

PUBLIC ACT 99-769

THE 2016 TECHNICAL CORRECTIONS TO THE PARENTAGE OF 2015

By Margaret Bennett

Definitional Changes:

Additional definitions were added:

(d) "Assisted reproduction" means a method of achieving a pregnancy through an artificial insemination or an embryo transfer and includes gamete and embryo donation. "Assisted reproduction" does not include any pregnancy achieved through sexual intercourse.

(i) "Donor" means an individual who participates in an assisted reproductive technology arrangement by providing gametes and relinquishes all rights and responsibilities to the gametes so that another individual or individuals may become the legal parent or parents of any resulting child. "Donor" does not include a spouse in any assisted reproductive technology arrangement in which his or her spouse will parent any resulting child.

(L-5) "Gestational surrogacy" means the process by which a woman attempts to carry and give birth to a child created through in vitro fertilization in which the gestational surrogate has made no genetic contribution to any resulting child.

(M) "Gestational mother" has been replaced with "gestational surrogate" to add clarity to the legal definition. The definition also clarifies that the surrogate is not the intended parent.

(M-5) "Intended parent" means a person who enters into an assisted reproductive technology arrangement, including a gestational surrogacy arrangement, under which he or she will be the legal parent of the resulting child.

The definitions of "assisted reproduction" and "donor" were originally reserved in the Parentage Act of 2015 as was Article 7- Child of Assisted Reproduction. They are included in Public Act 99-763, and will be incorporated into the Parentage Act of 2015 as of January 1, 2017.

The Parentage Act of 2015 refers to a "valid gestational surrogacy contract" throughout the Act. However the Illinois Gestational Surrogacy Act includes other requirements in addition to a contract in order for the parties involved to have a valid gestational surrogacy arrangement. Where there was a reference to a "valid gestational surrogacy contract" in the Parentage Act of 2015, the term has been replaced with a "valid gestational surrogacy arrangement" in order to reference all the requirements necessary to comply with the Illinois Gestational Surrogacy Act.

Other Definitional Changes are:

The term "custody" has been replaced with "the allocation of parental responsibilities."

Because the Illinois Marriage and Dissolution of Marriage Act legislation and the Parentage Act legislation were filed separately more than four years ago, the proposed terminology replacing "custody" could not be included in the original text of the Parentage Act until the term for "custody" was approved by the passage of the new IMDMA. Because the term "custody" is utilized in uniform family law acts as well as in state and local rules, it was unknown whether the new terminology would be accepted by the legislature.

However, when drafting the Parentage Act the drafter used the term "parenting time" throughout the Act as that term had become universally accepted. The term "removal" was changed to "relocation" in the trailer bill.

Voluntary Acknowledgement of Paternity (VAP) forms are promulgated by the Illinois Department of Healthcare and Family Services and are referred to as "acknowledgments" or "voluntary acknowledgments" throughout the Parentage Act of 2015. HFS requested that the word "voluntary" be added where necessary so that the term "voluntary acknowledgement" is used consistently throughout the Parentage Act.

Clarification of the Voluntary Acknowledgement of Paternity form:

The Parentage Act of 2015 provides that a VAP must contain language stating "a challenge to the acknowledgement is permitted only under limited circumstances and is barred after two years."

That section has been amended to provide that a VAP must contain the following language: "(i) a challenge by a signatory to the voluntary acknowledgment may be permitted only upon a showing of fraud, duress, or material mistake of fact; and (ii) a challenge to the voluntary acknowledgement is barred after two years unless that period is tolled pursuant to the law."

This language was added to the statute so that signatories have a clear understanding of the process required to challenge a fully executed VAP.

Section 312(c) was included to validate the use by individuals of outdated versions of VAP forms. The section states, "Any voluntary acknowledgment, denial, or recession of voluntary acknowledgment or denial of parentage that was completed before January 1, 2016 is valid if it meets all criteria for validity at the time it was signed."

Supreme Court Rule 138- Personal Identity Information

The Parentage Act was written in compliance with Supreme Court Rule 138 which originally provided that a person's date of birth and a minor's name were defined as protected

personal identity information. Those two provisions have since been redacted from Supreme Court Rule 138. Corresponding changes have been made to the Parentage Act to allow this information to be used in parentage and child support cases.

Temporary Relief

Section 501(a) permits the court to issue a temporary child support order which now specifically includes "a non-minor child with a disability." A reference to Section 513.5 of the IMDMA was also included in this section.

Section 501(b) was modified to include provisions for interim attorney's fees pursuant to Section 508 of the IMDMA.

Motion to Deny Genetic Testing

Section 610 allows a court to deny a motion for genetic testing under limited circumstances when that motion is brought by a parent, presumed parent, acknowledged parent or adjudicated parent or alleged parent seeking an order for genetic testing. Public Act 99-769 adds the "child" to those individuals whose motion for genetic testing can be denied.

610(b) has been modified to state: "it shall be presumed to be equitable and in the best interests of the child to grant a motion by the child seeking an order for genetic testing. The presumption may be overcome by clear and convincing evidence that extraordinary circumstances exist making the genetic testing contrary to the child's best interests. The court's order denying a child's request for genetic testing must state the basis upon which the presumption was overcome. The court's order granting a child's request for genetic testing must specify the ways in which the testing results may be used for purposes of protecting the child's best interest.

Judgments

Section 802(a) still provides that all issues relative to the allocation of parental responsibilities formerly custody including parenting time, parenting time interference, support for a non-minor disabled child, educational expenses for a non-minor child and related post judgment issues be adjudicated pursuant to the relevant provisions of the IMDMA.

802(c) now states that "in the absence of an explicit order or judgment for the allocation of parental responsibilities, the establishment of a child support obligation or the allocation of parenting time to one parent shall be construed as an order or judgment allocating all parental responsibilities to the other parent. If the parentage order or judgment contains no such provisions, all parental responsibilities shall be presumed to be allocated to the mother; however, the presumption shall not apply if the child has resided primarily with the other parent for at least six months prior to the date that the mother seeks to enforce the order or judgment of parentage."

Provisions have been modified in Section 803(c) and (d) to permit disclosure of the obligor, obligee and the child's full social security number or tax identification number.

Section 903 has been modified to provide "that this act applies to all pending actions and proceedings commenced before January 1, 2016 with respect to issues on which a judgment has not been entered."

Public Act 99-769 becomes law on January 1, 2017.