

SENATE No. 947

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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:	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>1/19/2023</i>
<i>Adam Scanlon</i>	<i>14th Bristol</i>	<i>1/25/2023</i>
<i>Robyn K. Kennedy</i>	<i>First Worcester</i>	<i>2/7/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/7/2023</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>2/7/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/7/2023</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/7/2023</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/7/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>2/22/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>2/22/2023</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>3/7/2023</i>

SENATE No. 947

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 947) of Julian Cyr, Bruce E. Tarr, Adam Scanlon, Robyn K. Kennedy and other members of the General Court for legislation to ensure legal parentage equality. 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 This section shall apply to nonmarital and marital children. This section shall not apply
183 to the birth of a child conceived by sexual intercourse or assisted reproduction by surrogacy
184 agreement under sections 28A-28Q.

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

189 The following terms shall have the following meanings:

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

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

199 A donor is not a parent of a child conceived through assisted reproduction by virtue of the
200 donor’s genetic connection. A donor may not establish the donor's parentage by signing an
201 acknowledgment of parentage pursuant to this chapter. A donor shall not be entitled to notice.

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

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

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

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

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

239 (i) If an individual who intends to be a parent of a child conceived by assisted
240 reproduction dies during the period between the transfer or implantation of a gamete or embryo
241 and the birth of the child, the individual's death does not preclude the establishment of the
242 individual's parentage of the child if the individual otherwise would be a parent of the child
243 under this chapter. (ii) If an individual who consented in a record to assisted reproduction by a
244 person who agreed to give birth to a child dies before a transfer or implantation of gametes or
245 embryos, the deceased individual is a parent of a child conceived by the assisted reproduction
246 only if either the individual consented in a record that if assisted reproduction were to occur after

247 the death of the individual, the individual would be a parent of the child; or the individual's
248 intent to be a parent of a child conceived by assisted reproduction after the individual's death is
249 established by a preponderance of the evidence; and either the embryo is in utero not later than
250 36 months after the individual's death; or the child is born not later than 45 months after the
251 individual's death.

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

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

258 (i) An individual giving birth or an individual who is or claims to be a parent under this
259 section may commence a proceeding prior to or after the birth of a child to obtain a judgment (a)
260 Declaring that the intended parent or parents are the parent or parents of the resulting child
261 immediately upon birth of the child and ordering that parental rights and responsibilities vest
262 exclusively in the intended parent or parents immediately upon birth of the child; and (b)
263 Designating the contents of the birth certificate and directing the department of public health to
264 designate the intended parent or parents as the parent or parents of the resulting child. (ii) A
265 judgment issued before the birth of the resulting child does not take effect unless and until the
266 birth of the resulting child. Nothing in this subsection shall be construed to limit the court's
267 authority to issue other orders under any other provision of the general laws. (iii) Neither the
268 state, the department of public health nor the hospital where the child is or expected to be born

269 shall be a necessary party to a proceeding under this section. (iv) The burden of proof in
270 proceedings under this section shall be by a preponderance of the evidence.

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

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

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

285 Section 28A. Parentage by Consent to Surrogacy Agreement

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

288 (b) Venue for proceedings under sections 28A through 28Q is in the county of this
289 state in which: (i) the child resides or is born or expected to be born; (ii) a parent or intended

290 parent resides; (iii) an individual acting as a surrogate resides; or (iv) a proceeding has been
291 commenced for administration of the estate of an individual who is or may be a parent under this
292 chapter.

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

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

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

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

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

307 (v) “Surrogacy agreement”, an agreement between one or more intended parents and an
308 individual who is not an intended parent in which the person agrees to become pregnant through
309 assisted reproduction and which provides that each intended parent is a parent of a child

310 conceived under the agreement. Unless otherwise specified, surrogacy agreement refers to both a
311 gestational surrogacy agreement and a genetic surrogacy agreement.

312 Section 28B. Eligibility

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

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

325 Section 28C. Process Requirements

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

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

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

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

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

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

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

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

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

352 Section 28D. Agreement Content Requirements

353 A surrogacy agreement shall comply with the following requirements:

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

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

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

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

365 (e) Except as otherwise provided in sections 28H, 28K, 28N, and 28O, the intended
366 parent or, if there are 2 intended parents, each parent jointly and severally, immediately on birth
367 of the child shall assume responsibility for the financial support of the child, regardless of the
368 number of children born or the gender or condition of each child.

369 (f) The intended parent or parents are liable, and the surrogacy agreement shall
370 include information providing that the intended parent or parents shall be responsible for paying,
371 for the surrogacy-related expenses of the individual acting as surrogate, including expenses for
372 health care provided for assisted reproduction, prenatal care, labor and delivery and for the

373 medical expenses of the resulting child that are not paid by insurance. This subsection shall not
374 be construed to supplant any health insurance coverage that is otherwise available to the
375 individual acting as surrogate or an intended parent for the coverage of health care costs. This
376 subsection shall not change the health insurance coverage of the individual acting as surrogate or
377 the responsibility of the insurance company to pay benefits under a policy that covers an
378 individual acting as surrogate.

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

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

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

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

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

396 Unless a surrogacy agreement expressly provides otherwise:

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

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

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

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

411 Section 28F. Exclusive Continuing Jurisdiction

412 During the period after the execution of a surrogacy agreement until the occurrence of the
413 earlier of the date of termination of a surrogacy agreement pursuant to the agreement terms or 90
414 days after the birth of a child conceived by assisted reproduction under the surrogacy agreement,
415 a court of this state conducting a proceeding under this chapter has exclusive, continuing

416 jurisdiction over all matters arising out of the agreement. This section does not give the court
417 jurisdiction over a child custody or child support proceeding if jurisdiction is not otherwise
418 authorized by the law of this state other than this chapter.

419 Section 28G. Termination of Gestational Surrogacy Agreement

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

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

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

433 Section 28H. Parentage under gestational surrogacy agreement

434 (a) Except as otherwise provided in subsection (c) or section 28I(b) or 28K, on birth of a
435 child conceived by assisted reproduction under a gestational surrogacy agreement, each intended

436 parent is, by operation of law, a parent of the child. Parental rights shall vest exclusively in the
437 intended parent or parents immediately upon birth of the resulting child.

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

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

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

451 Section 28I. Parentage of deceased intended parent under gestational surrogacy
452 agreement

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

455 (b) Except as otherwise provided in section 28K, an intended parent is not a parent of a
456 child conceived by assisted reproduction under a gestational surrogacy agreement if the intended

457 parent dies before the transfer of a gamete or embryo unless: (i) the surrogacy agreement
458 provides otherwise; and (ii) the transfer of a gamete or embryo occurs not later than 36 months
459 after the death of the intended parent or birth of the child occurs not later than 45 months after
460 the death of the intended parent.

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

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

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

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

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

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

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

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

476 and

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

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

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

484 (d) A complaint under this section shall include: (i) sworn affidavits of the parties to the
485 surrogacy agreement and the assisted reproductive physician demonstrating the intent of the
486 parties for the intended parent or parents to be the sole legal parent or parents of the child and
487 that the child was born pursuant to assisted reproduction and (ii) certifications from the attorneys
488 representing the intended parent(s) and the individual acting as gestational surrogate that the
489 requirements of sections 28B, 28C, and 28D have been met. A complaint supported by such
490 affidavits and certifications shall be sufficient to establish parentage, and a hearing shall not be
491 required unless the court requires additional information which cannot reasonably be ascertained
492 without a hearing.

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

497 (f) In the event the certification required by subsection (d) of this section cannot be made
498 because of a technical or nonmaterial deviation from the requirements of sections 28B, 28C, and

499 28D of this chapter, the court may nevertheless enforce the agreement and issue a judgment of
500 parentage if the court determines the agreement is in substantial compliance with the
501 requirements of said sections.

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

508 Section 28K. Effect of gestational surrogacy agreement

509 (a) A gestational surrogacy agreement that substantially complies with sections 28B,
510 28C, and 28D is enforceable.

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

518 (c) Except as expressly provided in a gestational surrogacy agreement or subsection (d)
519 or (e) of this section, if the agreement is breached by the individual acting as gestational

520 surrogate or 1 or more intended parents, the non-breaching party is entitled to the remedies
521 available at law or in equity.

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

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

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

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

534 Section 28L. Requirements to validate genetic surrogacy agreement

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

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

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

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

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

545 Section 28M. Termination of genetic surrogacy agreement

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

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

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

558 (d) On termination of the genetic surrogacy agreement, the parties are released from all
559 obligations under the agreement except that any intended parent remains responsible for all
560 expenses incurred by the individual acting as genetic surrogate through the date of termination
561 which are reimbursable under the agreement. Unless the agreement provides otherwise, the

562 individual acting as surrogate is not entitled to any non-expense related compensation paid for
563 acting as a surrogate.

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

567 Section 28N. Parentage under validated genetic surrogacy agreement

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

571 (b) On birth of a child conceived by assisted reproduction under a genetic surrogacy
572 agreement validated under section 28L or 28O of this chapter, the intended parent or parents
573 shall file a notice with the court that validated the agreement that a child has been born as a result
574 of assisted reproduction. Upon receiving such notice, the court shall immediately, or as soon as
575 practicable, issue an order without notice and hearing:

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

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

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

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

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

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

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

593 (d) If a child born to an individual acting as genetic surrogate is alleged not to have been
594 conceived by assisted reproduction, the court may, upon finding sufficient evidence, order
595 genetic testing to determine the genetic parentage of the child. If the child was not conceived by
596 assisted reproduction and the second source of genetic material is the spouse of the individual
597 acting as genetic surrogate, then the surrogate and the spouse shall be found to be the parents of
598 the child. If the second genetic source is an individual other than the spouse of the surrogate,
599 then parentage shall be determined as provided in sections 1 through 27 of this chapter.

600 However, if the second genetic source is an intended parent, the court, in its sole discretion, may
601 determine parentage under sections 1 through 27 of this chapter. Unless the genetic surrogacy
602 agreement provides otherwise, the individual acting as genetic surrogate is not entitled to any

603 non-expense related compensation paid for acting as a surrogate if the child was not conceived
604 by assisted reproduction.

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

611 Section 28O. Effect of nonvalidated genetic surrogacy agreement

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

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

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

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

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

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

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

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

631 (b) Except as otherwise provided in section 28N or 28O, an intended parent is not a
632 parent of a child conceived by assisted reproduction under a genetic surrogacy agreement if the
633 intended parent dies before the transfer of a gamete or embryo unless: (i) the agreement provides
634 otherwise; and (ii) the transfer of the gamete or embryo occurs not later than 36 months after the
635 death of the intended parent, or birth of the child occurs not later than 45 months after the death
636 of the intended parent.

637 Section 28Q. Breach of genetic surrogacy agreement

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

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

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