under a gestational surrogacy agreement if the intended
460 parent dies before the transfer of a gamete or embryo unless: (i) the surrogacy agreement
461 provides otherwise; and (ii) the transfer of a gamete or embryo occurs not later than 36 months
462 after the death of the intended parent or birth of the child occurs not later than 45 months after
463 the death of the intended parent.

464 Section 28J. Judgment of parentage under gestational surrogacy agreement

465 (a) Except as otherwise provided in subsection (c) of section 28H or section 28K, before,
466 on or after the birth of a child conceived by assisted reproduction under a gestational surrogacy
467 agreement, any party to the agreement may commence a proceeding for a judgment of parentage:

468 (1) declaring that each intended parent is a parent of the child and ordering that parental
469 rights and duties vest immediately on the birth of the child exclusively in each intended parent;

470 (2) declaring that the individual acting as gestational surrogate and the surrogate's spouse
471 or former spouse, if any, are not the parents of the child;

472 (3) designating the content of the birth record in accordance with chapter 46 and directing
473 the department of public health to designate each intended parent as a parent of the child;

474 (4) to protect the privacy of the child and the parties, declaring that the court record and
475 related pleadings shall be impounded in accordance with this section;

476 (5) if necessary, that the child be surrendered to the intended parent or parents;

477 (6) if necessary, that the hospital where the child will be or has been born, treat the
478 intended parent(s) as the sole legal parent(s) for the purpose of naming and medical decisions;

479 and

480 (7) for other relief the court determines necessary and proper.

481 (b) The court may issue an order or judgment under subsection (a) before and/or after the
482 birth of the child, as requested by the parties.

483 (c) Neither this state or the department of public health nor any town clerk nor the
484 hospital where the child is to be born or is born is a necessary party to a proceeding under
485 subsection (a). Any party to the surrogacy agreement not joining in the action shall be provided
486 with notice of the proceeding.

487 (d) A complaint under this section shall include: (i) sworn affidavits of the parties to the
488 surrogacy agreement and the assisted reproductive physician demonstrating the intent of the
489 parties for the intended parent or parents to be the sole legal parent or parents of the child and
490 that the child was born pursuant to assisted reproduction and (ii) certifications from the attorneys
491 representing the intended parent(s) and the individual acting as gestational surrogate that the
492 requirements of sections 28B, 28C, and 28D have been met. A complaint supported by such
493 affidavits and certifications shall be sufficient to establish parentage, and a hearing shall not be

494 required unless the court requires additional information which cannot reasonably be ascertained
495 without a hearing.

496 (e) Upon a finding that the complaint satisfies subsection (d), a court shall expeditiously,
497 but no later than sixty (60) days from the docketing of the complaint, issue a judgment of
498 parentage. Such parentage judgments issued under this section shall conclusively establish or
499 affirm, where applicable, the parent-child relationship.

500 (f) In the event the certification required by subsection (d) of this section cannot be made
501 because of a technical or nonmaterial deviation from the requirements of sections 28B, 28C, and
502 28D of this chapter, the court may nevertheless enforce the agreement and issue a judgment of
503 parentage if the court determines the agreement is in substantial compliance with the
504 requirements of said sections.

505 (g) On request of a party, the court may close a proceeding under this section to the
506 general public. All complaints, pleadings, papers or documents filed pursuant to this section,
507 including docket entries, shall not be available for inspection, unless a judge of probate and
508 family court of the county where such records are kept, for good cause shown, shall otherwise
509 order or unless requested by the child or the parties. All such complaints, pleadings, papers or
510 documents shall be segregated.

511 Section 28K. Effect of gestational surrogacy agreement

512 (a) A gestational surrogacy agreement that substantially complies with sections 28B,
513 28C, and 28D is enforceable.

514 (b) If a child was conceived by assisted reproduction under a gestational surrogacy
515 agreement that does not substantially comply with sections 28B, 28C, and 28D, the court shall
516 determine the rights and duties of the parties to the agreement consistent with the intent of the
517 parties at the time of execution of the agreement. Each party to the agreement and any individual
518 who at the time of the execution of the agreement was a spouse of a party to the agreement has
519 standing to maintain a proceeding to adjudicate an issue related to the enforcement of the
520 agreement.

521 (c) Except as expressly provided in a gestational surrogacy agreement or subsection (d)
522 or (e) of this section, if the agreement is breached by the individual acting as gestational
523 surrogate or 1 or more intended parents, the non-breaching party is entitled to the remedies
524 available at law or in equity.

525 (d) Specific performance is not a remedy available for breach by an individual acting as
526 gestational surrogate of a provision in the agreement that the individual acting as gestational
527 surrogate be impregnated, terminate or not terminate a pregnancy, or submit to medical
528 procedures.

529 (e) Except as otherwise provided in subsection (d), if an intended parent is determined to
530 be a parent of the child, specific performance is a remedy available for:

531 (i) breach of the agreement by an individual acting as gestational surrogate which
532 prevents the intended parent from exercising immediately on birth of the child the full rights of
533 parentage; or

534 (ii) breach by the intended parent which prevents the intended parent's acceptance,
535 immediately on birth of the child conceived by assisted reproduction under the agreement, of the
536 duties of parentage.

537 Section 28L. Requirements to validate genetic surrogacy agreement

538 (a) Except as otherwise provided in section 28O, a genetic surrogacy agreement shall be
539 validated by a probate and family court. A proceeding to validate the agreement shall be
540 commenced before assisted reproduction related to the surrogacy agreement.

541 (b) The court shall issue an order validating a genetic surrogacy agreement if the court
542 finds that:

543 (i) sections 28B, 28C, and 28D of this chapter are satisfied; and

544 (ii) all parties entered into the agreement voluntarily and understand its terms.

545 (c) An individual who terminates a genetic surrogacy agreement under section 28M shall
546 file notice of the termination with the court and parties. On receipt of the notice, the court shall
547 vacate any order issued under subsection (b).

548 Section 28M. Termination of genetic surrogacy agreement

549 (a) A party to a genetic surrogacy agreement may terminate the agreement as follows: An
550 intended parent or individual acting as genetic surrogate who is a party to the agreement may
551 terminate the agreement at any time before a gamete or embryo transfer by giving notice of
552 termination in a record to all other parties. If a gamete or embryo transfer does not result in a
553 pregnancy, a party may terminate the agreement at any time before a subsequent gamete or
554 embryo transfer. The notice of termination shall be attested by a notary or witnessed.

555 (b) An intended parent or individual acting as genetic surrogate who terminates the
556 agreement after the court issues an order validating the agreement under sections 28L or 28O of
557 this chapter, but before the individual acting as genetic surrogate becomes pregnant by means of
558 assisted reproduction, shall also file notice of the termination with such court.

559 (c) A person may not terminate a validated genetic surrogacy agreement if a gamete or
560 embryo transfer has resulted in a pregnancy.

561 (d) On termination of the genetic surrogacy agreement, the parties are released from all
562 obligations under the agreement except that any intended parent remains responsible for all
563 expenses incurred by the individual acting as genetic surrogate through the date of termination
564 which are reimbursable under the agreement. Unless the agreement provides otherwise, the
565 individual acting as surrogate is not entitled to any non-expense related compensation paid for
566 acting as a surrogate.

567 (e) Except in a case involving fraud, neither an individual acting as genetic surrogate nor
568 the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a
569 penalty or liquidated damages, for terminating a genetic surrogacy agreement under this section.

570 Section 28N. Parentage under validated genetic surrogacy agreement

571 (a) On birth of a child conceived by assisted reproduction under a genetic surrogacy
572 agreement validated under section 28L or 28O of this chapter, each intended parent is, by
573 operation of law, a parent of the resulting child.

574 (b) On birth of a child conceived by assisted reproduction under a genetic surrogacy
575 agreement validated under section 28L or 28O of this chapter, the intended parent or parents

576 shall file a notice with the court that validated the agreement that a child has been born as a result
577 of assisted reproduction. Upon receiving such notice, the court shall immediately, or as soon as
578 practicable, issue an order without notice and hearing:

579 (i) declaring that any intended parent or parents is a parent of a child conceived by
580 assisted reproduction under the agreement and ordering that parental rights and duties vest
581 exclusively in any intended parent;

582 (ii) declaring that the individual acting as genetic surrogate and the surrogate's spouse or
583 former spouse, if any, are not parents of the child;

584 (iii) designating the contents of the birth certificate in accordance with chapter 46 and
585 directing the department of public health to designate any intended parent as a parent of the
586 child;

587 (iv) to protect the privacy of the child and the parties, declaring that the court record is
588 not open to inspection in accordance with section 28J;

589 (v) if necessary, that the child be surrendered to the intended parent or parents; and

590 (vi) for other relief the court determines necessary and proper.

591 (c) Except as otherwise provided in subsection (d) or section 28P, if, due to a clinical or
592 laboratory error, a child conceived by assisted reproduction under a genetic surrogacy agreement
593 is not genetically related to an intended parent or a donor who donated to the intended parent or
594 parents, each intended parent, and not the individual acting as genetic surrogate and the
595 surrogate's spouse or former spouse, if any, is a parent of the child.

596 (d) If a child born to an individual acting as genetic surrogate is alleged not to have been
597 conceived by assisted reproduction, the court may, upon finding sufficient evidence, order
598 genetic testing to determine the genetic parentage of the child. If the child was not conceived by
599 assisted reproduction and the second source of genetic material is the spouse of the individual
600 acting as genetic surrogate, then the surrogate and the spouse shall be found to be the parents of
601 the child. If the second genetic source is an individual other than the spouse of the surrogate,
602 then parentage shall be determined as provided in sections 1 through 27 of this chapter.
603 However, if the second genetic source is an intended parent, the court, in its sole discretion, may
604 determine parentage under sections 1 through 27 of this chapter. Unless the genetic surrogacy
605 agreement provides otherwise, the individual acting as genetic surrogate is not entitled to any
606 non-expense related compensation paid for acting as a surrogate if the child was not conceived
607 by assisted reproduction.

608 (e) If an intended parent fails to file the notice required under subsection (b) of this
609 section, the individual acting as genetic surrogate may file with the court, not later than 60 days
610 after the birth of a child conceived by assisted reproduction under the agreement, notice that the
611 child has been born to the individual acting as genetic surrogate. On proof of a court order issued
612 under sections 28L or 28O of this chapter validating the agreement, the court shall order that
613 each intended parent is a parent of the child.

614 Section 28O. Effect of nonvalidated genetic surrogacy agreement

615 (a) A genetic surrogacy agreement, whether or not in a record, that is not validated under
616 section 28L is enforceable only to the extent provided in this section and section 28Q.

617 (b) If all parties agree, a court may validate a genetic surrogacy agreement after assisted
618 reproduction has occurred but before the birth of a child conceived by assisted reproduction
619 under the agreement if the court finds that:

620 (i) sections 28B, 28C, or 28D of this chapter are satisfied; and

621 (ii) all parties entered into the agreement voluntarily and understand its terms.

622 (c) If a child conceived by assisted reproduction under a genetic surrogacy agreement that
623 is not validated under section 28L or subsection (b) of this section is born, the individual acting
624 as genetic surrogate is not automatically a parent and the court shall adjudicate parentage of the
625 child based on the best interest of the child, taking into account the factors in subsection (a) of
626 section 26 and the intent of the parties at the time of the execution of the agreement.

627 (d) The parties to a genetic surrogacy agreement have standing to maintain a proceeding
628 to adjudicate parentage under this section.

629 Section 28P. Parentage of deceased intended parent under genetic surrogacy agreement

630 (a) Except as otherwise provided in section 28N or 28O on birth of a child conceived by
631 assisted reproduction under a genetic surrogacy agreement, each intended parent is, by operation
632 of law, a parent of the child, notwithstanding the death of an intended parent during the period
633 between the transfer of a gamete or embryo and the birth of the child.

634 (b) Except as otherwise provided in section 28N or 28O, an intended parent is not a
635 parent of a child conceived by assisted reproduction under a genetic surrogacy agreement if the
636 intended parent dies before the transfer of a gamete or embryo unless: (i) the agreement provides
637 otherwise; and (ii) the transfer of the gamete or embryo occurs not later than 36 months after the

638 death of the intended parent, or birth of the child occurs not later than 45 months after the death
639 of the intended parent.

640 Section 28Q. Breach of genetic surrogacy agreement

641 (a) Subject to section 28M(d), if a genetic surrogacy agreement is breached by an
642 individual acting as a genetic surrogate or 1 or more intended parents, the non-breaching party is
643 entitled to the remedies available at law or in equity.

644 (b) Specific performance is not a remedy available for breach by an individual acting as
645 genetic surrogate of a requirement of a validated or nonvalidated genetic surrogacy agreement
646 that the surrogate be impregnated, terminate or not terminate a pregnancy, or submit to medical
647 procedures.

648 (c) Except as otherwise provided in subsection (b), specific performance is a remedy
649 available for: (i) breach of a validated genetic surrogacy agreement by an individual acting as
650 genetic surrogate of a requirement which prevents an intended parent from exercising,
651 immediately upon birth of the child, the full rights of parentage; or (ii) breach by an intended
652 parent which prevents the intended parent's acceptance, immediately upon birth of the child, of
653 the duties of parentage.