

JOINT STATE GOVERNMENT COMMISSION

General Assembly of the Commonwealth of Pennsylvania

The Domestic Relations Code: Proposed Amendments to Title 23 of the Pennsylvania Consolidated Statutes

*Report of the Advisory Committee
on Domestic Relations Law*

April 2024



*Serving the General Assembly of the
Commonwealth of Pennsylvania Since 1937*

REPORT

*The Domestic Relations Code:
Proposed Amendments to Title 23 of the
Pennsylvania Consolidated Statutes*

Project Manager:

Ronald Grenoble, Assistant Counsel

Project Staff:

Lydia L. Hack, Staff Attorney

Wendy L. Baker, Office Manager/Executive Assistant

The report is also available at <http://jsg.legis.state.pa.us>

JOINT STATE GOVERNMENT COMMISSION

Room 108 Finance Building
613 North Street
Harrisburg, PA 17120

Telephone: 717-787-4397
Fax: 717-783-9380
E-mail: jntst02@legis.state.pa.us
Website: <http://jsg.legis.state.pa.us>

The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.¹

A fourteen-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission. The seven Executive Committee members from the House of Representatives are the Speaker, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. The seven Executive Committee members from the Senate are the President Pro Tempore, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. By statute, the Executive Committee selects a chairman of the Commission from among the members of the General Assembly. Historically, the Executive Committee has also selected a Vice-Chair or Treasurer, or both, for the Commission.

The studies conducted by the Commission are authorized by statute or by a simple or joint resolution. In general, the Commission has the power to conduct investigations, study issues, and gather information as directed by the General Assembly. The Commission provides in-depth research on a variety of topics, crafts recommendations to improve public policy and statutory law, and works closely with legislators and their staff.

A Commission study may involve the appointment of a legislative task force, composed of a specified number of legislators from the House of Representatives or the Senate, or both, as set forth in the enabling statute or resolution. In addition to following the progress of a particular study, the principal role of a task force is to determine whether to authorize the publication of any report resulting from the study and the introduction of any proposed legislation contained in the report. However, task force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in a report.

Some studies involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. When a study involves an advisory committee, the Commission seeks consensus among the members.² Although an advisory committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations contained in a study report.

¹ Act of July 1, 1937 (P.L.2460, No.459); 46 P.S. §§ 65–69.

² Consensus does not necessarily reflect unanimity among the advisory committee members on each individual policy or legislative recommendation. At a minimum, it reflects the views of a substantial majority of the advisory committee, gained after lengthy review and discussion.

Over the years, nearly one thousand individuals from across the Commonwealth have served as members of the Commission's numerous advisory committees or have assisted the Commission with its studies. Members of advisory committees bring a wide range of knowledge and experience to deliberations involving a particular study. Individuals from countless backgrounds have contributed to the work of the Commission, such as attorneys, judges, professors and other educators, state and local officials, physicians and other health care professionals, business and community leaders, service providers, administrators and other professionals, law enforcement personnel, and concerned citizens. In addition, members of advisory committees donate their time to serve the public good; they are not compensated for their service as members. Consequently, the Commonwealth receives the financial benefit of such volunteerism, along with their shared expertise in developing statutory language and public policy recommendations to improve the law in Pennsylvania.

The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly. Certain studies have specific timelines for the publication of a report, as in the case of a discrete or timely topic; other studies, given their complex or considerable nature, are ongoing and involve the publication of periodic reports. Completion of a study, or a particular aspect of an ongoing study, generally results in the publication of a report setting forth background material, policy recommendations, and proposed legislation. However, the release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair or Vice-Chair of the Commission, of all the findings, recommendations, or conclusions contained in the report. A report containing proposed legislation may also contain official comments, which may be used to construe or apply its provisions.³

Since its inception, the Commission has published over 450 reports on a sweeping range of topics, including administrative law and procedure; agriculture; athletics and sports; banks and banking; commerce and trade; the commercial code; crimes and offenses; decedents, estates, and fiduciaries; detectives and private police; domestic relations; education; elections; eminent domain; environmental resources; escheats; fish; forests, waters, and state parks; game; health and safety; historical sites and museums; insolvency and assignments; insurance; the judiciary and judicial procedure; labor; law and justice; the legislature; liquor; mechanics' liens; mental health; military affairs; mines and mining; municipalities; prisons and parole; procurement; state-licensed professions and occupations; public utilities; public welfare; real and personal property; state government; taxation and fiscal affairs; transportation; vehicles; and workers' compensation.

Following the completion of a report, subsequent action on the part of the Commission may be required, and, as necessary, the Commission will draft legislation and statutory amendments, update research, track legislation through the legislative process, attend hearings, and answer questions from legislators, legislative staff, interest groups, and constituents.

³ 1 Pa.C.S. § 1939.

LEGISLATIVE TASK FORCE MEMBERS

Senate of Pennsylvania

Aging & Youth Committee

Senator Judy Ward
Chair

Senator Maria Collett
Minority Chair

Judiciary Committee

Senator Lisa Baker
Chair

Senator Steven J. Santarsiero
Minority Chair

House of Representatives

Children & Youth Committee

Representative Donna Bullock
Chair

Representative Barry J. Jozwiak
Republican Chair

Judiciary Committee

Representative Tim Briggs
Chair

Representative Rob W. Kauffman
Republican Chair

ADVISORY COMMITTEE MEMBERS

Chair

Honorable Emanuel A. Bertin (ret.)

Mark R. Ashton, Esquire

Michael E. Bertin, Esquire

Honorable Daniel J. Clifford

Maria P. Cognetti, Esquire

Mark B. Dischell, Esquire

Mary Cushing Doherty, Esquire

Honorable Kim Diane Eaton

Frederick N. Frank, Esquire

Stephanie A. Gonzalez, F., Esquire

David N. Hofstein, Esquire

John C. Howett Jr., Esquire

Daniel J. Bell-Jacobs, Esquire

David L. Ladov, Esquire

James E. Mahood, Esquire

Catherine M. McFadden, Esquire

Sandra L. Meilton, Esquire

Charles J. Meyer, Esquire

Mark A. Momjian, Esquire

Sophia P. Paul, Esquire

Honorable Katherine B. L. Platt

James H. Richardson, Esquire

Megan Riesmeyer, Esquire



General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION

Room 108 – Finance Building
Harrisburg, Pa 17120

717-787-4397
Fax 717-783-9380
<http://jsg.legis.state.pa.us/>

April 2024

Executive Committee

Senate Members

Kim L. Ward
President Pro Tempore
Joseph A. Pittman
Majority Leader
Jay Costa, Jr.
Minority Leader
Ryan P. Aument
Majority Whip
Christine M. Tartaglione
Minority Whip
Kristin Phillips-Hill
Chair, Majority Caucus
Wayne D. Fontana
Chair, Minority Caucus

House Members

Joanna E. McClinton
Speaker
Matthew D. Bradford
Majority Leader
Bryan D. Cutler
Minority Leader
Dan L. Miller
Majority Whip
Timothy J. O'Neal
Minority Whip
Michael H. Schlossberg
Chair, Majority Caucus
George Dunbar
Chair, Minority Caucus

Administrative Staff

Glenn J. Pasewicz
Executive Director
Yvonne M. Hursh
Counsel

To Members of the General Assembly:

We are pleased to release the latest report of the Domestic Relations Law (DRL) Task Force and Advisory Committee, as authorized by Senate Resolution No. 43 of 1993. This edition proposes several amendments initially developed by DRL subcommittees before being presented to the full Advisory Committee for deliberation and approval prior to presenting it to the legislative Task Force.

Recommendations along with proposed draft legislation in the areas of Custody, Developing Issues in Family Law, Divorce, and the Uniform Parentage Act are included herein for the General Assembly's consideration.

The full report is available at <http://jsg.legis.state.pa.us>

Respectfully submitted,

Glenn J. Pasewicz
Executive Director

TABLE OF CONTENTS

INTRODUCTION	1
CUSTODY	3
Report of the Subcommittee on Custody	3
DEVELOPING ISSUES IN FAMILY LAW	11
Report of the Subcommittee on Developing Issues in Family Law	11
Companion Animals	11
18 Pa.C.S. ch. 57 (relating to wiretapping and electronic surveillance)	13
DIVORCE	17
Report of the Subcommittee on Divorce	17
UNIFORM PARENTAGE ACT	23
Report of the Subcommittee on Uniform Parentage Act	23
Assisted Reproduction and Gestational Agreements	24
Parentage Disputes	45

INTRODUCTION

Functioning under Senate Resolution no. 43 (Sess. of 1993), the Advisory Committee on Domestic Relations Law began convening in 2019 to prepare the proposed amendments in this report. Subcommittees were formed for matters relating to custody, developing issues in family law, divorce and the Uniform Parentage Act. The proposed amendments in this report were developed at the subcommittee level before being submitted to the full advisory committee for its deliberation and approval.

Report of the Subcommittee on Custody

The proposed amendment to 23 Pa.C.S. § 5337 (relating to relocation) would repeal and replace that section, primarily to reverse the burden of filing the petition for relocation from the non-relocating party to the relocating party and streamline the process. The term “party proposing the relocation” would be changed to “relocating party.” The proposed revisions are intended to streamline the process and to be fairer to the nonrelocating party. Rather than requiring the nonrelocating party to initiate the proceedings by filing a petition to oppose a relocation, a notice would inform the nonrelocating party to timely object or be foreclosed from objecting to the relocation.

An added provision would encourage usage of “advanced technology such as video conferencing and telephonic means to enable the pretrial conference to occur as quickly as possible.” The burden of proof would remain with the relocating party, but mitigation would be expanded to the whole section.

The relocating party will either file a Petition for Relocation and Modification or a Custody Complaint with Request to Relocate if no custody action has been filed previously. Service should be not later than 60 days before the proposed relocation or the 10th day after the relocating party knows of the relocation. The contents of the relocation filing are outlined in subsection (d). If the nonrelocating party objects, the nonrelocating party must file an Answer accordingly within 20 days. If no Answer is filed, the court shall presume the nonrelocating party has consented to the proposed relocation, and the court shall enter an order.

After a complaint and answer are filed, the court shall hold an expedited pretrial conference, using advanced technology (video and telephone conferences) if possible. Ten days prior to this pretrial conference, the parties shall file pretrial statements. If no agreement is reached at the pretrial conference, the court shall hold a full-factors hearing on an expedited basis. If the court approves the proposed relocation, it shall modify the existing order or establish the terms and conditions of a custody order. The relocation factors appear in subsection (g). Based on these relocation factors, the relocating party has the burden of proof to show that the relocation serves the best interests of the child. Subsection (i) outlines judicial considerations resultant from failure to comply with the entire section. Subsection (j) addresses mitigation. Subsection (k) states: “If a party relocates with the child prior to a full expedited hearing, the court shall not confer any presumption in favor of the relocation.”

AN ACT⁴

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, in child custody, providing for relocation; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5337 of Title 23 of the Pennsylvania Consolidated Statutes is repealed:

[§ 5337. Relocation.

(a) Applicability.--This section applies to any proposed relocation.

(b) General rule.--No relocation shall occur unless:

(1) every individual who has custody rights to the child consents to the proposed relocation; or

(2) the court approves the proposed relocation.

(c) Notice.--

(1) The party proposing the relocation shall notify every other individual who has custody rights to the child.

(2) Notice, sent by certified mail, return receipt requested, shall be given no later than:

(i) the 60th day before the date of the proposed relocation; or

(ii) the tenth day after the date that the individual knows of the relocation, if:

(A) the individual did not know and could not reasonably have known of the relocation in sufficient time to comply with the 60-day notice; and

(B) it is not reasonably possible to delay the date of relocation so as to comply with the 60-day notice.

(3) Except as provided by section 5336 (relating to access to records and information), the following information, if available, must be included with the notice of the proposed relocation:

(i) The address of the intended new residence.

(ii) The mailing address, if not the same as the address of the intended new residence.

(iii) Names and ages of the individuals in the new residence, including individuals who intend to live in the new residence.

(iv) The home telephone number of the intended new residence, if available.

(v) The name of the new school district and school.

(vi) The date of the proposed relocation.

(vii) The reasons for the proposed relocation.

(viii) A proposal for a revised custody schedule.

(ix) Any other information which the party proposing the relocation deems appropriate.

(x) A counter-affidavit as provided under subsection (d)(1) which can be used to object to the proposed relocation and the modification of a custody order.

(xi) A warning to the nonrelocating party that if the nonrelocating party does not file with the court an objection to the proposed relocation within 30 days after receipt of the notice, that party shall be foreclosed from objecting to the relocation.

⁴ “Language intended to be taken out of an existing provision is enclosed in brackets and new language to be added is underscored.” 101 Pa. Code § 15.222.

(4) If any of the information set forth in paragraph (3) is not known when the notice is sent but is later made known to the party proposing the relocation, then that party shall promptly inform every individual who received notice under this subsection.

(d) Objection to proposed relocation.--

(1) A party entitled to receive notice may file with the court an objection to the proposed relocation and seek a temporary or permanent order to prevent the relocation. The nonrelocating party shall have the opportunity to indicate whether he objects to relocation or not and whether he objects to modification of the custody order or not. If the party objects to either relocation or modification of the custody order, a hearing shall be held as provided in subsection (g)(1). The objection shall be made by completing and returning to the court a counter-affidavit, which shall be verified subject to penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), in substantially the following form:

COUNTER-AFFIDAVIT REGARDING RELOCATION

This proposal of relocation involves the following child/children:

Child's Name	Age	Currently residing at:
.....
Child's Name	Age	Currently residing at:
.....
Child's Name	Age	Currently residing at:
.....

I have received a notice of proposed relocation and

1. I do not object to the relocation and I do not object to the modification of the custody order consistent with the proposal for revised custody schedule as attached to the notice.
2. I do not object to the relocation, but I do object to modification of the custody order, and I request that a hearing be scheduled:
 - a. Prior to allowing (name of child/children) to relocate.
 - b. After the child/children relocate.
3. I do object to the relocation and I do object to the modification of the custody order, and I further request that a hearing be held on both matters prior to the relocation taking place.

.....
I understand that in addition to checking (2) or (3) above, I must also file this notice with the court in writing and serve it on the other party by certified mail, return receipt requested. If I fail to do so within 30 days of my receipt of the proposed relocation notice, I shall be foreclosed from objecting to the relocation.
.....

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date:
.....

(2) An objection made under this subsection shall be filed with the court within 30 days of receipt of the proposed relocation notice and served on the other party by certified mail, return receipt requested.

(3) If notice of the proposed relocation has been properly given and no objection to the proposed relocation has been filed in court, then it shall be presumed that the nonrelocating party has consented to the proposed relocation.

(4) If a party who has been given proper notice does not file with the court an objection to the relocation within 30 days after receipt of the notice but later petitions the court for review of the custodial arrangements, the court shall not accept testimony challenging the relocation.

(e) Confirmation of relocation.--If no objection to the proposed relocation is filed under subsection (d), the party proposing the relocation shall file the following with the court prior to the relocation:

(1) an affidavit stating that the party provided notice to every individual entitled to notice, the time to file an objection to the proposed relocation has passed and no individual entitled to receive notice has filed an objection to the proposed relocation;

(2) Proof that proper notice was given in the form of a return receipt with the signature of the addressee and the full notice that was sent to the addressee.

(3) a petition to confirm the relocation and modify any existing custody order; and

(4) a proposed order containing the information set forth in subsection (c)(3).

(f) Modification of custody order.--If a counter-affidavit regarding relocation is filed with the court which indicates the nonrelocating party both has no objection to the proposed relocation and no objection to the modification of the custody order consistent with the proposal for revised custody schedule, the court may modify the existing custody order by approving the proposal for revised custody schedule submitted under subsection (c)(3)(viii), and shall specify the method by which its future modification can be made if desired by either party. If a counter-affidavit regarding relocation is filed with the court which indicates the nonrelocating party objects either to the proposed relocation or to the modification of the custody order consistent with the proposal for revised custody schedule, the court shall modify the existing custody order only after holding a hearing to establish the terms and conditions of the order pursuant to the relocation indicating the rights, if any, of the nonrelocating parties.

(g) Hearing.--

(1) Except as set forth in paragraph (3), the court shall hold an expedited full hearing on the proposed relocation after a timely objection has been filed and before the relocation occurs.

(2) Except as set forth in paragraph (3), the court may, on its own motion, hold an expedited full hearing on the proposed relocation before the relocation occurs.

(3) Notwithstanding paragraphs (1) and (2), if the court finds that exigent circumstances exist, the court may approve the relocation pending an expedited full hearing.

(4) If the court approves the proposed relocation, it shall:

(i) modify any existing custody order; or

(ii) establish the terms and conditions of a custody order.

(h) Relocation factors.--In determining whether to grant a proposed relocation, the court shall consider the following factors, giving weighted consideration to those factors which affect the safety of the child:

(1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.

(2) The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.

(3) The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.

(4) The child's preference, taking into consideration the age and maturity of the child.

(5) Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.

(6) Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.

(7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.

(8) The reasons and motivation of each party for seeking or opposing the relocation.

(9) The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.

(10) Any other factor affecting the best interest of the child.

(i) Burden of proof.--

(1) The party proposing the relocation has the burden of establishing that the relocation will serve the best interest of the child as shown under the factors set forth in subsection (h).

(2) Each party has the burden of establishing the integrity of that party's motives in either seeking the relocation or seeking to prevent the relocation.

(j) Failure to provide reasonable notice.--The court may consider a failure to provide reasonable notice of a proposed relocation as:

(1) a factor in making a determination regarding the relocation;

(2) a factor in determining whether custody rights should be modified;

(3) a basis for ordering the return of the child to the nonrelocating party if the relocation has occurred without reasonable notice;

(4) sufficient cause to order the party proposing the relocation to pay reasonable expenses and counsel fees incurred by the party objecting to the relocation; and

(5) a ground for contempt and the imposition of sanctions against the party proposing the relocation.

(k) Mitigation.--Any consideration of a failure to provide reasonable notice under subsection (i) shall be subject to mitigation if the court determines that such failure was caused in whole, or in part, by abuse.

(l) Effect of relocation prior to hearing.--If a party relocates with the child prior to a full expedited hearing, the court shall not confer any presumption in favor of the relocation.]

Section 2. Section 5323(c) of Title 23 is amended to read:

§ 5323. Award of custody.

* * *

(c) Notice.--Any custody order shall include notice of a party's obligations under section [5337] **5337.1** (relating to relocation).

* * *

Section 3. Title 23 is amended by adding a section to read:

§ 5337.1. Relocation.

(a) Applicability.--This section applies to any proposed relocation.

(b) General rule.--No relocation shall occur unless the relocating party has filed a Custody Complaint with Request to Relocate if there is no existing custody action or a Petition for Relocation and Modification if there is an existing custody action, and:

(1) every individual who has custody rights to the child consents to the proposed relocation by written agreement; or

(2) the court approves the proposed relocation.

(c) Service.--

(1) The relocating party shall serve the Custody Complaint with Request to Relocate or Petition for Relocation and Modification by original process.

(2) The Custody Complaint with Request to Relocate or Petition for Relocation and Modification shall be served no later than:

(i) the sixtieth (60th) day before the date of the proposed relocation; or

(ii) the tenth (10th) day after the date that the relocating party knows of the relocation, if:

(A) the relocating party did not know and could not reasonably have known of the relocation in sufficient time to comply with the 60-day requirement; and

(B) it is not reasonably possible to delay the date of relocation so as to comply with the 60-day requirement.

(d) Contents of Custody Complaint with Request to Relocate or Petition for Relocation and Modification.--

(1) Except as provided by section 5336 (relating to access to records and information), the following information, if available, must be included in the Custody Complaint with Request to Relocate or Petition for Relocation and Modification:

(i) A Notice on the front of the document containing a warning to the nonrelocating party that if the nonrelocating party does not file an answer to the Custody Complaint with Request to Relocate or Petition for Relocation and Modification within 20 days after service of the Custody Complaint with Request to Relocate or Petition for Relocation and Modification with the court, the nonrelocating party shall be foreclosed from objecting to the relocation.

(ii) The address of the intended new residence.

(iii) The mailing address, if not the same as the address of the intended new residence.

(iv) Names and ages of the individuals in the new residence, including individuals who intend to live in the new residence.

(v) The home telephone number of the intended new residence, if available.

(vi) The name of the new school district and school.

(vii) The date of the proposed relocation.

(viii) The reasons for the proposed relocation.

(ix) A proposal for a revised custody schedule.

(x) Any other information which the party proposing the relocation deems appropriate.

(xi) All information regularly included in a Custody Complaint pursuant to Pa.R.C.P. 1915.3 and 1915.15 when filing a Custody Complaint with Request to Relocate.

(2) If any of the information set forth in paragraph (d)(1) is not known when the Custody Complaint with Request to Relocate or Petition for Relocation and Modification is filed with the court but later becomes known to the relocating party, then that party shall promptly file an amended Custody Complaint with Request to Relocate or Amended Petition for Relocation and Modification with the information included.

(e) Objection to proposed relocation.--

(1) If the nonrelocating party objects to the relocation within twenty (20) days of service of the Custody Complaint with Request to Relocate or Petition for Relocation and Modification, the nonrelocating party shall file an Answer objecting to the proposed relocation. If the nonrelocating party objects to either relocation or modification of the custody order, a full-factors hearing shall be held as provided in subsection (f).

(2) If no Answer objecting to the proposed relocation has been timely filed in court, then it shall be presumed that the nonrelocating party has consented to the proposed relocation and the court shall enter an appropriate order.

(f) Expedited pretrial conference and hearing.—

(1) After the relocating party files a Custody Complaint with Request to Relocate or Petition for Relocation and Modification and an Answer is filed, the court shall hold an expedited pretrial conference. The court is encouraged to use advanced technology such as video conferencing and telephonic means to enable the pretrial conference to occur as quickly as possible. Ten (10) days prior to the expedited pretrial conference, the parties shall file pretrial statements with the court, setting forth a factual and procedural history of the case and an analysis of the custody factors and relocation factors.

(2) If no agreement is reached at the pretrial conference, the court shall hold a full-factors hearing on an expedited basis.

(3) If the court approves the proposed relocation, it shall:

(i) modify any existing custody order; or

(ii) establish the terms and conditions of a custody order.

(4) If the court does not approve the relocation, it shall enter an appropriate order.

(g) Relocation factors.--In determining whether to grant a proposed relocation, the court shall consider the following factors, giving weighted consideration to those factors which affect the safety of the child:

(1) The nature, quality, extent of involvement and duration of the child's relationship with the relocating party and with the nonrelocating party, siblings and other significant persons in the child's life.

(2) The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.

(3) The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.

(4) The child's preference, taking into consideration the age and maturity of the child.

(5) Whether there is an established pattern of conduct of either party to promote

or thwart the relationship of the child and the other party.

(6) Whether the relocation will enhance the general quality of life for the relocating party, including, but not limited to, financial or emotional benefit or educational opportunity.

(7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.

(8) The reasons and motivation of each party for seeking or opposing the relocation.

(8.1) If applicable, the reason and motivation of the relocating party for not filing a Custody Complaint with Request to Relocate or Petition for Relocation and Modification earlier to the extent the reason and motivation impacts the best interests of the child.

(9) The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.

(10) Any other factor affecting the best interest of the child.

(h) Burden of proof.--

(1) The relocating party has the burden of establishing that the relocation will serve the best interest of the child as shown under the factors set forth in subsection (g).

(2) Each party has the burden of establishing the integrity of that party's motives in either seeking the relocation or seeking to prevent the relocation.

(i) Failure to comply.--The court may consider a failure to comply with this section as:

(1) a factor in making a determination regarding the relocation;

(2) a factor in determining whether custody rights should be modified;

(3) a basis for ordering the return of the child to the nonrelocating party if the relocation has occurred prior to the filing of a Custody Complaint with Request to Relocate or Petition for Relocation and Modification;

(4) sufficient cause to order the relocating party to pay reasonable expenses and counsel fees incurred by the nonrelocating party; and

(5) a ground for contempt and the imposition of sanctions against the relocating party.

(j) Mitigation.--Any consideration of a failure to comply with this section shall be subject to mitigation if the court determines that such failure was caused in whole, or in part, by abuse.

(k) Effect of relocation prior to hearing.--If a party relocates with the child prior to a full expedited hearing, the court shall not confer any presumption in favor of the relocation.

COMMENT

Rule 1930.4 of the Pennsylvania Rules of Civil Procedure governs the service of original process in domestic relations matters. Except for paragraph (8.1) in subsection (g), the relocation factors are from former § 5337(h) with the same numbered paragraphs.

DEVELOPING ISSUES IN FAMILY LAW

Report of the Subcommittee on Developing Issues in Family Law

Companion Animals

“In 2023, around 66 percent of American households reported that they owned at least one pet”⁵ Historically, addressing the custody of a pet in equitable distribution or otherwise has received mixed resolutions, including that many jurisdictions will not entertain discussion of this topic. The subcommittee on developing issues in family law reviewed other states’ approaches to pets and companion animals. The proposed amendment would allow the parties to enter into an enforceable agreement. In the equitable distribution provision, the court shall provide for the possession or care or both considering a list of seven, logical (among other relevant) factors. The proposed factors are based on other states’ statutes.

Presently animals are chattel in equitable distribution and may be awarded. However, many judges choose not to address pet possession issues. A pet custody schedule is not being requested by the proposed amendment. Other states have enacted or considered similar legislation.

As with other issues, a judge could refer pet issues to a master. Parties should have an avenue of consideration for this important issue in our equitable judicial system. This proposed amendment is similar to House Bill no. 1108⁶ but differs accordingly:

Owners’ children would be explicitly recognized in the legislative findings and intent (relating to companion animals).

The definition of companion animal is narrower because it doesn’t have the possible exception for animals used for business or agriculture.

The equitable distribution of a companion animal doesn’t have a rebuttable presumption for a service animal but adds a seventh factor that likely would achieve the same result.

⁵ Statista, Pet ownership in the U.S.—statistics & facts, <https://www.statista.com/topics/1258/pets/#topicOverview> (2023).

⁶ Sess. of 2023, Printer’s no. 1677;

<https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2023&sessInd=0&billBody=H&billTyp=B&billNbr=1108&pn=1677>.

AN ACT⁷

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, in preliminary provisions relating to divorce, further providing for legislative findings and intent, for definitions and for effect of agreement between parties; and, in property rights, further providing for equitable division of marital property.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 3102(b) of Title 23 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding a subsection to read:

§ 3102. Legislative findings and intent.

* * *

(a.1) Companion animals.--The Commonwealth recognizes that companion animals are living beings that are generally regarded as cherished family members that offer their owners and their owners' children companionship, security and assistance. Companion animals occupy a special category of personal property which does not include inanimate personal property. Therefore, it is the policy of the Commonwealth that special consideration be extended to companion animals when the division of personal property is planned or determined under this part.

(b) Construction of part.--The objectives **and policies** set forth in [subsection (a)] **subsections (a) and (a.1)** shall be considered in construing provisions of this part and shall be regarded as expressing the legislative intent.

Section 2. Section 3103 of Title 23 is amended by adding a definition to read:

§ 3103. Definitions.

The following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Companion animal." Includes an animal that:

(1) is a domesticated, living being commonly referred to as a pet; or

(2) has been bought, bred, raised or otherwise acquired in accordance with applicable law for the primary purpose of providing the owner with assistance in relation to a disability, security or companionship, rather than for business or agricultural purposes.

* * *

Section 3. Sections 3105 and 3502 of Title 23 are amended by adding subsections to read:

§ 3105. Effect of agreement between parties.

⁷ "Language intended to be taken out of an existing provision is enclosed in brackets and new language to be added is underscored." 101 Pa. Code § 15.222.

* * *

(d) Possession and care of companion animal.--Notwithstanding any other provision in this part, parties may enter into an enforceable agreement regarding the possession or care, or both, of a companion animal. Among other things, the agreement may specify the following:

(1) The periods of time during which each party will possess the companion animal.

(2) The financial responsibility of each party regarding the care of the companion animal.

* * *

§ 3502. Equitable division of marital property.

* * *

(g) Companion animal.--Upon the request of either party, the court shall provide for the possession or care, or both, of a companion animal of the parties. The court shall consider all relevant factors, including, but not limited to, the following:

(1) Whether the companion animal was acquired prior to or during the marriage.

(2) The basic daily needs of the companion animal.

(3) The party who generally facilitates veterinary care for the companion animal.

(4) The party who generally provides the companion animal with social interaction.

(5) The party who generally ensures the compliance with State and local regulations regarding the companion animal.

(6) The party who provides the greater ability to financially support the companion animal.

(7) The relationship the companion animal has with the children of the parties and which party will insure the children have continuing contact with the companion animal.

Section 4. This act shall take effect in 90 days.

18 Pa.C.S. ch. 57 (relating to wiretapping and electronic surveillance)

Generally, oral communications in the Commonwealth are not subject to interception when the speaker does not expect it to be intercepted under circumstances justifying this expectation.⁸ The statutory exception to the general, statutory prohibition of intercepting oral communications is when all parties to the communication consent in advance,⁹ but this is one of 19 enumerated, statutory exceptions to the interception of oral communications, which is otherwise a felony of the 3d degree.¹⁰ The proposed amendment would add an exception for the recording of a child by “[a] parent, guardian, person *in loco parentis* or childcare custodian, including daycare worker, teacher

⁸ 18 Pa.C.S. § 5702.

⁹ *Id.* § 5704(4).

¹⁰ *Id.* § 5703. The crime extends beyond intentional interception to include intentional disclosure or use of illegally intercepted oral communications..

or other person having temporary care of a minor child with parental or other lawful authority.” Currently, if an individual records another individual without his or her express or implied consent, the person has committed a third-degree felony *per se*, inadmissible in any proceeding,¹¹ and the recording subjects the recorder to a civil damage claim.¹² The proposed amendment would allow the recording without penalties of law.

The comment notes that the misuse of recording a child may be considered in determining sanctions as opposed to making the recording of a child a crime. In 2015, two attorneys from Beaver County were indicted for referencing child recordings created by their clients. One attorney was charged for playing a recording from his cell phone, allegedly illegally obtained. Another attorney was charged with including a copy of a transcript of allegedly illegally recorded conversations. Neither of these prosecutions proceeded to conviction, but a Dauphin County attorney was convicted of similar charges decades ago. This behavior should not be addressed criminally. The admittance of recorded evidence by a child should be an evidentiary rather than criminal issue. An appropriate sanction for misuse would be a civil penalty.

Many individuals are under a legal duty to report alleged abuse, so why should it be a crime to present the best evidence—a recording of a child disclosing alleged abuse?

AN ACT¹³

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in wiretapping and electronic surveillance, further providing for exceptions to prohibition of interception and disclosure of communications.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5704 of Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a paragraph to read:

§ 5704. Exceptions to prohibition of interception and disclosure of communications.

It shall not be unlawful and no prior court approval shall be required under this chapter for:

* * *

(20) A parent, guardian, person *in loco parentis* or childcare custodian, including daycare worker, teacher or other person having temporary care of a minor child with parental or other lawful authority, to intercept or otherwise make an aural recording of such minor child. Unless otherwise properly excluded by a court or administrative tribunal, any such recording shall be fully admissible in evidence in

¹¹ *Id.* § 5721.1.

¹² *Id.* § 5725(a).

¹³ “Language intended to be taken out of an existing provision is enclosed in brackets and new language to be added is underscored.” 101 Pa. Code § 15.222.

any legal or administrative proceeding, if relevant, upon proper authentication of such recording as otherwise provided in law.

COMMENT

Federal preemption, allowing aural recording with single consent, does not apply to situation of a parent-child recording and none of the present statutory exclusions apply to a parent-child recording under prior Pennsylvania law. Theories of vicarious consent have been argued to apply, or not, to permit parental recording in some jurisdictions. Other issues may arise where parents share legal custody and one parent seeks to record a child for use in a child custody proceeding involving the other parent who objects to the recording. Paragraph (20) makes clear that there will be no criminal liability for custodial recordings of minor children and that such recordings are admissible in legal and administrative proceedings, if relevant and properly authenticated. Any recording found to be made in bad faith or abusive to a minor child's best interests can be otherwise sanctioned by the court or administrative body in the proceeding in which admission is sought without criminal penalty or blanket evidential exclusion.

Report of the Subcommittee on Divorce

The subcommittee on divorce prepared amendments proposed for 23 Pa.C.S. ch. 35 (relating to property rights).

- § 3501 (relating to definitions) would add two sub§§ to define dissipation of marital property or marital income and marital debt.
- § 3502 (relating to equitable division of marital property) would be extended to marital debt.
- § 3502(c) would be amended to require judicial consideration of statutory factors to grant exclusive possession of a marital residence.
- § 3502(d.1) would be added to require the judiciary to address a security for deferred pension distributions.
- § 3502(f) would be amended to extend partial distributions to marital debt and subject judicial orders for partial distributions to additional statutory paragraphs.

AN ACT¹⁴

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, in property rights, further providing for definitions and equitable division of marital property and marital debt.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 3501 of Title 23 of the Pennsylvania Consolidated Statutes is amended by adding subsections to read:

§ 3501. Definitions.

* * *

¹⁴ “Language intended to be taken out of an existing provision is enclosed in brackets and new language to be added is underscored.” 101 Pa. Code § 15.222.

(d) Dissipation of marital property or marital income.--As used in this chapter, "dissipation of marital property" and "dissipation of marital income" means that through bad faith or other intentional misconduct, with inadequate consideration, and without consent of the other spouse, one of the spouses loses, destroys, transfers, gifts or expends marital property or marital income for a nonmarital purpose during one of the following periods:

(1) during the separation of the parties;

(2) during the 12 months immediately preceding separation; or

(3) prior to the 12 months immediately preceding separation if the injured spouse did not know and reasonably could not have known about the dissipation prior to any time during or after the 12 months immediately preceding separation.

(e) Marital debt.—As used in this chapter, "marital debt" means all debt incurred by one or both parties during the marriage and prior to separation.

COMMENT

Subsection (d) is new and based partly on Section 4:10 of the ALI Principles of the Law of Family Dissolution and partly on the law of other states. The definition is limited to marital property and marital income. It should be noted that if a party dissipates the increased value of separate property, then, in accordance with the 2004 Comment, advocacy of counsel may be employed to address dissipation through consumption both under section 3502(a)(7) and under the court's equity powers in section 3323(f). Remedies for dissipation may include reimbursement to the injured spouse of a portion of the dissipated amount as if the property or income continued to exist; consideration of the dissipation as a factor relevant to the distribution of the remaining marital assets; an award of attorney fees, costs and expenses; and any other relief available at law or in equity available that may be just, including a declaration that a transfer to a third person is fraudulent and void if the third person has been joined as a party to the divorce action.

Section 2. Section 3502 of Title 23 is amended to read:

§ 3502. Equitable division of marital property **and marital debt.**

(a) General rule.--Upon the request of either party in an action for divorce or annulment, the court shall equitably divide, distribute or assign, in kind or otherwise, the marital property **and marital debt** between the parties without regard to marital misconduct in such percentages and in such manner as the court deems just after considering all relevant factors. The court may consider each marital asset **or marital debt**, or group of assets **or debts**, independently and apply a different percentage to each marital asset **or marital debt**, or group of assets **or debts**. Factors which are relevant to the equitable division of marital property **and marital debt** include the following:

* * *

(7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property **or marital debt**, including the contribution of a party as homemaker.

(8) The value of the property or the amount of marital debt set apart or assigned to each party.

* * *

(10.1) The Federal, State and local tax ramifications associated with each asset or debt to be divided, distributed or assigned, which ramifications need not be immediate and certain.

(10.2) The expense of sale, transfer or liquidation associated with a particular asset or debt, which expense need not be immediate and certain.

* * *

(c) [Family home] **Marital residence.** –

(1) The court may award, during the pendency of the action or otherwise, to one or both of the parties [the right to reside in] exclusive possession of the marital residence. The granting of exclusive possession shall not apply to non-marital property except when that property is owned or leased by the parties or the party seeking exclusive possession. The court shall consider the following factors when determining the granting of exclusive possession:

(i) The behavior of the party sought to be excluded has caused or created physical and emotional harm or either of them to a minor child or the other party or both of them in the residence.

(ii) The behavior of the party sought to be excluded has had an adverse effect on the parties or a child or both of them.

(iii) The ability of the party sought to be excluded to obtain adequate living arrangements elsewhere.

(iv) The financial circumstances of the parties and children to enable the parties to maintain separate residences.

(v) The duration of time that a party has voluntarily vacated the marital residence.

(vi) The ability of the party remaining in the marital residence to adequately maintain the residence and the household expenses.

(vii) Any other relevant factor.

(2) The court may enter an order granting each party exclusive possession of the marital residence at different time periods.

(3) This section shall apply to parties with or without a child.

(4) If applicable, the court may enter a temporary custody order upon granting exclusive possession of the marital home. If the court enters a temporary custody order, it shall expire and be null and void if the spouse who was granted exclusive possession of the marital residence does not institute a custody complaint or appropriate petition within two (2) weeks of the court entering a temporary custody order. A temporary custody order entered under this section shall be without prejudice to the merits of a custody case.

* * *

(d.1) Security for deferred pension distributions.--In the case of the marital portion of a defined benefit retirement plan being distributed by means of a deferred distribution, the trial court shall specifically address how the death of the employee spouse will impact the nonemployee spouse's benefits. Where the plan does not permit assignment to the non-employee spouse of a separate interest with benefits actuarially adjusted to the life

expectancy of the nonemployee spouse or the provision of survivor benefits to a former spouse, the trial court shall consider:

(1) whether the non-employee spouse's share of the plan should be secured against defeat by the death of the employee through life insurance or other means; and

(2) how the expense of the security should equitably be assigned between the spouses.

* * *

(f) Partial Distribution – The court, upon the request of either party, may at any stage of the proceedings enter an order providing for an interim partial distribution or assignment of marital property **or marital debt subject to the following:**

(1) The parties shall submit to the court sufficient evidence of the marital estate, indicating the title and value of the marital assets, as well as marital obligations being paid by either party.

(2) Should there be a reasonable dispute as to whether an asset is marital property, the court shall not include the asset in the total available assets from which a partial distribution may be taken until that dispute is determined.

(3) The most easily liquidated marital property shall be presumed to be the first source of a possible partial distribution.

(4) If deemed appropriate, a partial distribution shall be awarded with consideration of the value and components of the entire marital estate and shall not constitute an inappropriately large percentage of the marital estate.

(5) Prior to awarding a partial distribution, the court shall consider the following:

(i) Whether there is sufficient liquidity in the marital estate;

(ii) The financial need of the party seeking partial distribution, including the need for payment of counsel fees and expert fees;

(iii) Each party's respective non-marital property and income; and

(iv) The possible tax ramifications of the partial distribution.

COMMENT

New subsection (d.1) is meant to ensure that the death of the pension participant spouse is considered where pension distributions are deferred. The pension participant ordinarily is able to receive pension benefits until death. The nonemployee spouse, however, will lose benefits when the participant dies, unless the pension distribution order addresses the participant's death. Some pensions, including those subject to the federal Employee Retirement Income Security Act of 1974 and the Retirement Equity Act of 1984, can be divided so that the nonemployee will receive a benefit based on the non-employee's lifetime instead of the participant's lifetime, or so that the non-employee will receive death/survivor benefits. Other pensions, however, do not provide these options, including many municipal pension plans that do not allow separate-interest distributions or survivor benefits for ex-spouses. This means that a non-employee former spouse may be left with zero from the pension if the participant spouse dies first, while the

participant spouse may receive 100% of the pension if the non-employee spouse dies first. Where a pension plan does not provide for or allow security for the nonemployee former spouse, an immediate offset distribution should be ordered whenever possible. If not possible, every avenue to secure the non-employee's interest must be explored. Subsection (d.1) does not specify how the cost of security should be allocated between the parties, as this may vary from case to case.

Subsec. (f): The need for a partial distribution is an important, but need not be the controlling, factor. A party may be entitled to a partial distribution without a showing of need if the distribution is not prejudicial to the other party.

UNIFORM PARENTAGE ACT

Report of the Subcommittee on Uniform Parentage Act

After reviewing the complete Uniform Parentage Act,¹⁵ the subcommittee members concluded that too many issues were addressed and concentrated on the two identified issues to best serve the residents of our Commonwealth: 1) assisted reproduction and gestational agreements; and, 2) parentage disputes.

Legal principles related to assisted reproduction continually evolve and shift without balanced legal jurisprudence. The unique facts of each case on appeal do not provide adequate guidance. A statute is better suited to outline who is the parent with attendant rights and responsibilities. Statutory requirements would help to guide judges faced with competing claims and encourage more consistent resolutions.

Currently in Pennsylvania, surrogacy hinges on contract law, but our residents have no ability to obtain court approval of gestational agreements. From a public policy perspective and to assist couples unable to traditionally conceive children and grow their families. Pennsylvania needs to enact laws to protect the children of assisted reproduction, the intended parents, the gestational surrogate, and other affected parties.

The proposed legislation presented is the culmination of studying assisted reproduction legislation from various states (both enacted and proposed); the uniform act; legislation introduced in Pennsylvania; the proposed Pennsylvania Assisted Reproductive Technologies Act;¹⁶ New York Child-Parent Security Act (effective February 15, 2021);¹⁷ New Jersey Gestational Carrier Agreement Act (enacted in 2018);¹⁸ New Hampshire Surrogacy statute (enacted in 2014);¹⁹ and Pennsylvania caselaw. This proposal essentially updates the 2008 proposal published by the Joint State Government Commission.

¹⁵ Nat'l Conf. of Commissioners on Unif. State Laws (2017), *available at* <https://www.uniformlaws.org/viewdocument/final-act-96?CommunityKey=c4f37d2d-4d20-4be0-8256-22dd73af068f&tab=librarydocuments>.

¹⁶ Pa. J. State Gov't Comm'n, Rep. of the Subcomm. on Assisted Reproductive Techs. (2008), *available at* <http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2008-23-Assisted%20Reproductive%20Technologies%20Act%20-%20May%202008.pdf>.

¹⁷ N.Y. Fam. Ct. Act §§ 581-101 to -704 (McKinney).

¹⁸ N.J. Rev. Stat. § 9:17-60 *et. seq.*.

¹⁹ N.H. Rev. Stat. Ch. 168-B.

Assisted Reproduction and Gestational Agreements

To fill this gap in the law, the advisory committee recommends the addition of 23 Pa.C.S. Ch. 59 (relating to assisted reproduction and gestational agreement), including the following four subchapters:

- A. General Provisions
- B. Gestational Agreements and Prepregnancy Validation Process
- C. Gestational Agreements and Parentage through Postpregnancy Process and
- D. Child of Assisted Reproduction Without Gestational Agreement or Sufficient Gestational Agreement

SUBCHAPTER A: General Provisions

There are definitions²⁰ for assisted reproduction, child, court, department, donor, gestational agreement, egg, embryo, gamete, gestational carrier, intended parent, man, parent prospective gestational carrier or surrogate, sperm, and transfer. “Transfer” of gamete into the surrogate represents a critical time in the statute—when the transfer occurs, something happens under the proposed statute.

The legal status of a donor is not a parent or intended parent of a child conceived by means of assisted reproduction, unless the donor, with the intent to become a parent of the child, evidences the intent in writing to the other intended parent before making a sperm or egg donation and prior to placement of the eggs, sperm, or embryos.²¹

The court is able to resolve any parentage issue arising from an agreement regarding assisted reproduction and a person who conceives or gives birth to a child under the agreement, if venue is established, a party proceeds in good faith and cause is shown excusing compliance with a specific requirement regarding gestational agreements.²²

The court is able to resolve any parentage issue arising from an agreement, consent or otherwise, which does not involve a purported gestational agreement, if a party proceeds in good faith.²³

The general requirements for a gestational agreement include the necessary parties, the need for a writing, permissible provisions, and provisions concerning health decision making by a gestational carrier.²⁴— (Intended parents become responsible for child at birth.)

- The list of permissible provisions in the agreement (including types of payments allowed, including surrogate’s health care expenses during pregnancy).

²⁰ Proposed 23 Pa.C.S. § 5902, *infra* pp. 30-31.

²¹ *Id.* § 5903, *infra* p. 31.

²² *Id.* § 5904(b)(1), *infra* p. 32.

²³ *Id.* § 5904(b)(2), *infra* p. 32.

²⁴ *Id.* § 5905, *infra* pp. 32-34.

- Enforcement of a gestational agreement.
- Genetic testing, if there is an allegation that the genetic parentage of a child born to the gestational carrier is not the result of the intended assisted reproduction.
- Fraud and duress regarding a gestational agreement—(must be proven by clear and convincing evidence).

SUBCHAPTER B: Gestational Agreements and Prepregnancy Validation Process (Court’s approval obtained before assisted reproduction process begins.)

A statutory framework regarding gestational agreements and a prepregnancy validation process include provisions regarding:

- Venue.²⁵
- Eligibility of surrogate and intended parent to enter into gestational agreement.²⁶
- Execution of a gestational agreement.²⁷
- Contents of gestational agreement.²⁸
- Terminating gestational agreement and vacating decree.²⁹
- Establishing legal parentage through validation of gestational agreement.³⁰

The establishment of legal parentage through the validation of a gestational agreement, which occurs after the execution of the agreement but before any attempt to achieve pregnancy through assisted reproduction.³¹

The requirements to petition to commence a proceeding to validate a gestational agreement, including the contents of the petition and notice of the hearing.³²

The validation decree after hearing on the petition to validate a gestational agreement, postbirth notice and the postbirth decree.³³

²⁵ *Id.* § 5912, *infra* p. 34.

²⁶ *Id.* § 5913, *infra* pp. 34-35.

²⁷ *Id.* § 5914, *infra* p. 35.

²⁸ *Id.* § 5915, *infra* p. 35.

²⁹ *Id.* § 5916, *infra* pp. 35-36.

³⁰ *Id.* § 5917, *infra* pp. 36-37.

³¹ *Id.* § 5917 (a), (b), *infra* p. 36.

³² *Id.* § 5917(c), (d), *infra* p. 36.

³³ *Id.* § 5917(e)-(g), *infra* pp. 36-37.

SUBCHAPTER C: Gestational Agreements and Parentage Through Postpregnancy Process
(Court's approval during assisted reproduction pregnancy and within one year of child's birth.)

This is a statutory framework regarding gestational agreements and legal parentage through a postpregnancy process if the gestational agreement has not been validated under § 5917.³⁴

The statutory framework includes the following provisions:

- Venue.³⁵
- Eligibility to enter into gestational agreement.³⁶
- Execution of gestational agreement³⁷ (requires express intent by all parties as to who are to be the intended parents).
- Mandatory contents of gestational agreement.³⁸
- Petition to ratify agreement³⁹ (must petition within one year of birth; petition may be filed by intended parent(s) or gestational carrier).
- Hearing and notice requirements.⁴⁰
- Decree.⁴¹
- Amended petition unnecessary if filed prebirth.⁴²

The requirements to petition to ratify a gestational agreement, including when to petition, the relief requested by the petition, the contents of the petition and the exhibits to be attached to the petition.⁴³ (Exhibits include sample affidavits, acknowledgement, and waiver for both intended parent(s) and gestational carrier.)

The requirements regarding the hearing to confirm the facts set forth in the petition to ratify a gestational agreement and the decree.⁴⁴ (It's in the court's discretion to make this process move promptly, perhaps by using technology (video conference).)

³⁴ *Id.* § 5921, *infra* p. 37.

³⁵ *Id.* § 5922, *infra* pp. 37-38.

³⁶ *Id.* § 5923, *infra* p. 38.

³⁷ *Id.* § 5924, *infra* p. 38.

³⁸ *Id.* § 5925, *infra* p. 38.

³⁹ *Id.* § 5926, *infra* pp. 38-41.

⁴⁰ *Id.* § 5927, *infra* p. 42.

⁴¹ *Id.* § 5928, *infra* p. 42.

⁴² *Id.* § 5929, *infra* p. 42.

⁴³ *Id.* § 5926(a)-(c), *infra* pp. 38-39.

⁴⁴ *Id.* §§ 5927, 5928, *infra* p. 42.

SUBCHAPTER D: Child of Assisted Reproduction Without Gestational Agreement or Sufficient Gestational Agreement (No gestational agreement (under definition of standard agreement) exists; an insufficient gestational agreement exists; or an agreement may be inferred by facts and circumstances.)

This is applicable when no agreement exists or it does exist but does not conform to Subchapters B or C.⁴⁵

A parent is a person who, with the intent to be a parent of a child born as a result of assisted reproduction, provides gametes for the assisted reproduction or consents to the assisted reproduction under § 5934 (but subject to withdrawal of consent under § 5934(g)).⁴⁶

The requirements for a consent to assisted reproduction are for it to be in writing, dated and signed by: (1) the gestational carrier who is not a donor; (2) a person who intends to be a parent of the child whether the person is providing sperm, egg, or embryo; and, (3) all donors of gamete or embryo, if identified.⁴⁷

Contents of a consent to assisted reproduction are specified.⁴⁸

Retention of a prebirth consent to assisted reproduction is required.⁴⁹

Requirement that consents after birth must be co-signed by the other parent or confirmed by the other parent in writing; the court may require adoption proceedings.⁵⁰

Bases are specified for establishing consent to parentage in the absence of all signed consents.⁵¹

There are specifics for when and how a consent to assisted reproduction may be withdrawn, before placement, and the consequences of the withdrawal.⁵²

Parentage is unchanged upon the service of a filed complaint for divorce or annulment unless consent withdrawn under § 5934(g) before the transfer of gametes or embryos.⁵³

The requirements for conferring parentage of a deceased individual on a child conceived and born after the death of the individual include: (1) the individual's written consent to be the parent if assisted reproduction happened after death; (2) the transfer of gametes or embryo occurs within 12 months of the individual's death; and, (3) the surviving spouse's filing of the consent

⁴⁵ *Id.* § 5931, *infra* pp. 42-43.

⁴⁶ *Id.* § 5933, *infra* p. 43.

⁴⁷ *Id.* § 5934, *infra* pp. 43-44.

⁴⁸ *Id.* § 5934(c), *infra* p. 43.

⁴⁹ *Id.* § 5934(d), *infra* p. 43.

⁵⁰ *Id.* § 5934(e), *infra* pp. 43-44.

⁵¹ *Id.* § 5934(f), *infra* p. 44.

⁵² *Id.* § 5934(g), *infra* p. 44.

⁵³ *Id.* § 5935, *infra* p. 44.

with the clerk of the court and notice to the individual's personal representative within six months after the individual's death.⁵⁴

SUBCHAPTER E: Records

Retention of records and their confidentiality are required.⁵⁵

There is a release of information from the court records to an adult child who was born as a result of assisted reproduction.⁵⁶

Conforming amendments to 20 Pa.C.S. §§ 711 (relating to mandatory exercise of jurisdiction through the orphans' court division in general) and 713 (relating to special provisions for Phila. County), provide for mandatory exercise of jurisdiction through orphans' court division, except for Philadelphia.⁵⁷ In Philadelphia, the jurisdiction over these assisted reproduction and gestational agreements are to be exercised through the Family Court Division of the Court of Common Pleas.

AN ACT⁵⁸

Amending Titles 20 Pa.C.S. (Decedents, Estates and Fiduciaries) and (23 (Domestic Relations) of the Pennsylvania Consolidated Statutes in orphans' court divisions, further providing for mandatory exercise of jurisdiction through orphans' court division in general and special provisions for Philadelphia county; and in children and minors, providing for assisted reproduction and gestational agreements.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 711 of Title 20 of the Pennsylvania Consolidate Statutes is amended by adding a paragraph to read:

§ 711. Mandatory exercise of jurisdiction through orphans' court division in general.

Except as provided in section 712 (relating to nonmandatory exercise of jurisdiction through the orphans' court division) and section 713 (relating to special provisions for Philadelphia County), the jurisdiction of the court of common pleas over the following shall be exercised through its orphans' court division:

* * *

⁵⁴ *Id.* § 5936, *infra* pp. 44-45.

⁵⁵ *Id.* § 5941, *infra* p. 45.

⁵⁶ *Id.* § 5942, *infra* p. 45.

⁵⁷ *Infra* pp. 28-29.

⁵⁸ "Language intended to be taken out of an existing provision is enclosed in brackets and new language to be added is underscored." 101 Pa. Code § 15.222.

(24) Assisted reproduction and gestational agreement.--All matters pertaining to assisted reproduction as provided in 23 Pa.C.S. Ch. 59 (relating to assisted reproduction and gestational agreement), including custody matters and a parentage determination:

(i) if they relate directly to the validity, compliance or enforcement of a gestational agreement under 23 Pa.C.S. Ch. 59; or

(ii) as provided in 23 Pa.C.S. § 5904 (relating to determination of parentage generally).

Section 2. Section 713 of Title 20 is amended to read:

§ 713. Special provisions for Philadelphia County.

The provisions of section 711 (relating to mandatory exercise of jurisdiction through orphans' court division in general), insofar as they relate to adoptions and birth records, shall not apply to Philadelphia County. In Philadelphia County the jurisdiction over adoptions and all proceedings which may be necessary to be presented to a court for determination with regard to issues concerning recordation of birth and birth records or the alteration, amendment or modification of such birth records or the right to obtain a certified copy of the same, shall be exercised through the family court division of the court of common pleas. Whenever a resident of Philadelphia is entitled to take an appeal from the action of the Department of Health in connection with any matters concerning birth records, the appeal shall be taken to the family court division of the court of common pleas of Philadelphia. In all other matters in which a petition is addressed to a court by a resident of Philadelphia in connection with matters of birth records, the filing of which petition is not in the nature of an appeal but is an original proceeding, the petition shall be determined by the family court division of the court of common pleas of Philadelphia. **The provisions of section 711(24) shall not apply to Philadelphia County. In Philadelphia County, the jurisdiction over matters under section 711(24) shall be exercised through the family court division of the court of common pleas.**

Section 3. Part VI of Title 23 is amended by adding a chapter to read:

TITLE 23
DOMESTIC RELATIONS

PART VI
CHILDREN AND MINORS

CHAPTER 59
ASSISTED REPRODUCTION AND GESTATIONAL AGREEMENT

Subchapter

A. General Provisions

B. Gestational Agreements and Prepregnancy Validation Process

C. Gestational Agreements and Parentage through Postpregnancy Process

D. Child of Assisted Reproduction Without Gestational Agreement or Sufficient Gestational Agreement
E. Records

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

5901. Short title of chapter.

5902. Definitions.

5903. Donors.

5904. Determination of parentage generally.

5905. Gestational agreements generally.

§ 5901. Short title of chapter.

This chapter shall be known and may be cited as the Assisted Reproduction and Gestational Agreement Act.

§ 5902. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Assisted reproduction.” A reproductive method, other than sexual intercourse, that includes handling eggs, sperm, and/or embryos or may result in a child’s conception or causes pregnancy. The term includes:

- (1) Artificial insemination.
- (2) Invitro fertilization.
- (3) Transfer of embryos.
- (4) Intracytoplasmic sperm injection.
- (5) Donation of eggs, sperm, or embryos.

“Child.” An individual of any age whose parentage is determined under this chapter.

“Court.” As defined in section 102 (relating to definitions), subject to 20 Pa.C.S. §§ 711 (relating to mandatory exercise of jurisdiction through orphans’ court division in general) and 713 (relating to special provisions for Philadelphia County).

“Department.” The Department of Health of the Commonwealth.

“Donor.” A person who provides eggs, sperm, or embryos for use in assisted reproduction. The term does not include:

- (1) a spouse or partner who produces sperm, or a spouse or partner who provides eggs, to be used for assisted reproduction by either spouse or partner;
- (2) an intended parent of the child;
- (3) a gestational carrier who gives birth to a child by means of assisted reproduction under Subchapter D (relating to child of assisted reproduction without gestational agreement or sufficient gestational agreement); and
- (4) a parent of the child under Subchapter D.

“Gestational agreement.” A written contract that:

- (1) strictly complies with Subchapter B (relating to gestational agreements and pre-pregnancy validation process); or

(2) serves as the basis to determine parentage under Subchapter C (relating to gestational agreements and parentage through postpregnancy process).

"Egg." Female reproductive cell that may be fertilized by sperm to produce an embryo, commonly known as an egg or ova cell.

"Embryo." A cell containing a group of cells with the potential of becoming a live human being, made of an egg that has been fertilized with sperm and is thereafter may develop into a fetus in a female uterus or that has been cryopreserved for future transfer into a uterus.

"Gamete." A mature sex or reproductive cell that when combined with another gamete can become an embryo. Female gamete is an egg or ova cell and a male gamete is a sperm cell.

"Gestational carrier or surrogate." An adult person who carries a child through assisted reproduction who may or may not be genetically related to the child and who intends to give birth to a child for the intended parent pursuant to a gestational agreement under Subchapter B or C.

"Intended parent." An adult individual who seeks to become a parent of a child conceived pursuant to a gestational agreement under Subchapter B or C.

"Man." A male individual of any age.

"Parent." An individual who is the genetic mother or genetic father of a child or whose parentage is otherwise established by law.

"Prospective gestational carrier or surrogate." An adult person who intends to conceive and give birth to a child who is not genetically related to them through assisted reproduction pursuant to a gestational agreement under Subchapter B or C.

"Sperm." Male reproductive cell that may fertilize the female egg to produce an embryo.

"Transfer." Insertion of the embryo under medical supervision into the uterus of a person who will gestate the embryo.

§ 5903. Donors.

(a) Rule.--Except as provided under subsection (b), the following rules apply to a donor of a child conceived by means of assisted reproduction:

(1) The donor is not a parent or intended parent of the child.

(2) The donor may not sue to establish parental rights regarding the child.

(3) The donor may not be sued and required to support the child.

(4) The donor is not an heir of the child.

(5) The child is not an heir of the donor.

(b) Expressed intention.--A person who plans to provide eggs, sperms, or embryos who does not comply with Subchapter B (relating to gestational agreements and prepregnancy validation process) or C (relating to gestational agreements and parentage through postpregnancy process) may express intent to become a parent.

(1) Subsection (a) does not apply if a person, with the intent to become a parent of a child conceived by means of assisted reproduction, evidences such intent in writing to the other intended parent before he or she respectively makes a sperm or egg donation.

(2) After a person has evidenced the intent pursuant to paragraph (1), the person may evidence a clear, contrary intent in a separate writing to the other intended parent only if it occurs before the placement of the eggs, sperm or embryos, in which case subsection (a) shall apply.

§ 5904. Determination of parentage generally.

(a) Exclusivity.--Nothing in this chapter is intended to create an exclusive means of determining the parentage of a child.

(b) Court jurisdiction.--

(1) The court has jurisdiction to resolve any parentage issue arising from an agreement regarding assisted reproduction and a person who conceives or gives birth to a child pursuant to the agreement by proceeding under the general procedures set forth in Subchapters B (relating to gestational agreements and prepregnancy validation process) and C (relating to gestational agreements and parentage through postpregnancy process) if:

(i) venue is established under section 5912 (relating to venue) or 5922 (relating to venue);

(ii) a party proceeds in good faith under this chapter; and

(iii) subject to subparagraph (i), cause is shown excusing compliance with a specific requirement regarding gestational agreements under this chapter.

(2) The court has jurisdiction to resolve any parentage issue arising from an agreement, consent or otherwise under Subchapter D (relating to child of assisted reproduction without gestational agreement or sufficient gestational agreement) if:

(i) venue is established under section 5932 (relating to venue); and

(ii) a party proceeds in good faith under this chapter.

§ 5905. Gestational agreements generally.

(a) Parties to agreement.--A prospective gestational carrier and each intended parent of the child shall be a party to a gestational agreement. The surrogate's spouse, if any, must acknowledge and agree to comply with the obligations imposed on the surrogate by the gestational agreement.

(b) Claim to parentage--The surrogate and the surrogate's spouse have no claim to parentage of the child conceived by assisted reproduction under the agreement.

(c) Writing required.--A gestational agreement under this chapter shall be written, and executed, as provided in sections 5913(b) (relating to eligibility to enter into gestational agreement) and 5923 (relating to eligibility to enter into gestational agreement).

(d) Health decision making by gestational carrier.--The agreement shall permit the surrogate to make all health and welfare decisions regarding the pregnancy. This chapter does not enlarge nor diminish the surrogate's right to terminate the pregnancy.

(e) Intended parent--The intended parent is, or if two parents are, jointly and severally responsible immediately upon the birth of the child as parent or parents of the child regardless of the number of children born, gender, mental or physical condition of each child.

(f) Permissible provisions in agreement.--A gestational agreement may provide for:

(1) The payment of reasonable compensation and the return of compensation upon the termination of the agreement.

(2) The payment or reimbursement of reasonable expenses relating to the pregnancy and the agreement and return of payment of expenses if the agreement is terminated.

(3) Subject to subsection (d) that the gestational carrier:

(i) Consult with an intended parent regarding the choice of obstetrical health care provider.

(ii) Undergo medical examinations, mental health examination, treatments, fetal monitoring procedures, etc., that the obstetrical health care provider recommends for the success of the pregnancy.

(iii) Inform an intended parent of the health care services rendered to the gestational carrier during the pregnancy.

(iv) Abstain from an activity that the health care provider reasonably believes would be harmful to the pregnancy and future health of the child.

(4) The effect of the gestational carrier's injury, disability or death.

(5) Each party's right to terminate and the consequences of termination.

(6) Mandatory, nonjudicial, alternative dispute resolution procedures for nonemergency situations.

(g) Enforcement of gestational agreement.--

(1) Any dispute which is related to a gestational agreement including an alleged material breach or conflict regarding the interpretation of the agreement shall be resolved by determination of the court of appropriate jurisdiction.

(2) An intended parent or parents or the gestational carrier have standing to seek to enforce the agreement.

(3) An enforcement action under this subsection shall be commenced in the court of the judicial district where:

(i) the validation decree under section 5917(e) (relating to establishing parentage through validation of gestational agreement) was issued;

(ii) a petition under section 5924 (relating to execution of gestational agreement) was filed; or

(iii) the gestational carrier or an intended parent has resided for at least 90 days.

(h) Genetic testing.--

(1) Notwithstanding Subchapter B (relating to gestational agreements and prepregnancy validation process) or Subchapter C (relating to gestational agreements and parentage through postpregnancy process), if an intended parent, the gestational carrier or the gestational carrier's spouse alleges that the genetic parentage of a child born to the gestational carrier is not the result of the intended assisted reproduction, the court shall order genetic testing to determine the genetic parentage of the child.

(2) An allegation under paragraph (1) shall be made through a petition filed in court by an intended parent, the gestational carrier or the gestational carrier's spouse within 90 days after the birth of the child.

(3) A hearing on the petition under paragraph (2) shall be held in an expeditious manner within 60 days of the filing of the petition.

(4) After a hearing on the petition under paragraph (2), the court shall make an appropriate order promptly after the hearing.

(i) Fraud and duress.--

(1) A decree under section 5917(e) or section 5926 (relating to petition to ratify agreement) is not subject to challenge except as provided in this subsection and subsection (h).

(2) An intended parent or the gestational carrier may challenge a decree under section 5917(e) or 5926 by filing a petition alleging fraud or duress within 30 days after the issuance of the decree.

(3) Fraud or duress under this section must be proven by clear and convincing evidence.

(4) A hearing on the petition under paragraph (2) shall be held in an expeditious manner within 60 days of the filing of the petition.

(5) After a hearing on the petition under paragraph (2), the court shall make an appropriate order promptly after hearing.

SUBCHAPTER B
GESTATIONAL AGREEMENTS AND
PREPREGNANCY VALIDATION PROCESS

Sec.

5911. Applicability.

5912. Venue.

5913. Eligibility to enter into gestational agreement.

5914. Execution of gestational agreement.

5915. Mandatory contents of gestational agreement.

5916. Terminating gestational agreement and vacating decree.

5917. Establishing legal parentage through validation of gestational agreement.

§ 5911. Applicability.

This subchapter relates to gestational agreements in a prepregnancy context and applies to assisted reproduction involving a gestational carrier, where requirements under this subchapter regarding the gestational agreement and procedures resulting in the determination of the parentage of the child are strictly followed unless the court accepts jurisdiction under section 5904(b)(1)(iii) (relating to determination of parentage generally).

§ 5912. Venue.

A proceeding under this subchapter shall be commenced in the court of the judicial district where:

- (1) the prospective gestational carrier or the intended parent has resided for at least 90 days before the petition is filed;
- (2) the child is expected to be born, if a prebirth decree is sought; or
- (3) the child was born, if a prebirth decree is sought.

§ 5913. Eligibility to enter into gestational agreement.

(a) Surrogate--To execute an agreement to act as a surrogate, a person shall:

- (1) have attained 21 years of age;
- (2) previously have given birth to at least one child;
- (3) complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;
- (4) complete a mental-health consultation related to the surrogacy arrangement by a licensed mental-health professional; and
- (5) have independent legal representation of the person's choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

(b) Intended parent--To execute a surrogacy agreement, each intended parent, whether or not genetically related to the child, shall:

(1) have attained 21 years of age;

(2) complete a mental-health consultation related to the surrogacy arrangement by a licensed mental health professional; and

(3) have independent legal representation of the intended parent's choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement unless the intended parent affirmatively waives his or her right to legal representation by executing a notarized waiver and said waiver is attached to the executed gestation agreement.

§ 5914. Execution of gestational agreement.

(a) Timing.--The prospective gestational carrier and each intended parent shall execute a gestational agreement under this subchapter prior to any attempt to achieve the pregnancy using assisted reproduction through the prospective gestational carrier.

(b) Notarization.--The signatures of the parties to the gestational agreement shall be notarized.

§ 5915. Mandatory contents of gestational agreement.

A gestational agreement under this subchapter shall contain the following provisions:

(1) The prospective gestational carrier agrees to pregnancy by means of assisted reproduction.

(2) The prospective gestational carrier agrees to relinquish all parental rights and duties regarding the child conceived through assisted reproduction.

(3) Each intended parent agrees to become a parent of the child upon birth.

(4) The prospective gestational carrier agrees custody of the child shall immediately transfer to the intended parents as soon as medically appropriate after the birth of the child.

(5) Each intended parent agrees to accept custody of the child and assume responsibility for the support of the child immediately upon the birth of the child.

(6) Requirements in section 5905(d), (e), and (g) (relating to gestational agreements generally).

§ 5916. Terminating gestational agreement and vacating decree.

(a) Circumstances under which termination of agreement permitted.--Before the gametes or embryo are transferred to the prospective gestational carrier, either the gestational carrier or an intended parent may terminate the gestational agreement.

(b) Notice if decree not issued.--If the court has not issued a decree under section 5917(e) (relating to establishing parentage through validation of gestational agreement), an individual who terminates a gestational agreement under subsection (a) shall give written notice of the termination to all other parties to the agreement and written notice to the court if a petition was filed.

(c) Notice if decree issued.--

(1) If the court has issued a decree under section 5917(e), an individual who terminates a gestational agreement pursuant to subsection (a) shall:

(i) file notice of the termination with the court; and

- (ii) give written notice of the termination to all other parties to the agreement.
- (2) The court shall vacate the decree issued under section 5917(e) upon:
 - (i) receipt of the notice under paragraph (1)(i); and
 - (ii) proof of notice to all other parties to the agreement.
- (3) Termination of a gestational agreement under this subsection is effective only if an individual notifies the court of the termination pursuant to this subsection.
- (d) Liability.--
 - (1) Except as may be provided in the gestational agreement, a party to a gestational agreement is not liable to another party for the termination of the agreement if in compliance with this section.
 - (2) A liability provision that is contained in the gestational agreement and concerns the termination of the gestational agreement survives after the termination of the agreement and is enforceable to the extent that it is reasonable under the circumstances.

§ 5917. Establishing parentage through validation of gestational agreement.

- (a) Applicability.--This section shall apply to a situation that occurs after the execution of a gestational agreement but before any attempt to transfer gametes or embryo through assisted reproduction.
- (b) General rules.--
 - (1) The intended parent or parents may petition to commence a proceeding to validate a gestational agreement.
 - (2) A copy of the fully-executed gestational agreement shall be attached to the petition.
- (c) Contents of petition.--The petition under subsection (b) shall set forth the following:
 - (1) The basis for venue for filing the petition.
 - (2) The full name, residence address and marital status of each intended parent.
 - (3) The full name, residence address, marital status and age of the gestational carrier.
 - (4) The full name and residence address of the gestational carrier's spouse, if the gestational carrier is married.
 - (5) The identity of the genetic parents of the child, if known.
 - (6) A statement that each intended parent desires that a decree be issued:
 - (i) validating the gestational agreement; and
 - (ii) declaring that each intended parent will be parent of a child born pursuant to the agreement.
- (d) Hearing to consider petition; notice--
 - (1) The court shall schedule a hearing to consider the petition under this section.
 - (2) The hearing shall be held in an expeditious manner within 30 days of the filing of the petition.
 - (3) The parties to the gestational agreement shall appear at the hearing unless the court determines that their presence is unnecessary.
 - (4) The court shall hear testimony regarding the petition as the court deems necessary.
- (e) Validation decree.--After a hearing on a petition pursuant to this section, the court shall issue a decree validating a gestational agreement and declaring that each intended parent will be a parent of a child born pursuant to the agreement if the court finds all of the following:
 - (1) The requirements of this chapter have been satisfied.

(2) All of the parties to the gestational agreement have voluntarily entered into the agreement and understand the terms of the agreement.

(3) Adequate provision has been made for all reasonable health care expenses associated with the gestational agreement until the birth of the child, including responsibility for those expenses if the agreement is terminated.

(f) Postbirth notice.--

(1) If a gestational carrier gives birth to a child within 300 days after assisted reproduction, upon the birth of the child, the intended parent or parents of the child shall file notice of the birth with the court and serve notice on the gestational carrier's spouse.

(2) If the intended parent or parents fail to file the notice required under paragraph (1), the gestational carrier or the department may file with the court notice of the birth.

(3) A copy of the decree under subsection (e) shall accompany the notice under this subsection.

(g) Postbirth decree.--Upon receiving the notice under subsection (f), the court shall issue a decree:

(1) confirming that each intended parent is a parent of the child and assumes parental rights and duties regarding the child; and

(2) directing that any certified copies of the child's birth records issued by the department's Division of Vital Records reflect such parentage when parentage appears on the certified copies that the department issues of such birth records.

SUBCHAPTER C GESTATIONAL AGREEMENTS AND PARENTAGE THROUGH POSTPREGNANCY PROCESS

Sec.

5921. Applicability.

5922. Venue.

5923. Eligibility to enter into gestational agreement.

5924. Execution of gestational agreement.

5925. Mandatory contents of gestational agreement.

5926. Petition to ratify agreement.

5927. Hearing and notice.

5928. Decree.

5929. Amended petition unnecessary.

§ 5921. Applicability.

This subchapter applies to assisted reproduction involving a gestational carrier, if the gestational agreement has not been validated under section 5917 (relating to establishing parentage through validation of gestational agreement).

§ 5922. Venue.

A proceeding under this subchapter shall be commenced in the court of the judicial district where:

(1) the gestational carrier or an intended parent has resided for at least 90 days before the petition is filed;

(2) the child is expected to be born, if a prebirth decree is sought; or

(3) the child was born, if a post birth decree is sought.

§ 5923. Eligibility to enter into gestational agreement.

The requirements set forth in section 5913 (relating to eligibility to enter into gestational agreement) shall also apply to this subchapter.

§ 5924. Execution of gestational agreement.

(a) Timing.--The prospective gestational carrier and each intended parent shall execute a gestational agreement under this subchapter prior to any attempt to transfer gametes or embryo using assisted reproduction through the prospective gestational carrier.

(b) Intent.--The gestational agreement shall express the parties' mutual intent that each intended parent shall become a parent of the child born as a result of the assisted reproduction.

(c) Notarization.--The signatures of the parties to the gestational agreement shall be notarized.

§ 5925. Mandatory contents of gestational agreement.

The requirements set forth in section 5915 (relating to mandatory contents of gestational agreement) shall also apply to this subchapter.

§ 5926. Petition to ratify agreement.

(a) General rule.--Either before or after the birth of the child, but no later than one year after the birth of the child, an intended parent or the gestational carrier may petition the court for a decree:

(1) ratifying the gestational agreement;

(2) declaring that each intended parent is a parent of the child and assumes parental rights and duties regarding the child; and

(3) directing that certified copies of the child's birth records issued by the department's Division of Vital Records reflect such parentage when parentage appears on the certified copies that the department issues of such birth records.

(b) Contents of petition.--The petition shall set forth the following;

(1) The basis for venue for filing the petition.

(2) The full name, residence address and marital status of each intended parent.

(3) The full name, residence address, marital status and age of the gestational carrier.

(4) The full name and residence address of the gestational carrier's spouse, if married.

(5) The identity of the gamete donor(s) of the child, if permitted by the donor(s).

(6) If the child has been born, the child's full name, date of birth, place of birth, and history of custody.

(7) If the child has not yet been born, the child's full-term due date and the anticipated place of birth.

(8) The assisted reproduction that resulted in the child's conception and the pregnancy, including the type of procedure and when and where it was performed.

(9) A statement that, prior to the assisted reproduction resulting in pregnancy, the gestational carrier and each intended parent entered into a written gestational agreement in which their mutual intent was that each intended parent become a parent of the child.

(10) A statement that the petitioner desires that a decree be issued ratifying the gestational agreement and determining that each intended parent is a parent of the child.

(11) A statement that:

(i) a hearing is requested to ratify the gestational agreement; or

(ii) a hearing is not requested to ratify the gestational agreement because it would be unnecessary or burdensome, along with an explanation why it would be unnecessary or burdensome.

(c) Exhibits--The following exhibits shall be attached to the petition:

(1) A notarized affidavit executed by the petition or petitioners attesting to the facts set forth in the petition.

(2) If the gestational carrier is the petitioner, a notarized acknowledgement executed by each intended parent, in which each acknowledges that the person will or has become a parent of the child, if such acknowledgment is available.

(3) If the intended parent waives the right to a hearing to ratify the gestational agreement, a notarized waiver executed by the intended parent.

(4) If an intended parent waives the required notice under section 5927 (relating to hearing and notice), a notarized waiver executed by the intended parent.

(5) A notarized acknowledgment executed by the gestational carrier, in which that person acknowledges that the person agrees to permanently relinquish any and all parental rights to the child and to allow each intended parent to become a parent of the child.

(6) If the gestational carrier waives the right to a hearing to ratify the gestational agreement, a notarized waiver executed by the gestational carrier.

(7) If the gestational carrier waives the required notice under section 5927, a notarized waiver executed by the gestational carrier.

(8) Unless determined by the court to be unnecessary, the gestational carrier's spouse shall execute a notarized acknowledgment in which the spouse acknowledges that the spouse is not the parent of the child and agrees to permanently relinquish any and all parental rights to the child and to allow each intended parent to become a parent of the child.

(d) Instruments.--The following may be executed and notarized in one instrument:

AFFIDAVIT, ACKNOWLEDGMENT AND WAIVER
BY INTENDED PARENT

I, _____, am an intended parent of the child referenced in the accompanying petition. I am the petitioner and the information contained in the accompanying petition is true and correct to the best of my knowledge, information and belief.

Signature of Intended Parent

Date

I acknowledge that I agree to be a parent of the child, and I accept the responsibilities of parentage.

Signature of Intended Parent

Date

I waive the right to a hearing to ratify the gestational agreement.

Signature of Intended Parent

Date

I waive the required ten-day notice for any hearing that is scheduled to ratify the gestational agreement.

Signature of Intended Parent

Date

(NOTARIZATION)

{The following is an example of a form containing a combined affidavit, acknowledgment and waiver of the gestational carrier under 23 Pa.C.S. § 5926(c).}

§ 5927. Hearing and notice.

(a) Scheduling.--

(1) Unless the court determines that a hearing is unnecessary, the court shall schedule a hearing to confirm the facts set forth in the petition under section 5926 (relating to petition to ratify agreement).

(2) The hearing shall be held in an expeditious manner within 30 days of the filing of the petition.

(b) Notice.-- Unless the party waives the notice, at least ten days' notice of the hearing shall be given to a party to the gestational agreement.

(c) Procedures.--

(1) Unless the court determines that the party's presence is unnecessary, a party to the gestational agreement shall appear at the hearing.

(2) The court shall hear testimony regarding the petition as it deems necessary.

§ 5928. Decree.

Following the filing of a petition satisfying the requirements of section 5926 (relating to petition to ratify agreement) and after the hearing under section 5927 (relating to hearing and notice), if required by the court and during which the court is satisfied that the facts set forth in the petition are confirmed at that hearing, the court shall issue a decree:

(1) ratifying the gestational agreement;

(2) declaring that each intended parent is a parent of the child and assumes parental rights and duties regarding the child; and

(3) directing that any certified copies of the child's birth records issued by the department's Division of Vital Records reflect such parentage when parentage appears on the certified copies that the department issues of such birth records.

§ 5929. Amended petition unnecessary.

An amended petition is not required if a prebirth decree is sought and birth occurs after the filing of the petition but prior to the entry of the decree.

SUBCHAPTER D
CHILD OF ASSISTED REPRODUCTION
WITHOUT GESTATIONAL AGREEMENT OR
SUFFICIENT GESTATIONAL AGREEMENT

Sec.

5931. Applicability.

5932. Venue

5933. Parentage through assisted reproduction.

5934. Consent to assisted reproduction.

5935. Effect of filing complaint for divorce or annulment.

5936. Parental status of deceased individual.

§ 5931. Applicability.

This subchapter applies to assisted reproduction without the parties signing a gestational agreement or the parties signed an agreement that does not conform to

Subchapter B (relating to gestational agreements and prepregnancy validation process) or Subchapter C (relating to gestational agreements and parentage through postpregnancy process). This does not apply if a child is conceived by sexual intercourse, including if one genetic parent is married to someone else.

§ 5932. Venue.

A proceeding under this subchapter to seek an order of parentage shall be commenced in the court of the judicial district where:

- (1) a person intending to be a parent provides gametes for assisted reproduction has resided for at least 90 days;
- (2) a person who does not intend to be a parent gives birth to a child by assisted reproduction has resided for at least 90 days; or
- (3) the child was born by assisted reproduction.

§ 5933. Parentage through assisted reproduction.

Subject to section 5934(g) (relating to consent to assisted reproduction), a person is a parent of a child born as a result of assisted reproduction if, with the intent to be a parent of the child and without countermanding that intent before the placement of the gamete, the person:

- (1) provides gamete for the assisted reproduction; or
- (2) consents to the assisted reproduction as provided in section 5934.

§ 5934. Consent to assisted reproduction.

(a) General rule.--A consent under this section shall be in writing, dated and signed by the required parties under subsection (b). A consent shall be witnessed.

(b) Consent.--The following individuals who are involved shall consent to assisted reproduction:

- (1) the gestational carrier who is not a donor;
- (2) a person who intends to be a parent of the child, whether or not the person is providing sperm, egg, or embryo; and
- (3) all donors of gamete or embryo, if identified.

(c) Contents of consent.--A consent under this section shall at a minimum specify:

- (1) That the woman who intends to give birth to a child by assisted reproduction pursuant to this subchapter shall be the non-parent and shall relinquish any and all parental rights of the child or shall be a parent of the child.
- (2) That the person who intends to be a parent of the child shall be a parent of the child, and each person shall acknowledge the responsibilities of parentage.
- (3) The name of any known donor regarding the assisted reproduction.
- (4) The name of the spouse of any known donor.

(d) Copy of consent.--A copy of the consent:

- (1) shall be retained by the individuals executing the consent; and
- (2) should be provided to the clinic or other facility performing the assisted reproduction.

(e) Consent after birth--A consent by a person who did not provide gametes and seeks to be the intended parent that is signed after the child's birth shall be co-signed or confirmed

in writing by the other parent, however, the intended parent may be required by the court to complete adoption proceedings.

(f) Absence of all signed consents.--

(1) A party may establish consent to parentage by providing the court with clear and convincing evidence of an express agreement with the other parent or intended parent prior to conception that both would be parents.

(2) A party may establish consent to serve as gestational carrier and donor, without becoming an intended parent, by providing the court with clear and convincing evidence of an express agreement with the intended parents prior to conception to serve as gestational carrier without becoming a parent.

(3) A party may establish consent to serve as gestational carrier without becoming an intended parent, by providing the court with clear and convincing evidence of an express agreement with the intended parents prior to conception to serve as gestational carrier without becoming a parent.

(g) Withdrawal of consent.--

(1) An individual may withdraw consent to parentage by assisted reproduction at any time before the transfer of the gametes or embryo.

(2) A withdrawal of consent shall be in writing, dated and signed by the individual withdrawing consent and provided to the other individuals who signed consents.

(3) A withdrawal of consent may be provided to the clinic or other facility that is scheduled to perform the assisted reproduction.

(4) A person who formerly had signed a consent and intended to be the parent of the child and who later withdraws a consent pursuant to this section is not a parent of the resulting child and has no legal rights or responsibilities of parentage.

§ 5935. Effect of filing complaint for divorce or annulment.

If a complaint for divorce or annulment is filed and served before the transfer of the gametes or embryo, the spouse who had consented to parentage by assisted reproduction remains a parent of the resulting child unless the person withdraws consent in a dated, signed writing to be a parent of the child of assisted reproduction under section 5934(g) (relating to consent to assisted reproduction).

§ 5936. Parental status of deceased individual.

(a) Consent necessary.--If an individual who consented to be a parent by assisted reproduction dies before the transfer of gametes or embryo, the deceased individual is not a parent of the resulting child unless the deceased individual consented in a dated, signed writing to be a parent of the child of assisted reproduction if the assisted reproduction were to occur after death, which writing is either co-signed by the other parent or an adult witness.

(b) Notice and placement requirements.--If an individual has consented pursuant to subsection (a), the deceased individual shall be a parent of the resulting child only if:

(1) the transfer of gametes or embryo occurred within 12 months of the individual's death; and

(2) within six months following the death of the individual or the other intended parent:

(i) files the consent under subsection (a) with the clerk of the court; and

(ii) serves notice of the consent under subsection (a) with the decedent's personal representative, as defined in 20 Pa.C.S. § 102 (relating to definitions).

SUBCHAPTER E
RECORDS

Sec.

5941. Records generally.

5942. Release of information from court records.

§ 5941. Records generally.

(a) Retention and confidentiality.--All petitions, agreements, orders, decrees and other records or papers pertaining to a proceeding under this chapter shall be:

(1) retained in the files of the court as a permanent record; and

(2) withheld from inspection except on an order of court granted upon cause shown or as otherwise provided under this subchapter.

(b) Penalty for unauthorized disclosure.--An officer, employee or agent of the department or court, other than a judge of the court, who willfully discloses confidential information, other than as expressly authorized by this chapter, commits a misdemeanor of the third degree.

§ 5942. Release of information from court records.

A child born as a result of assisted reproduction involving a donor or gestational carrier may petition the court in the judicial district where the applicable records are retained for information regarding the donor or gestational carrier, if the child is at least 18 years of age. Upon petition, the court shall then furnish the information to the child.

Parentage Disputes

Supplementing its review of the Uniform Parentage Act, a repeal and replacement of 23 Pa.C.S. §§ 4343 (relating to paternity) and 5104 (relating to blood tests to determine paternity) is proposed. The most important goal of the proposal is to allow genetic testing in cases where traditional paternity-related presumptions in child support and child custody cases previously may have blocked the testing, a problem that has been challenging our Commonwealth for decades. The proposal with respect to the presumptions was prepared because there was a consensus of the Domestic Relations Advisory Committee that steps should be taken to limit and control application of the presumptions to prevent unfairness to children, parents, and claimed parents.

Other changes of significance include a provision allowing adult children to obtain parentage testing, and a provision allowing post-mortem testing. In addition, the proposal also addresses more mundane paternity-related issues, such as moving the blood testing provisions out of § 4343 and combining those with the genetic testing provisions in § 5104⁵⁹ while eliminating duplication and inconsistencies.

⁵⁹ Proposed 23 Pa.C.S. § 5104.1, *infra* pp. 49-52.

Underlying the proposed changes are the following considerations:

- Children have a right, and sometimes a medical need, to know their biological background. The medical need also may be that of a biological parent who requires a medical treatment involving a relative.
- Litigation over whether to allow DNA testing should be minimized for many reasons, including the ease with which such testing can be obtained *without* a court order, and the need to conserve the resources of the courts and the parties.
- A person who wants to assert paternity must ordinarily be prepared to pay child support, with exceptions for the cases that involve pure birth certificate corrections and no issue of family interference.
- Although we anticipate that few men who have been excluded from paternity will want child custody rights and the concomitant child support obligation, a presumed father who wants child custody should have the right to whatever child custody the trial court determines to be in the child's best interests, even if the result is that two men have custodial rights to the child, which does not seem problematic in this modern age of divorce and remarriage.
- Outside of the child support and child custody context, it sometimes is important to obtain parentage testing to correct a birth certificate where there is no controversy about parentage, or in the *post-mortem* context, to allow Social Security or other benefits to be paid.

AN ACT⁶⁰

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, in general provisions relating to support matters generally, providing for determination of disputed parentage; and, in general provisions relating to children and minors, providing for parentage; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 4343 of Title 23 of the Pennsylvania Consolidated Statutes is repealed:

[§ 4343. Paternity.

(a) Determination.--Where the paternity of a child born out of wedlock is disputed, the determination of paternity shall be made by the court in a civil action without a jury. A putative father may not be prohibited from initiating a civil action to establish paternity. The burden of proof shall be by a preponderance of the evidence. Bills for pregnancy, childbirth, postnatal care related to the pregnancy and genetic testing are admissible as evidence without requiring third-

⁶⁰ "Language intended to be taken out of an existing provision is enclosed in brackets and new language to be added is underscored." 101 Pa. Code § 15.222.

party foundation testimony and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child. If there is clear and convincing evidence of paternity on the basis of genetic tests or other evidence, the court shall upon motion of a party issue a temporary order of support pending the judicial resolution of a dispute regarding paternity. The Supreme Court shall provide by general rule for entry of a default order establishing paternity upon a showing of service of process on the defendant and a subsequent failure to appear for scheduled genetic testing.

(b) Limitation of actions.--

(1) An action or proceeding under this chapter to establish the paternity of a child born out of wedlock must be commenced within 18 years of the date of birth of the child.

(2) As of August 16, 1984, the requirement of paragraph (b)(1) shall also apply to any child for whom paternity has not yet been established and any child for whom a paternity action was brought but dismissed because of a prior statute of limitations of less than 18 years.

(c) Genetic tests.--

(1) Upon the request of any party to an action to establish paternity, supported by a sworn statement from the party, the court or domestic relations section shall require the child and the parties to submit to genetic tests. The domestic relations section shall obtain an additional genetic test upon the request and advance payment by any party who contests the initial test.

(2) Genetic test results indicating a 99% or greater probability that the alleged father is the father of the child shall create a presumption of paternity which may be rebutted only by clear and convincing evidence that the results of the genetic tests are not reliable in that particular case.

(3) To ensure the integrity of the specimen and that the proper chain of custody has been maintained, the genetic tests of the biological mother, the child or children in question and the alleged father should be conducted by an established genetic-testing laboratory in the course of its regularly conducted business activity, and certified records should be issued. The certified records shall be admissible into evidence without further foundation, authentication or proof of accuracy if no objection is made within ten days prior to trial. The laboratory must be certified by either the American Association of Blood Banks or the American Association for Histocompatibility and Immunogenetics.

(4) If the court or domestic relations section orders genetic testing, the domestic relations section shall pay the cost of the test, subject to recoupment from the alleged father if paternity is established.

(5) A determination of paternity made by another state, whether through judicial proceedings, administrative proceedings or by acknowledgment of paternity, shall be given full faith and credit in the courts of this Commonwealth.

(6) A determination of nonpaternity made by another state with respect to a public assistance recipient shall not be binding upon the Department of Public Welfare unless the defendant shows that the department had actual notice of the proceedings, including the date and time of any trial, and a fair opportunity to participate in all material proceedings through counsel of its own choice.]

Section 2. Title 23 is amended by adding a section to read:

§ 4343.1. Determination of disputed parentage.

Where the parentage of a child is disputed, the determination of parentage shall proceed under sections 5104.1 (relating to parentage) and 4321(2.1) (relating to liability for support).

Section 3. Section 5104 of Title 23 is repealed:

[5104. Blood tests to determine paternity.

(a) Short title of section.--This section shall be known and may be cited as the Uniform Act on Blood Tests to Determine Paternity.

(b) Scope of section.--

(1) Civil matters.--This section shall apply to all civil matters.

(2) Criminal proceedings.--This section shall apply to all criminal proceedings subject to the following limitations and provisions:

(i) An order for the tests shall be made only upon application of a party or on the initiative of the court.

(ii) The compensation of the experts shall be paid by the party requesting the blood test or by the county, as the court shall direct.

(iii) The court may direct a verdict of acquittal upon the conclusions of all the experts under subsection (f). Otherwise, the case shall be submitted for determination upon all the evidence.

(iv) The refusal of a defendant to submit to the tests may not be used in evidence against the defendant.

(c) Authority for test.--In any matter subject to this section in which paternity, parentage or identity of a child is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved, may or, upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child and alleged father to submit to blood tests. If any party refuses to submit to the tests, the court may resolve the question of paternity, parentage or identity of a child against the party or enforce its order if the rights of others and the interests of justice so require.

(d) Selection of experts.--The tests shall be made by experts qualified as examiners of blood types, who shall be appointed by the court. The experts shall be called by the court as witnesses to testify to their findings and shall be subject to cross-examination by the parties. Any party or person at whose suggestion the tests have been ordered may demand that other experts qualified as examiners of blood types perform independent tests under order of court, the results of which may be offered in evidence. The number and qualifications of experts shall be determined by the court.

(e) Compensation of experts.--The compensation of each expert witness appointed by the court shall be fixed at a reasonable amount. It shall be paid as the court shall order. Subject to general rules, the court may order that it be paid by the parties in such proportions and at such times as it shall prescribe or that the proportion of any party be paid by the county and that, after payment by the parties or the county, or both, all or part or none of it be taxed as costs in the action. Subject to general rules, the fee of an expert witness called by a party but not appointed by the court shall be paid by the party calling him, but shall not be taxed as costs in the action.

(f) Effect of test results.--If the court finds that the conclusions of all the experts as disclosed by the evidence based upon the tests are that the alleged father is not the father of the child, the question of paternity, parentage or identity of a child shall be resolved accordingly. If the experts disagree in their findings or conclusions, the question shall be submitted upon all the evidence.

(g) Effect on presumption of legitimacy.--The presumption of legitimacy of a child born during wedlock is overcome if the court finds that the conclusions of all the experts as disclosed by the evidence based upon the tests show that the husband is not the father of the child.]

Section 4. Title 23 is amended by adding a section to read:

§ 5104.1. Parentage.

(a) Limitation of actions.--An action or proceeding under this chapter to establish the parentage of a child must be commenced within 18 years of the date of birth of the child. However, a formerly underage child may commence an action for parentage testing at any time thereafter for good cause shown, including medical reasons.

(b) Determination.--Where the parentage of a child is disputed, the determination shall be made by the court in a civil action without a jury. A putative father may not be prohibited from initiating a civil action to establish parentage. The burden of proof shall be by a preponderance of the evidence. Bills for pregnancy, childbirth, postnatal care related to the pregnancy and parentage testing are admissible as evidence without requiring third-party foundation testimony in accordance with governing Pa.R.Civ.P. Ch. 1910 (relating to actions for support) and shall constitute *prima facie* evidence of amounts incurred for such services or for testing on behalf of the child. If there is clear and convincing evidence of parentage on the basis of parentage testing or other evidence, the court shall, upon motion of a party, issue a temporary order of support pending the judicial resolution of a dispute regarding parentage.

(c) Scope of authority to order parentage testing.--

(1) Civil matters.--This section shall apply to all civil matters subject to this section in which parentage or identity of a child is a relevant fact. The court, upon its own initiative or upon suggestion made by or on behalf of any person involved, may or, upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the child and the alleged parents to submit to parentage testing.

(2) Criminal proceedings.--This section shall apply to all criminal proceedings subject to the following limitations and provisions:

(i) An order for the tests shall be made only upon application of a party or on the initiative of the court after notice and opportunity to be heard have been provided to the victim.

(ii) The court may direct a verdict of acquittal upon the conclusions of all the experts under subsection (i). Otherwise, the case shall be submitted for determination upon all the evidence.

(iii) The refusal of a defendant to submit to the tests may not be used in evidence against the defendant.

(d) Enforcement of parentage testing order.--By general rule, the Supreme Court shall provide for entry of a default order establishing parentage upon a showing that the order for parentage testing was served on a party in the manner that original process is served; the party failed to appear for the parentage testing; and, the party failed to appear without good cause for subsequent proceedings to enforce the order for parentage testing. All parties shall receive notice and have an opportunity to be heard before a default order

establishing parentage is issued, with a goal of providing the child with accurate parentage information.

(e) Parentage test procedure.—To ensure the integrity of the specimen and that the proper chain of custody has been maintained, parentage testing shall be conducted by an established testing laboratory in the course of its regularly conducted business activity. The laboratory must be certified by either the Association for the Advancement of Blood and Biotherapies (AABB) or the American Association for Histocompatibility and Immunogenetics, as applicable. The laboratory report stating the parentage test results shall be issued with a certification that the report is true and correct.

(f) Second test.—The domestic relations section shall obtain one additional genetic test upon the request and advance payment by any party who contests the initial test results; any additional testing thereafter shall be performed only after written notice, opportunity for objection, and hearing if an objection is made in writing.

(g) Evidence.—The certified parentage test results and records shall be admissible in evidence without further foundation, authentication or proof of accuracy if no objection is made within ten days prior to trial.

(h) Compensation of experts.—The compensation of each expert witness appointed by the court shall be fixed at a reasonable amount. It shall be paid as the court shall order. Subject to general rules:

(1) The court may order that it be paid by the parties in such proportions and at such times as it shall prescribe or that the proportion of any party be paid by the county and that, after payment by the parties or the county, or both, all or part or none of it be taxed as costs in the action.

(2) The fee of an expert witness called by a party but not appointed by the court shall be paid by the party calling the expert witness, but shall not be taxed as costs in the action.

(i) Effect of test results.—If the court finds that the conclusions of all the experts as disclosed by the evidence based upon the tests are that the alleged parent is not the parent of the child, the question of parentage or identity of a child shall be resolved accordingly. Genetic parentage test results that indicate a 99% or greater probability that the alleged parent is the parent of the child shall create a presumption of parentage which may be rebutted only by clear and convincing evidence that the results of the genetic tests are not reliable in that particular case. If the experts disagree in their findings or conclusions, the question shall be submitted upon all the evidence.

(j) Presumption of parentage.—

(1) In cases where a child is conceived and is born during marriage and prior to separation of , the spouses shall be presumed to be the child's parents.

(2) A person who files an executed acknowledgement of parentage in the form provided by a state agency or by applicable rules of court shall be presumed to be the parent of a child.

(3) In cases where a child is conceived prior to marriage, born after the separation of married parties, or born out of wedlock, a person who undertook the actions and responsibilities associated with parenting sufficient to establish *in loco parentis status* shall be presumed to be a parent of the child.

(4) A person who is a parent, sibling or other relative of either parent of the child shall not be a presumed parent of the child.

(k) Permitted petitions for parentage testing.—For the purpose of establishing parentage or of correcting parentage on a birth record and whether or not there is a presumption of parentage, a verified petition for parentage testing may be filed by: the husband, the wife, the mother, a person who purports to be a parent of a minor child, a person who has filed an executed acknowledgement of parentage, a formerly underage child, or any person permitted to file such a petition under section 5905(h) (relating to gestational agreements generally). If a formerly underage child is seeking parentage testing but not to correct a birth record, the underage child shall aver good cause for parentage testing. All other petitions for parentage testing must be accompanied by a complaint for child support, a complaint for child custody, or a petition to correct a birth record. The petition for parentage testing shall be granted without the necessity of hearing.

{**Note:** If the proposed legislation addressing Assisted Reproduction and Gestational Agreement⁶¹ is not enacted, the following alternative subsection (k) would be inserted:

(k) Permitted petitions for parentage testing.—For the purpose of establishing parentage or of correcting parentage on a birth record and whether or not there is a presumption of parentage, a verified petition for parentage testing may be filed by: the husband, the wife, the mother, a person who purports to be a parent of a minor child, a person who has filed an executed acknowledgement of parentage, or a formerly underage child. If a formerly underage child is seeking parentage testing but not to correct a birth record, the underage child shall aver good cause for parentage testing. All other petitions for parentage testing must be accompanied by a complaint for child support, a complaint for child custody, or a petition to correct a birth record. The petition for parentage testing shall be granted without the necessity of hearing.}

(l) Testing after death of a parent.—If a purported parent is deceased, an order may issue upon good cause shown requiring third parties to submit to parentage testing, or for release of biological material of the decedent for use in parentage testing. To issue an order for testing of a third party under this section, the court must find that a need for parentage testing outweighs the legitimate interests of the individual sought to be tested. Good cause may be shown if the petitioner demonstrates a need for parentage testing for the purpose of establishing parentage, or of correcting parentage on a birth certificate or other official records, including Social Security records.

(m) Prohibited actions.—An order for parentage testing shall not issue in cases where:

(1) The child, whether or not underage, whose parentage is or may be at issue was adopted, unless the purported biological parent or parents to be tested and the adoptive parents agree in writing to the parentage testing; or

(2) The child was born as the result of a sexual offense as defined in 18 Pa.C.S.

⁶¹ *Supra* pp. 29-45.

§§ 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3124.2 (relating to institutional sexual assault), 3125 (relating to aggravated indecent assault), and 4302 (relating to incest) on the mother, unless the mother of the child agrees in writing to the parentage testing.

(n) Effect of test results.—

(1) Rights of child.—An emancipated child has a right of access to the result of court-ordered parentage tests.

(2) Rights of presumed parent.—The child custody rights and child support obligations of a presumed parent shall not be affected by the outcome of the parentage testing unless the presumed parent agrees to termination of both his or her child custody rights and child support obligations.

(3) Effect of no agreement.—If a person found to be a biological parent as the result of a parentage testing order and the presumed parent both seek child custody rights, the trial court shall enter an order that serves the best interests of the child with specific consideration of the importance of maintaining the bond between the child and the presumed parent, and may allow physical and/or legal custody to either one or both of the biological parent and the presumed parent as well as the undisputed parent. Any party awarded custody rights also may be subject to a child support obligation in the discretion of the court.

(o) Determinations in other states.—

(1) A determination of parentage made by another state, whether through judicial proceedings, administrative proceedings or by acknowledgment of parentage, shall be given full faith and credit in the courts of this Commonwealth.

(2) A determination of nonparentage made by another state with respect to a public assistance recipient shall not be binding upon the Department of Human Services unless the defendant shows that the department had actual notice of the proceedings, including the date and time of any trial, and a fair opportunity to participate in all material proceedings through counsel of its own choice.

(p) Definition.—As used in this section the term “parentage testing” means genetic testing, blood testing or any other type of methodology or testing generally accepted in the relevant scientific community for purposes of determining parentage.