COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Middlesex, ss. No. SJC-12018

KAREN PARTANEN

Plaintiff-Appellant

vs.

JULIE GALLAGHER

Defendant-Appellee

ON APPEAL FROM A JUDGMENT OF
THE PROBATE AND FAMILY COURT

BRIEF OF AMICI CURIAE GREATER BOSTON LEGAL SERVICES CHILDREN'S LAW CENTER OF MASSACHUSETTS MASSACHUSETTS LGBTQ BAR ASSOCIATION WOMEN'S BAR ASSOCIATION OF MASSACHUSETTS COMMUNITY LEGAL AID CAROLYN N. FAMIGLIETTI AND MAUREEN MCBRIEN

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INTERESTS OF AMICI CURIAE

Amicus **Greater Boston Legal Services (GBLS)** is a nonprofit program which provides free legal assistance to indigent people in the greater Boston area. GBLS offers a full range of legal assistance in many substantive areas related to domestic relations, including paternity, child custody, visitation and child support matters. GBLS handles hundreds of family law matters each year and is also active in legislative and policy issues important to its clients. GBLS has an interest in having courts recognize all factors related to the best interests of, and in promoting equal protection for, all children in the Commonwealth. GBLS represented the prevailing party in Paternity of Cheryl, 434 Mass. 23 (2001), and has filed many amicus briefs relating to children's interests.

Amicus **Children's Law Center of Massachusetts (CLCM)** is a private, non-profit legal advocacy and resource center providing direct representation to children in Eastern Massachusetts as well as technical assistance and training to lay and professional communities throughout the Commonwealth on issues affecting children's custody, civil rights, health,

education, and welfare. CLCM's mission is to promote and secure equal justice and to maximize opportunity for low-income children and youth by providing quality advocacy and legal services. CLCM served as an amicus curiae in Paternity of Cheryl, 434 Mass. 23 (2001), and other cases relating to children's interests.

Amicus **Massachusetts LGBTQ Bar Association** is a voluntary state-wide professional association of lesbian, gay, bisexual, transgender, and queer lawyers and their allies, providing a visible LGBTQ presence within the Massachusetts legal community. Its work focuses on leadership, education, support, and the promotion of the administration of justice throughout Massachusetts for all persons without regard to their sexual orientation or gender identity or expression. The Massachusetts LGBTQ Bar Association has a substantial interest in affirming and clarifying the parentage rights of all citizens, including LGBTQ citizens who have intentionally sought, as couples, to welcome children into their relationships.

Amicus **Women's Bar Association of Massachusetts (WBA)** is a professional association comprised of over 1,500 members, including judges, attorneys, and policy makers dedicated to advancing and protecting the

interests of women. In particular, the WBA advocates for public policy that improves the lives of women and their children. The WBA has filed and joined many amicus briefs on legal issues that have a unique impact on women, including cases involving sexual discrimination, family law, domestic violence, and employment discrimination. In addition to advocacy, the WBA coordinates legal representation for victims of domestic violence in proceedings before the Probate and Family Court Department of the Trial Court, through its non-profit affiliate, the Women's Bar Foundation (WBF). The WBF recruits, trains, and mentors volunteer attorneys who represent low-income survivors of domestic violence. As a result of its advocacy and experience in the Probate and Family Court, the WBA can provide this court with relevant information and a useful perspective on family law and how it impacts women.

Amicus **Community Legal Aid (CLA)** is the state-funded civil legal aid program serving the low-income and elderly residents of Worcester, Hampden, Hampshire, Franklin, and Berkshire Counties. Its lawyers and paralegals currently provide critically-needed assistance to families and individuals facing

domestic violence, homelessness, and barriers to employment, healthcare, and benefits programs. CLA's mission is to protect and advance the legal rights of low-income, elderly and other disenfranchised people, in order to secure access to basic needs and to challenge institutional barriers to social and economic justice. CLA's Family Law Unit is dedicated to representing low-income individuals in domestic relations matters. With its extensive experience in representing parents of nonmarital children, CLA is uniquely suited to analyze the impact of alterations in custody laws.

Amica **Carolyn N. ("Nicki") Famiglietti**, a member of the Massachusetts Bar since 1973, has spent her entire career as an advocate for children and as a key policy maker in the areas of child support and parentage. In 1985, then-Governor Michael Dukakis appointed Ms. Famiglietti to the Governor's Commission on Child Support. As chair of that commission's Legislation Committee, she led the effort to advance the commission's child welfare recommendations by drafting legislation that ultimately would be enacted in 1986 as "An Act Improving the Collection of Child Support in the Commonwealth," including G. L. c. 209C,

the interpretation of which is central to this action.

Amica **Maureen McBrien**, a partner at Brick, Sugarman, Jones & McBrien LLP, is a family lawyer who has written extensively on Massachusetts family law and assisted reproductive technology law issues. With Professor Charles Kindregan, she is the co-author of the 4th Edition of Massachusetts Practice: Family Law and Practice and of Assisted Reproductive Technology: A Lawyer's Guide to Emerging Law and Science. She also serves as an adjunct professor at Suffolk University Law School where she co-teaches Assisted Reproductive Technology Law.

ISSUES PRESENTED FOR REVIEW

As specified in the Court's request for amicus briefs, the issues for review are as follows:

> 1. Whether the plaintiff, whose same-sex partner gave birth to two children by artificial insemination with the plaintiff's consent during their relationship, was entitled to assert a claim of parentage pursuant to G. L. c. 46, § 4B ("Any child born to a married woman as a result of artificial insemination with the consent of her husband, shall be considered the legitimate child of the mother and such husband"), even though the couple was not married.
>
> 2. Whether the plaintiff was entitled to assert a claim of parentage pursuant to G. L. c. 209C, the so-called "paternity" statute governing children born out of wedlock, even though she had no biological connection to the children.
>
> 3. Whether in these circumstances the plaintiff was entitled to assert a claim of full legal parentage, as opposed to de facto parentage, pursuant to the Probate and Family Court's general equity jurisdiction, G. L. c. 215, § 6.

The undersigned amici answer "yes" to all three issues presented for review.

STATEMENT OF THE CASE

Amici adopt and incorporate Appellant's Statement of the Case.

STATEMENT OF THE FACTS

Amici adopt and incorporate Appellant's Statement of the Facts.

SUMMARY OF THE ARGUMENT

Amici submit this brief on behalf of the thousands of children in this Commonwealth who were brought into the families of unmarried couples by the joint choice and actions of those couples. Just like children of a married couple, these children regard the two people who partnered to bring them into their families as their parents. The opinion below mistakenly focused on biological ties as a necessary basis for legal protection of these parent-child bonds. While biological ties are elements of many families, that is not always the case. The law of this Commonwealth already reflects this reality in part, and must be read to apply to families like those of Appellant.

This brief provides the historical context leading to key elements of Massachusetts parentage law – in particular, General Laws chapter 209C ("chapter 209C"). Prior to the enactment of chapter 209C, nonmarital children were relegated to secondary status compared to children of a marriage in a host of scenarios, including child custody and support. Chapter 209C sought to break the connection between a child's interest in having two legal parents and the

marital status of the child's parents. Chapter 209C reflects the Commonwealth's public policy to protect every child's right, as much as possible, to establish legal parent-child relationships with both parents and thus to enjoy the economic and emotional support from, and all other legal rights attendant to, having two legal parents (p. 4-15).

From this historical foundation, amici argue that chapter 209C (among other laws) must be read to protect parent-child relationships that are nonmarital and non-adoptive, such as that between Ms. Partanen and her children. To do otherwise would be counter to the text and purposes of chapter 209C, undercut the "best interest of the child" standard, ignore the overwhelming trend in sister states, and impermissibly discriminate against children based on the suspect category of "illegitimacy" (p. 16-32, 43). It would also harm a subclass of vulnerable nonmarital children, denying them the economic support, emotional benefits, and legal rights and protections of having two legal parents (p. 33-47). Amici are united in their efforts to advocate for and serve the children and families that would be harmed if chapter 209C were unduly cabined in this way.

ARGUMENT

I. CHAPTER 209C REPRESENTED A HISTORIC SHIFT TOWARD THE EQUAL LEGAL TREATMENT OF MARITAL AND NONMARITAL CHILDREN UNDER MASSACHUSETTS LAW.

Where the welfare of children is at issue, the beginning and end of this Court's inquiry has always been the "overriding . . . concern to promote the best interests of children." Woodward v. Comm'r of Soc. Sec., 435 Mass. 536, 545-46 (2002). Indeed, "the first and paramount duty of courts is to consult the welfare of the child. To that governing principle every other public and private consideration must yield." Richards v. Forrest, 278 Mass. 547, 553 (1932).

Chief among a child's "essential" interests is maintaining "stability and continuity of support, both emotional and financial," from both parents if the parents' relationship ends. Paternity of Cheryl, 434 Mass. 23, 31 (2001); see also Hunter v. Rose, 463 Mass. 488, 493 (2012) ("[A] child's welfare is promoted by ensuring that she has two parents to provide, inter alia, financial and emotional support."); see also Adoption of Mariano, 77 Mass. App. Ct. 656, 664 (2010).

To that end, Massachusetts has safeguarded by statute a marital child's right to the continued care and financial support of both parents upon divorce for nearly two centuries. See An Act respecting Cases of Divorce and Alimony, St. 1821, c. 56 § 1 (Feb. 12, 1821). In particular, General Laws Chapter 208, which has been codified in some form since 1821, provides for children of divorcing parents to receive a court order mandating the parents' respective obligations to care for, maintain, and support the child, with the express "public policy that dependent children shall be maintained as completely as possible from the resources of their parents." G. L. c. 208, § 28; St. 1821, c. 56 § 1; see also L.W.K. v. E.R.C., 432 Mass. 438, 444 (2000). However, the law historically ignored nonmarital children, excluding them from the legal guarantee of maintenance and support from both parents, and denying them access to the courts to enforce such maintenance and support. See Part I.A, infra.

This framework shifted markedly in 1986 with the enactment of legislation entitled, "An Act Improving the Collection of Child Support in the Commonwealth," St. 1986 c. 310, § 16 (the "Support Act"), which was

codified as chapter 209C and which mandated that nonmarital children have legal rights equal with marital children to establish legal parentage, and thus to secure care, support, and all other rights and protections that flow from the legal relationship of parent and child. See generally G. L. c. 209C et seq.; see also Woodward, 435 Mass. at 546.

The Support Act's central focus on protecting the best interests of children, "most especially those who may be stigmatized by their 'illegitimate' status," Woodward, 435 Mass. at 545-46, marked a historic shift toward maintaining, as much as possible, stable economic and emotional parent-child relationships for the benefit of children, regardless of the marital ties (or lack thereof) between their parents.

A. Chapter 209C was a Response to the Historically Inequitable Legal Treatment of "Illegitimate" Children in Massachusetts.

Originally at common law in Massachusetts, echoing our English legal inheritance, parentage law served primarily to establish bloodlines for paternal inheritance. WILLIAM BLACKSTONE, 1 COMMENTARIES ON THE LAWS OF ENGLAND 443 (1765). A nonmarital child was not the legal "issue" of his father and could not inherit his

father's property. Id. at 447. Such children were labeled "bastards," "illegitimate," and, perhaps most poignantly, "filii nullius" – that is, the children of no one. Id. at 434, 443, 446-47. This regime reflected the preference under "the rules of honour and civil society" that adults marry before having children, and the belief that depriving fathers of lawful heirs would promote that policy. See id. at 443-44.

Accordingly, common law notions of legal parentage took no account of the actual state of relationships between children and their parents, focusing instead on the marital status of the parents.[1] See id. at 443-47. Because nonmarital children were parentless under the law, establishing legal parentage for such children was a meaningless concept. See C.C. v. A.B., 406 Mass. 679, 683 (1990).

The resulting system effectively punished nonmarital children as a way to express society's disapproval of the conduct of their parents. See BLACKSTONE, supra at 443, 47; C.C., 406 Mass. at 682-83. Indeed, the "filii nullius" epithet was a precise

[1] It was impossible under the British common law for a nonmarital child to become "legitimate" absent an act of Parliament. BLACKSTONE, supra at 447.

legal description: besides having no inheritance rights, nonmarital children often could not hold public office, join professional associations, or pass on their own property to heirs. Maldonado, Illegitimate Harm: Law, Stigma, and Discrimination against Nonmarital Children, 63 FLA. L. REV. 345, 347 (2011); see also BLACKSTONE, supra at 447. Most relevant here, a nonmarital child had no right at common law to any support, financial or otherwise, from her father. See Commonwealth v. Dornes, 239 Mass. 592, 593-94 (1921).

In 1913, Massachusetts adopted a statutory scheme that criminalized having children outside of marriage, and which was designed to punish fathers for begetting nonmarital children and to force them to support such children financially. See St. 1913, c. 563 §§ 1, 7 (1913) repealed by St. 1977, c. 848 § 7 (1977). The statute originally made impregnating a woman other than one's wife a misdemeanor and provided that the failure to provide child support upon conviction was an ongoing offense. Id.; Dornes, 239 Mass. at 594. While "begetting" a nonmarital child was decriminalized by repeal in 1977, support actions remained criminal proceedings. Davis v. Misiano, 373

Mass. 261, 264 (1977). The sole focus of these proceedings was establishing paternity for purposes of shifting child support obligations from the Commonwealth to the biological father. See Dep't of Revenue v. Jarvenpaa, 404 Mass. 177, 184-85 (1989) (acknowledging that prior paternity action under the criminal regime was pursued for the Commonwealth's "own financial benefit").

In practice, the criminal paternity regime paid no regard to the child's right to establish parentage and support from both parents, and its operation favored fathers in almost all respects. Only the Commonwealth, not the child or mother, could institute an action for parentage. Davis, 373 Mass. at 264; G. L. c. 273, § 11 (repealed 1977). When the Commonwealth did pursue actions, fathers enjoyed all of the protections of the criminal law, including the Commonwealth's burden of proof beyond a reasonable doubt, and the privilege not to testify; in contrast, mothers testifying in such actions routinely faced blistering cross-examination regarding their sexual history and other private matters. [2] Commonwealth

[2] All the while, and in stark contrast, marital children enjoyed access to court orders mandating both

v. Chase, 385 Mass. 461, 472 n.8 (1982); Commonwealth v. MacKenzie, 368 Mass. 613, 619 n.5 (1975); see Holz, The Trial of a Paternity Case, 50 MARQ. L. REV. 450, 496-99 (Apr. 1967) (citing Odewald v. Woodsum, 142 Mass. 512 (1886)). Separately, fathers alone were at the same time free to bring a civil equity action to establish their parental rights. E.g., Normand v. Barkei, 385 Mass. 851, 852-53 (1982).

Under the criminal regime, the concept of parentage was entirely biology-focused, paying no regard to the child's circumstances, and hence leaving no place for consideration of the child's best interests in the context of adjudicating paternity. In the 1959 case Commonwealth v. D'Avella, for example, this Court held that a blood grouping test that negated paternity entitled the putative father to judgment as a matter of law, regardless of any "evidence, apart from the blood tests, warranting a finding of guilty[.]" 339 Mass. 642, 644 (1959); contra Paternity of Cheryl, 434 Mass. at 31.

By the mid-1980s, many policy-makers and advocates in Massachusetts were acutely aware that the

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parents' respective obligations to care for, maintain, and support the children. See G. L. c. 208 § 28 (1932); St. 1821 c. 56.

Commonwealth's criminal parentage and support system was not serving the interests of a large group of children. See LARAMORE, ECONOMIC CHILD ABUSE: A REPORT ON CHILD SUPPORT ENFORCEMENT IN MASS. 4 (1985). In connection with this problem, the federal Child Support Enforcement Act Amendments of 1984, Public Law 98-378 (the "Federal Support Act"), required all states (by conditioning federal funding on compliance therewith) to establish a commission to study the state's child support system and to adopt prescribed reforms. GOVERNOR'S COMM'N ON CHILD SUPPORT, RECOMMENDATIONS OF THE GOVERNOR'S COMM'N ON CHILD SUPPORT 3 (1985) ("COMMISSION REPORT").

Pursuant to the Federal Support Act, then-Governor Dukakis appointed the Massachusetts Child Support Commission (the "Commission") in December 1984. Thirty-two commissioners, including amica Carolyn N. Famiglietti, worked over the course of eight months to examine Massachusetts' child support collection and enforcement systems. COMMISSION REPORT, Cover Letter (Oct. 1, 1985).

The Commission "recognized the disincentives to filing paternity actions, the inefficient enforcement system and the lack of accountability which at present

p[er]vade the system." Memo. from Comm'r Nicki Famiglietti re: Suggested Amendments to H. 2244, March 10, 1986. These problems were reflected in the poverty-related statistics. For example, at the time of the Commission's report, roughly 84,000 families, which included 150,000 children, depended on government assistance. See Commission Fact Sheet at 1. A full 92 percent of those families were eligible for assistance as a result of unpaid child support. Id. While the median income for two-parent families in Massachusetts with children under eighteen was $23,183, the median income for single-parent families was only $7,393. COMMISSION REPORT at 1. The median income for single-parent families with children under six was just $4,588. Id. These disparities likewise were linked to unpaid child support. Id.

While these figures reflected all single-parent families in Massachusetts, the impact of the failed child support system overwhelmingly fell on nonmarital children. At the time, 75 percent of divorced mothers had a support award, while only 6 percent of unmarried mothers had one. LARAMORE, supra at 3. An independently-funded study conducted at the same time

characterized the epidemic of nonpayment of child support as "economic child abuse." Id. at 1.

B. The Support Act Sought to Provide Nonmarital Children Equal Access to the Benefits of Legal Parentage.

The Commission reported numerous findings and made comprehensive recommendations that ultimately took shape in the Support Act, which was signed into law on July 22, 1986. See generally COMMISSION REPORT; News Release from Gov. Dukakis: *Dukakis Signs Sweeping Child Support Legislation*, July 22, 1986. As reflected in its title, the Support Act reformed the Massachusetts child support and enforcement laws in line with the Federal Support Act's mandate. In particular, the Support Act provided for expedited enforcement actions, made "income assignment" (diversion of wages for child support) automatic in certain cases, and expanded the program allowing support recipients to receive support payments via intercepted tax refunds. COMMISSION REPORT at 4-5.[3]

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[3] The Support Act also established a requirement that nonmarital children be treated similarly to marital children in support orders. As background, the Federal Support Act required the states to adopt concrete guidelines to establish more uniform support judgments. COMMISSION REPORT at 5. Accordingly, the Commission recommended qualitative principles for the formation of Massachusetts' guidelines (the

Going beyond the federal requirements, see 42 U.S.C. §§ 666-67, the Support Act also provided a mechanism for nonmarital children to establish their parental relationships in law. This permitted nonmarital children equal access with marital children to the courts "to have an order for [such] support and to have a declaration relative to their custody or visitation." G. L. c. 209C, § 1; compare id. with G. L. c. 208, § 28. But chapter 209C's establishment of equal rights is in no way limited to child support. Despite no federal requirement to do so, chapter 209C guarantees nonmarital children equal entitlement to all rights under the law. Its terms could not be plainer:

> Children born to parents who are not married to each other shall be entitled to the same rights and protections of the law as all other children.

G. L. c. 209C, § 1.

This Court has punctuated the significance and breadth of this law: "Repeatedly, forcefully, and unequivocally, the Legislature has expressed its will that all children be 'entitled to the same rights and

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"Guidelines Principles"). Id. at 9-10. The Guidelines Principles apply equally to nonmarital children. St. 1986 c. 310, § 15.

protections of the law' regardless of the accidents of their birth." Woodward, 435 Mass. at 546 (quoting G. L. c. 209C, § 1). Chapter 209C makes clear that parentage and the rights flowing therefrom are the child's, enforceable by the child, the child's mother, or anyone "standing in a parental relation to the child." G. L. c. 209C, §§ 1, 5 ("It is the purpose of this chapter to establish a means for such children . . . to [an] adjudication [of parentage].") (emphasis added); accord G.E.B. v. S.R.W., 422 Mass. 158, 163 (1996) (citing with approval Ruddock v. Ohls, 91 Cal. App. 3d 271, 277-78 (Ct. App. 1979) ("The establishment of the parent-child relationship is the most fundamental right a child possesses.")).

II. CONSISTENT WITH ITS CLEAR TEXT AND PURPOSE, CHAPTER 209C MUST BE READ TO PROTECT A CHILD'S RELATIONSHIP WITH A NON-BIOLOGICAL PARENT AS MUCH AS WITH A BIOLOGICAL PARENT.

For marital children, section 6 of chapter 209C ("section 6") provides a legal presumption that a man or woman is the child's parent if that person was married to the mother when the child was born (the "Marriage Presumption").[4] G. L. c. 209C, § 6(a)(1). In a similar vein, and further to chapter 209C's purpose of protecting children's equal rights regardless of whether their parents marry, section 6 provides a presumption of parentage when a child is brought up in a familial setting similar to one where a child's parents are married, but where the parents are unmarried. Specifically, section 6(a)(4), the so-called "Holding Out Presumption," provides:

> [A] Man [or woman] is presumed to be the father [or mother] of a child and must be joined as a party if: . . . while the child

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[4] For the reasons detailed in Appellant's Brief, which the Amici incorporate herein by reference, chapter 209C has been applied neutrally as to sex, such that any provision applicable to the establishment of paternity applies equally to the establishment of a mother-child relationship. G. L. c. 209C, § 21; Appellant Brief at 10, 16; accord Hunter, 463 Mass. at 493 (2012) (affording section 6's parentage presumptions a gender neutral application); see also G. L. c. 4, § 6, Fourth ("words of one gender may be construed to include the other gender and the neuter").

> is under the age of majority, he [or she], jointly with the mother, received the child into their home and openly held out the child as their child[.]

G. L. c. 209C, § 6(a)(4), § 21.

The court below held that, for the Holding Out Presumption to apply, the putative legal parent must not only qualify under the language of section 6(a)(4), but also must have a biological link with the child. This "biological" limitation is found in neither the text of section 6 nor anywhere else in chapter 209C. Indeed, such a limitation would be antithetical to chapter 209C's "clear intention to provide broad remedies for equal treatment for children born out of wedlock," Doe v. Roe, 23 Mass. App. Ct. 590, 594-95 (1987), for at least three reasons. First, a biological limitation on the Holding Out Presumption runs counter to the text and purpose of the statute, particularly its aim to address the changing circumstances of family formation. Second, this Court's jurisprudence provides no basis for any such limitation. Third, courts in sister states interpreting similarly-drafted statutes have not read in such a requirement to

parallel "holding out" provisions. Each of these reasons is discussed in turn.

A. Imposing a Biological Limitation on the Holding Out Presumption Defies Chapter 209C's Text and Broad Purpose to Address Changing Circumstances of Family Formation.

The Holding Out Presumption by its own terms applies to any person who holds out a child as his or her own. G. L. c. 209C, § 6(a)(4), § 21. There is no requirement that a putative holding-out parent have a biological link with the child anywhere in the statutory text. Thus no such limitation should be inferred, particularly in the context of a broad remedial statute such as chapter 209C. See L.W.K., 432 Mass. at 446 ("We are not free to add a further requirement, beyond what the Legislature has declared.").

To be sure, expectations today regarding family formation, and hence expectations regarding the circumstances under which chapter 209C was most likely to be applied, are not what they were at the time of the statute's enactment in 1986. Then, roughly 18 percent of children in Massachusetts were born to unmarried parents; today that figure is 33 percent. Compare MASS. DEP'T OF PUB. HEALTH, MASS. BIRTHS

2014, at Table 1 (2015), with MASS. DEP'T OF PUB. HEALTH, MASS. BIRTHS 1998, at Table 1 (2000). Then, nonmarital children were typically the result of unintended pregnancy; today, an increasing number of cohabitating couples plan to start a family while remaining unmarried. CURTIN, VENTURA & MARTINEZ, CTRS. FOR DISEASE CONTROL & PREVENTION, RECENT DECLINES IN NONMARITAL CHILDBEARING IN THE UNITED STATES 4 (2014); see also MARTINEZ, CTRS. FOR DISEASE CONTROL & PREVENTION, THREE DECADES OF NONMARITAL FIRST BIRTHS AMONG FATHERS AGED 15-44 IN THE UNITED STATES 3 (2015). And the climate for same-sex couples forming families in Massachusetts and elsewhere has experienced changes then unimaginable. See Goodridge v. Dep't of Pub. Health, 440 Mass. 309, 323 (2003); Obergefell v. Hodges, 135 S. Ct. 2584, 2596, 2600 (2015). By contrast, in 1985, Massachusetts adopted a policy barring same-sex couples from providing foster care, and even a commentator sympathetic to same-sex couples wrote, "I have never understood the need of gay couples to define their relationships as 'family.'" Goodman, A `No` To Gay Men As Foster Parents, CHI. TRIBUNE, May 31, 1985, at 3C.

Changing trends in family life, both anticipated and not, were front of mind for the Support Act's

framers, who observed, "Rising rates of divorce, separation and out-of-wedlock births during the past decade have increased the necessity for careful examination of social policies and practices related to family issues." COMMISSION REPORT at 1. Consequently, those framers and the Support Act itself adopted a "comprehensive declaration of policy," in the broadest terms possible, to maximize nonmarital children's access to both parents and provide every right and protection of parentage that marital children enjoyed. See Doe, 23 Mass. App. Ct. at 594-95; G. L. c. 210, §§ 1, 5, 21. Taking one example, the Support Act's Guidelines Principles, supra n.3, abandoned the notion that child support should be tied solely to biological fathers, and instead adopted a child-focused standard designed to maintain the security and continuity of the child's standard of living based on whoever provided support and care prior to the family's breakup. St. 1986 c. 310, § 16A (requiring that the support guidelines "minimize the economic impact on the child of family breakup, . . . [and] provide the standards of living the child would have enjoyed had the family been intact"). As the Commission concluded when recommending the Support

Act's reforms, "Policies related to child custody and the access of children to both parents are inextricably tied to continued emotional commitment and financial responsibility assured by parents." COMMISSION REPORT at 1.

In light of chapter 209C's unmistakable policy goals, this Court must read the statute to maximize recognition of parent-child relationships, regardless of biological ties or parents' marital status. See Doe, 23 Mass. App. Ct. at 594-95. Indeed, this Court has "consistently construed statutes to effectuate the Legislature's overriding purpose to promote the welfare of all children," Woodward, 435 Mass. at 547, and has refused to limit the application and remedial purpose of chapter 209C specifically. L.W.K., 432 Mass. at 446.

B. This Court Has Not Read Chapter 209C As Necessarily Keyed to Biology.

This Court's precedent has not construed the remedial provisions of chapter 209C as necessarily tied to biology, such that it would be inconsistent to read a biological limitation into the Holding Out Provision.

In Paternity of Cheryl, for instance, a man sought to dissolve his child support obligations based on the undisputed fact that he was not the child's (Cheryl's) biological father. 434 Mass. at 24. However, in the years after Cheryl's birth, the man had held himself out as her father, "fostered 'a substantial relationship'" with her, and regularly paid child support. Id. at 26-27. The Court rejected the man's petition to rescind his acknowledgment of paternity, holding that where a parent and child enjoy "a substantial parent-child relationship . . . and the father has provided the child with consistent emotional and financial support, an attempt to undo a determination of paternity is potentially devastating to a child who ha[s] considered the man to be the father." Id. at 31-32 (internal quotations marks and citations omitted). As to the lack of biological ties, the Court held that "what is in a child's best interests will often weigh more heavily than the genetic link between parent and child." Id. at 31; see also Adoption of a Minor, 471 Mass. 373, 378 (2015); C.C., 406 Mass. at 685-86.

This Court has also made clear that another parentage presumption under section 6 (the Marital

Presumption) is not necessarily tied to biology.[5] See Matter of Walter, 408 Mass. 584, 585, 587-89 (1990); see also Adoption of a Minor, 471 Mass. at 378. The Marital Presumption is that the child of a married woman is presumed to be her husband's child. G. L. c. 209C § 6(a)(1). In Matter of Walter, the Court rejected an adoption agency's attempt to dispense with obtaining consent for adoption from the child's mother's husband based on evidence that he was not the biological father. 408 Mass. at 585. Invoking the Marital Presumption, and acknowledging chapter 209C's purpose "to give children born out of wedlock the same opportunity as other children to make support and related claims," the Court concluded that allowing evidence of a biological link to another putative father would "render[] the child the illegitimate offspring of parents who want no responsibility for him." Id. at 588. Likewise here, requiring a biological link under the Holding Out

[5] Given that there is no biological link limitation in the text of either the Marital Presumption or Holding Out Presumption, there is no reason that jurisprudence interpreting the former should not apply to the latter. Monell v. Boston Pads, LLC, 471 Mass. 566, 575 (2015) (remedial statutes "should be given a broad interpretation" to give effect to the purpose for which they were enacted) (internal quotation marks omitted).

Presumption legally estranges a child from her actual, presumptive parent, and renders her the illegitimate offspring of, in this case for example, the biological mother and the donor of genetic material, the latter being a complete stranger to the child. Cf. id.; Adoption of a Minor, 471 Mass. at 374 (holding that even known donors of genetic material are not legal parents). Section 6's presumptions protect preexisting parent-child relationships at the expense of biological links to avoid this very absurd and unjust result. Matter of Walter, 408 Mass. at 588.

Indeed, the only time an allegedly biological claimant may assert a paternity claim in the face of the Marital Presumption is when that claimant can establish a "substantial parent-child relationship" with the child. C.C., 406 Mass. at 685-86, 689 ("The existence of a substantial parent-child relationship is, in our view, the controlling factor."). This exception proves the rule of favoring the primacy of the preexisting parent-child relationship over biological ties. Id.

In short, "[t]he reality today is that families take many different forms," and this Court has

expressly recognized "that a genetic connection between parent and child can no longer be the exclusive basis for imposing the rights or duties of parenthood." Adoption of a Minor, 471 Mass. at 378 n.8 (internal quotation marks and citation omitted). As this Court observed in Paternity of Cheryl, while the courts cannot ameliorate every injury a child suffers in a family breakup, they can under chapter 209C "ensure that [children are] not also deprived of the legal rights and financial benefits of a parental relationship." 434 Mass. at 36-37.

C. Courts Across the Country Strongly Protect the Holding Out Presumption for Children Regardless of Biological Ties.

Courts of last resort in sister states have consistently applied provisions substantially similar to the Holding Out Presumption to maximize the ability of children to have two legal parents, without requiring biological ties.

Most notably, in the seminal California case of Elisa B. v. Superior Court, that state's Supreme Court held that a woman who co-parented her former partner's biological children satisfied the requirements of parentage under the state's holding out statute — based, like chapter 209C, on the Uniform

Parentage Act (the "UPA").[6] 37 Cal. 4th 108, 125 (2005). The Elisa B. court reasoned that the legislature "implicitly recognized the value of having two parents, rather than one, as a source of both emotional and financial support . . . " 37 Cal. 4th at 123. Where the non-biological mother participated in the artificial insemination of her partner "with the understanding that they would raise the children together," and the two acted as co-parents to their twins for a substantial period of time, the non-

[6] The statutory language used in Chapter 209C bears a striking resemblance to the text of the Uniform Parentage Act as it read at the time former was drafted. Compare G. L. c. 209C, §§ 1, 6, with UNIF. PARENTAGE ACT §§ 2, 4 (1973) ("UPA"). Both provide for equal treatment of children regardless of their parents' marital status, compare G. L. c. 209C, § 1 with UPA § 2, and both generally contain the same list of presumptions of parentage, including the marital presumption and the "holding out" presumption, compare G. L. c. 209C, § 6, with UPA § 4. In key places where the Massachusetts statute differs from the uniform law, however, the General Court adopted a more expansive view of parentage. Compare G. L. c. 209C, §§ 6(a)(4), 21 with UPA §§ 3, 4(a)(4). For example, although the UPA's "holding out" presumption establishes a presumption of "natural" parentage, suggesting a need for genetic contribution, Chapter 209C's "holding out" presumption specifically excludes the term "natural" and thereby any explicit biological requirement. Compare G. L. c. 209C, § 6(a)(4), with UPA § 4(a)(4). Additionally, although the UPA provides for establishment of maternity "by proof of her having given birth to the child," Chapter 209C allows for proof of maternity using the same statutory scheme as is available to prove paternity. Compare G. L. c. 209C § 21, with UPA § 3.

biological mother had a "legal obligation to support the child[ren] whom she caused to be born." Id. at 124-25. Elisa B. relied on prior California cases finding the holding out provision applicable to non-biological parents. See In re Nicholas H., 28 Cal. 4th 56, 62-63 (2002) (applying holding out presumption to non-biological parent who lived with child from birth, noting that a strict biology-based test would lead to the "harsh result" of leaving the child fatherless); In re Salvador M., 111 Cal. App. 4th 1353, 1357-58 (2003) (applying holding out presumption to child's half sister who raised him after their mother's death, and characterizing child's belief that half sister was his mother as the "most compelling evidence" that she had held him out as her own). In so doing, California recognized that its statutory parentage presumptions "are driven, not by biological [parentage], but by the state's interest in the welfare of the child and integrity of the family." Salvador M., 111 Cal. App. 4th at 1357-58.

Many other courts of last resort have recognized that the "familial relationship" between a non-biological parent and his or her child developed over years of living together is, as the New Hampshire

Supreme Court put it, "considerably more palpable than the biological relationship of actual paternity" and should not be "lightly dissolved." In re Guardianship of Madelyn B., 166 N.H. 453, 461 (2014) (quoting Salvador M., 111 Cal. App. 4th at 1358) (internal quotation marks omitted). The New Mexico Supreme Court held that a woman who actively participated in her former partner's adoption of a child, and raised that child as a co-parent, was a presumed "natural mother" pursuant to the state's UPA-based holding out statute. Chatterjee v. King, 280 P.3d 283, 285 (N.M. 2012). The reasoning was simple: the UPA's holding out presumption "is based on a person's conduct, not a biological connection" and thus "a woman is capable of holding out a child as her natural child and establishing a personal, financial, or custodial relationship with that child." Id. at 288. The Supreme Court of Kansas reached the same result. Frazier v. Goudschaal, 296 Kan. 730, 746-47 (2013). New Hampshire also has interpreted its own holding out provision to apply to non-biological mothers. Madelyn B., 166 N.H. at 460; see also Rubano v. DiCenzo, 759 A.2d 959, 966-67 (R.I. 2000) (conferring standing to establish a legal "mother and

child relationship" between a woman and her ex-partner's son, despite no biological link). These rulings are consistent with the growing list of other jurisdictions interpreting corresponding provisions similarly. E.g., St. Mary v. Damon, 309 P.3d 1027, 1032 (Nev. 2013); In re Parental Responsibilities of ARL, 318 P.3d 581, 587-88 (Colo. App. 2013); In re Roberto d.B., 923 A.2d 115, 122-25 (Md. 2007).

This Court should join its sister courts in furthering the purpose of maximizing children's access to legal parentage by applying the Holding Out Presumption where, as here, the parties "entered into an intentional intimate relationship and made a conscious decision to have a child and co-parent as a family." Ramey v. Sutton, 362 P.3d 217, 221 (Okla. 2015). To hold otherwise would thwart the "implicit legislative preference for the recognition of two parents" inherent in chapter 209C, Madelyn B., 166 N.H. at 460, and deny the parties' children "the love, protection, and support from the only parents [they have] ever known," Ramey, 362 P.3d at 221.

III. THE AVENUES TO LEGAL PARENTAGE PROVIDED UNDER CHAPTER 46, SECTION 4B ALSO MUST NOT BE LIMITED TO EXCLUDE NONMARITAL CHILDREN.

Chapter 46, section 4B ("section 4B") establishes yet another means to establish legal parentage, for one who together with the birth parent conceives and bears a child through artificial insemination.[7] G. L. c. 46, § 4B. Like all statutes governing parent-child relations, the policy underlying section 4B "looks principally to the interests of the child." Okoli v. Okoli, 81 Mass. App. Ct. 371, 377 (2012). Consistent with that principle and this Court's decisions, that provision should be read to apply to children born to unmarried couples where one or both parents lacks a biological link to the child.

As detailed in Appellant's Brief (at 38-44), Massachusetts courts have interpreted section 4B broadly, looking to intentional procreative conduct, not the statute's technical requirements, as the

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[7] Artificial insemination, also known as intrauterine insemination, is the process by which sperm is injected into the female reproductive tract other than by sexual intercourse. See KINDREGAN & MCBRIEN, ASSISTED REPRODUCTIVE TECHNOLOGY: A LAWYER'S GUIDE TO EMERGING LAW AND SCIENCE 29 (Am. Bar Ass'n 2006); What is intrauterine insemination (IUI)?, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 16, 2015), http://www.cdc.gov/reproductive health/infertility/; Artificial Insemination, Am. Soc'y Reprod. Med. (2016), http://www.reproductive facts.org/Topics/Artificial_Insemination/.

touchstone for parentage. See Adoption of a Minor, 471 Mass. at 376 (extending coverage to "children born through the use of any assisted reproductive technology,"[8] though the statutory language is limited to only "artificial insemination"); Hunter, 463 Mass. at 493 (conferring parentage on domestic partner despite textual marriage requirement); Della Corte v. Ramirez, 81 Mass. App. Ct. 906, 907 (2012) (applying statute to child born to same-sex partners unmarried at time of conception where non-biological mother was "an integral part of the couple's decision to conceive"). In rejecting a formal and technical reading of the statute, these decisions recognize that the parents' consent and intent to create a child is the "critical element" of legal parentage in cases involving assisted reproductive technology. Okoli, 81 Mass. App. Ct. at 377.

Courts across the country recognize presumptive parentage for children conceived through ART regardless of the child's parents' marital status. E.g., Rubano, 759 A.2d at 971 (where parties

[8] "Assisted reproductive technology," or "assisted reproduction," refers to methods of conception outside of sexual intercourse. See, e.g., UNIF. PARENTAGE ACT § 102(4) (2002).

jointly decided to conceive via artificial insemination, plaintiff-mother was "involved with" paternity of child for purposes of parentage statute); In re Parentage of Robinson, 383 N.J. Super. 165, 174 (2005) (where couple "held themselves before the world as life partners - a family" and "carefully planned to have a child," commitment to one another qualifies as the "essence of marriage" for purposes of artificial insemination statute's reference to "husband" and "wife").

By enacting section 4B, the Legislature "affirmatively supported the assistive reproductive technologies that are the only means by which [some] children can come into being." Woodward, 435 Mass. at 546-47. This Court should reject the "inherently irrational conclusion that artificial reproductive technologies are to be encouraged while a class of children who are the fruit of that technology are to have fewer rights and protections than other children." Id.; cf. Hunter, 463 Mass. at 493; Della Corte, 81 Mass. App. Ct. at 90.

IV. FAILING TO READ MASSACHUSETTS LAW CONSISTENTLY WITH THE NEEDS OF NON-BIOLOGICAL PARENT-CHILD RELATIONSHIPS SEVERELY BURDENS AN ALREADY VULNERABLE CLASS OF NONMARITAL CHILDREN.

Failing to extend legal parentage to actual parents like Ms. Partanen - under chapter 209C or section 4B (or under the court's general equity jurisdiction [9]) - undercuts the clear policy of Massachusetts in maximizing for children the economic support, filial bonds, and legal rights of having two legal parents. The impact of undermining that policy creates needless hardship for thousands of children.

A. A Constrained Reading of Massachusetts Parentage Law Defeats Its Key Function of Ensuring Economic Support for an Already Vulnerable Class of Children.

One of the primary policy aims of chapter 209C was to lessen burdens on nonmarital children by securing sources of parental support, reducing childhood poverty, and commensurately reducing the

[9] Even if chapter 209C and section 4B were inapplicable to Appellant, the Probate and Family Court should recognize her full legal parentage under its general equity jurisdiction. See G. L. c. 215, § 6. As this Court confirmed just this month, the equity power of the Probate and Family Court is sufficiently broad to fill statutory gaps to advance the welfare of children. Recinos vs. Escobar, SJC-11986, slip op. at 11-12 (Mar. 4, 2016). Amici incorporate by reference in full Appellant's argument regarding the court's general equity jurisdiction to recognize her legal parentage. Appellant Br. at 44-46.

burden on the government and community. See supra Part I.B. Limiting the means whereby children can establish legal relationships with (and obtain support from) non-biological parents thwarts the Support Act's goals. The impact, however, is not abstract. Foreclosing parentage in this way exacerbates the economic hardships faced by Massachusetts children raised by single parents, unmarried parents, and - in particular, although not exclusively - LGBT parents, who are already disproportionately affected by poverty.

Unmarried couples who ultimately raise children together commonly include one partner who becomes more responsible for child care and less financially independent, while the other partner maintains more stable employment. See PARKER & WANG, PEW RES. CENTER, MODERN PARENTHOOD 41-43 (2013); see also, e.g., Hunter, 463 Mass. at 490-91 (observing how plaintiff became primary caretaker, taking time off from work to accommodate defendant's work schedule). This dynamic is not new; nor is it unique to nonmarital relationships. See, e.g., Editorial, Sensible Child Support, BOS. GLOBE, May 17, 1986, at 14 ("The standard of living improves for most fathers after divorce, but

deteriorates for most mothers and children."). But the persistence of this dynamic underscores the critical need to maintain support from both parents if their relationship ends, often leaving the economically dependent caregiver parent wholly vulnerable and the "breadwinner" partner entirely immune from any legal support obligation. See Chambers vs. Chambers, Del. Fam. Ct., No. CN00-09493, slip op., 2002 WL 1940145 at *5 (Feb. 5, 2002) ("Were the court to adopt Carol's narrow definition of parent, David might well face impoverishment."); see also COMMISSION REPORT at 1-2 (observing that "children's living standards often plummet when the chief breadwinner leaves the household").

Social research data confirm the vulnerable state of nonmarital children most in need of routes to parentage. Nationally, almost 1.6 million children are born to unmarried women, over 40 percent of all births. Martin et al., Births: Final data for 2013, NAT'L VITAL STAT. REP., Jan. 15, 2015, at 6-7. In Massachusetts, approximately one in three children were born to unmarried parents in 2014. MASS. DEP'T OF PUB. HEALTH, MASS. BIRTHS 2014, at Table 1 (2015).

Children in unmarried households are almost twice as likely to be poor than children growing up with married different-sex parents. M.V. LEE BADGETT ET AL., WILLIAMS INST., NEW PATTERNS OF POVERTY IN THE LESBIAN, GAY, AND BISEXUAL CMTY. 7, 8 (2013). In Massachusetts specifically, three-quarters of the children living below the federal poverty line reside with an unmarried parent or parents. Mass. Demographics of Poor Children, NAT'L CTR. FOR CHILD. IN POVERTY (May 13, 2015), http://www.nccp.org/profiles/MA_profile_7.html. In Boston, the poverty rate among all family households with children is 17 percent, but 40.5 percent for one-parent households. BOST. REDEVELOPMENT AUTHORITY RES. DIVISION, POVERTY IN BOS. 5 (2014). This high rate of poverty among nonmarital children today - just as in 1985, prior to the Support Act's passage - is largely attributable to the absence of economic support from two parents. COMMISSION REPORT at 1; see also Grall, Custodial Mothers and Fathers and Their Child Support: 2013, U.S. CENSUS BUREAU CURRENT POPULATION REPORTS 12 (2016) (reporting that child support constitutes 70.3 percent of income for poor single parents).

Limiting the Holding Out Presumption to parents with biological ties has particular impact on children of LGBT parents, since in most cases, at least one parent will not be linked biologically to the child. See Woodward, 435 Mass. at 546-47. Thus, such children are disproportionately likely to lack a viable pathway to having two legal parents under the framework adopted by the Probate Court in this case. But at the same time, children of LGBT parents are more likely to need support from two parents, because poverty also affects these families disproportionately. As many as six million American children have an LGBT parent. GATES, WILLIAMS INST., LGBT PARENTING IN THE U.S. 1 (2013).

Children raised by married or partnered LGBT couples are twice as likely to report household incomes near the poverty threshold as children in non-LGBT households. LGBT PARENTING IN THE U.S., supra at 5. Single LGBT adults raising children are *three times more likely* than comparable non-LGBT individuals to report household incomes near the poverty line. Id. Importantly, researchers attribute such higher rates of poverty in LGBT families to (among other things) *the lack of legal recognition of those families*, which

negatively impacts access to benefits such as health insurance, government safety-net programs, retirement savings, inheritance, and Social Security benefits, while imposing higher taxation. See generally CTR. FOR AM. PROGRESS, PAYING AN UNFAIR PRICE: THE FIN. PENALTY FOR BEING LGBT IN AM. 33-59 (2014).[10]

The effects of poverty on a child's life-long well-being are many and profound. "Poverty denies children by robbing them of physical and mental health. It under-nourishes them, keeps them in the cold, undermines school success, locks them out of stable homes, and increases their vulnerability to child maltreatment." CHILD POVERTY IN MASS., supra at 9. Growing up in poverty is correlated with an increased risk of exposure to environmental toxins, higher rates of risky and delinquent behaviors, higher teen birth rates, more likely interaction with the criminal justice system, and poorer cognitive and academic outcomes during childhood, to say nothing of poorer

[10] Researchers also attribute this gap to a variety of other external factors affecting LGBT Americans, including employment discrimination, housing discrimination, inadequate access to healthcare, hostile educational environments, and lack of extended family support for LGBT families. FIN. PENALTY FOR BEING LGBT IN AM., supra at i-ii; NEW PATTERNS OF POVERTY IN THE LESBIAN, GAY, AND BISEXUAL CMTY., supra at 1.

occupational and health outcomes in adulthood. CHILD TRENDS DATA BANK, CHILD. IN POVERTY: INDICATORS ON CHILD. AND YOUTH 2-3 (2015); RATCLIFFE, URBAN INST., CHILD POVERTY AND ADULT SUCCESS 4, 9 (2015); Brooks-Gunn & Duncan, The Effects of Poverty on Children, 7 CHILD. AND POVERTY 55, 57-64 (1997).

The economic impact of the lower court's ruling is also systemic, since foreclosing parentage where a legal parent could be established unnecessarily strains the limited resources of the Commonwealth and non-profit organizations, leaving less for children who truly have only one, or no, legal parent for support. See Quilloin v. Walcott, 434 U.S. 246, 255 (1978); see also MASS. CITIZENS FOR CHILD., CHILD POVERTY IN MASS.: A TALE OF THREE CITIES 10 (2010) (estimating the annual cost of child poverty in Massachusetts at $6.5 billion).

B. Imposing A Non-Textual Biological Limitation on Chapter 209C or a Marital Limiter on section 4B Strips a Subclass of Children of the Care and Emotional Bonds Attendant to the Parent-Child Relationship.

Foreclosing avenues of establishing legal parentage for nonmarital children with non-biological parents also curtails a child's access to the non-economic benefits of the parent-child

relationship. Cf. Smith v. Org. of Foster Families for Equal. & Reform, 431 U.S. 816, 844 (1977) (observing that "the importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association").

This Court has observed that "a child's interest is best served in a stable, continuous family environment. . . . Although this principle is not easily susceptible of empirical proof, there exists a 'substantial and impressive consensus' among experts in the field of child development that 'disruption of the parent-child relationship carries significant risks' for the child." Pet. of Dep't of Pub. Welfare to Dispense with Consent to Adoption, 383 Mass. 573, 588 (1981); see also MASS. ASS'N OF FAMILY AND CONCILIATION CTS., PLANNING FOR SHARED PARENTING 3 (2005) ("Children do best when both parents have a stable and meaningful involvement in their children's lives."); Dickenson v. Cogswell, 66 Mass. App. Ct. 442, 446 (2006) (affirming denial of request by divorcing parent to remove a child from the Commonwealth and away from the second parent, observing the "steady and important presence" of the other parent in the child's life, and

that it "is in [the child's] best interests to have regular contact with [the parent]").

The lower court's approach permits one parent - generally a biological parent - in a nonmarital family to remove the child from the other parent, without regard to the child's interest in that bond. This is exactly the result criticized by this Court in Hunter. See 463 Mass. at 491, 495-96 (defendant mother "wrongfully removed" child to Oregon "and, in doing so, disrupted [the child's] attachment" to plaintiff mother); see also Herscher, Family Circle, S.F. CHRON., Aug. 29, 1999, at 1Z1 (recounting how a biological mother left the state with adolescent son, abandoning her long-time partner whom the son regarded as his other mother). Such a harsh result is compounded where such biological parent could move to a jurisdiction with no protections for nonmarital children and their preexisting parent-child relationships. See, e.g., Jones v. Barlow, 154 P.3d 808, 818-19 (Utah 2007).

Social science research confirms the courts' regard for maintaining filial bonds. As this Court has observed, researchers associate nonmarital children's stable access to two parents with higher

educational achievement, improved behavior, and better employment outcomes. Paternity of Cheryl, 434 Mass. at 31 n.15. Data gathered in connection with the decade-long Fragile Families and Child Wellbeing Study support a finding that nonmarital children raised without consistent access to two parents are at greater risk for lower school achievement and poorer social and emotional development than nonmarital children in more stable families. Waldfogel et al., Fragile Families and Child Wellbeing, 20 THE FUTURE OF CHILD. 87, 103-04 (2010); see also U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD HEALTH USA 2014, at 12 (2015); CHILD TRENDS DATA BANK, FAMILY STRUCTURE: INDICATORS ON CHILD. AND YOUTH 2 (2015); Herscher, supra (recounting that the daughter of a separated same-sex couple whose non-biological mother was adjudged to have no rights to maintain parental contact was diagnosed by a psychologist with "the kind of clinical depression kids undergo when they lose a parent").

Because the parent-child relationship with both parents is an indispensable source of "guidance, companionship, and affection," Adoption of Mariano, 77 Mass. App. Ct. at 663, and "disrupting the attachment a child has to a parent . . . causes harm that can be

long term," Hunter, 463 Mass. at 496, the Court should construe the law to protect the bonds nonmarital children have with their non-biological parents.

C. A Constrained Reading of Massachusetts Parentage Law Divests Children of All the Legal Rights, Protections, and Entitlements of Having Two Legal Parents.

The lower court's rulings applied broadly would severely obstruct the right of an entire subclass of nonmarital children to have two legal parents. Adoption of a Minor, 471 Mass. at 378 n.8 (holding donor of genetic material not a legal parent); G. L. c. 210, § 6 (providing that adoption extinguishes legal consequences of parentage as to birth parent(s)). Like the nonmarital children under the long-past common law regime of bastardy - "the children of none" - these children necessarily would be legally "the children of only one."

At the outset, and as detailed in Appellant's Brief (at 29-38), such a result would deprive these children of basic constitutional rights of equal protection, due process, and liberty. Depriving children of such rights based on the conduct and characteristics of their parents is "illogical and

unjust" as a matter of law. Cf. Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164, 175 (1972).

Moreover, countless other basic legal rights and benefits automatically flow directly to children from each of their legal parents. These include eligibility for health insurance coverage and Social Security benefits, inheritance under intestacy laws, and immediate access to a second parent, should one of them die or become incapacitated during the child's minority. See Adoption of Mariano, 77 Mass. App. Ct. at 661 (citing 42 U.S.C. § 402(d)); G. L. c. 210, § 7); Adoption of Tammy, 416 Mass. 205, 214 (1993).

Excluding children with two presumptive parents from access to these rights halves this bundle of benefits, severing all of those flowing from one parent. Cf. Adoption of Mariano, 77 Mass. App. Ct. at 661. The life-altering impact of being entitled - or not - to health insurance, death benefits, inheritance, and other parentage-related legal benefits is well-recognized. E.g., Adoption of Tammy, 416 Mass. at 214; cf. United States v. Windsor, 133 S. Ct. 2675, 2694 (2013) (striking down Defense of Marriage Act as depriving those affected of a host of rights automatically conferred by marriage).

Even more profound, however, are the basic bonds of family, which help define a child's identity and place in the world. The repercussions of ignoring these bonds are manifest. Taking one example: in 1999 the San Francisco Chronicle featured the story of 13-year old Micah, whose unmarried mothers partnered to conceive him and his sister and planned to raise them as a family. Herscher, supra. Micah's biological mother, Nancy, eventually left Micah's non-biological mother, Micki, and moved with Micah from California to Oklahoma, leaving Micki with no legal means of defending her parental rights (the pre-Elisa B. law in California at the time did not recognize Micki's parentage). Id. Tragically, Micah and Nancy had an automobile accident, which killed Nancy. Id.

> Micah had no father, but he told the hospital authorities repeatedly that he did have another mother -- Nancy's former partner, who lived in Berkeley. No one listened. No one dialed the phone numbers in California he kept giving them. [] Micah . . . was already a ward of the court and on his way to becoming a foster child. . . .
>
> "Mom," Micah said as Micki swept into his hospital room that afternoon. "You got here." But a judge had ruled six years earlier that, in the eyes of the law, Micki [] wasn't mom. Now, in an Oklahoma hospital, that ruling . . . threaten[ed] to throw [her] injured son into the foster-care system.

Id. While Micki eventually obtained guardianship over Micah, the outcome was not free from doubt. Id. Rather, the legal landscape that deprived him of legal parentage "made Micah an orphan." Jacobs, Micah Has One Mommy and One Legal Stranger: Adjudicating Maternity for Nonbiological Lesbian Coparents, 50 BUFF. L. REV. 341, 381-82 (2002). This unfortunate anecdote highlights how parentage confers more than rights and benefits; it bestows a fundamental legal identity of "parent" and "child" that has no equal.

To be sure, equitable doctrines such as de facto parentage and parentage by estoppel may afford children limited benefits such as visitation. See E.N.O. v. L.M.M., 429 Mass. 824, 834 (1999). But those doctrines are wholly inadequate substitutes for the legal rights conferred by chapter 209C and chapter 46, section 4B. Similar half-measures such as domestic partnership laws for same-sex couples wishing to marry have been soundly rejected as denying equal access to the fundamental rights embedded in marriage. Obergefell, 135 S. Ct. at 2601 ("[The States] throughout our history made marriage the basis for an expanding list of governmental rights, benefits, and

responsibilities."); Goodridge, 440 Mass. at 323 ("The benefits accessible only by way of a marriage license are enormous, touching nearly every aspect of life and death."). So also, limiting a nonmarital child's access to full legal parentage plainly and simply "exclude[s her] from the full range of human experience and denie[s her] full protection of the laws." Cf. id. at 326.

CONCLUSION

For the foregoing reasons, amici respectfully urge this Court to recognize the purpose and text of Massachusetts parentage law as protecting a child's right to presumed legal parentage under either chapter 209C or chapter 46, section 4B. Each child in the Commonwealth must be able to reap all of the rights, benefits, and protections afforded, without regard to, and without requirement of the parents' biological ties to the child or their marital status. This Court should reverse the decision of the trial court and remand the case for adjudication of Ms. Partanen as a legal parent of her children.

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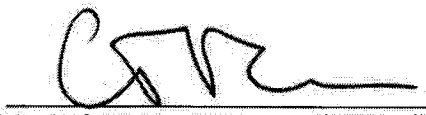
March 16, 2016

Certification of Compliance

Pursuant to Mass. R. App. P. 16(k), I hereby certify that this brief complies in all material respects with the Massachusetts Rules of Appellate Procedure pertaining to the filing of briefs.



C. Thomas Brown (BBO #667558)

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M.G.L.A. 46 § 4B

§ 4B. Artificial insemination

Currentness

Any child born to a married woman as a result of artificial insemination with the consent of her husband, shall be considered the legitimate child of the mother and such husband.

Credits
Added by St.1981, c. 684, § 7.

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Effective: July 1, 2012
Currentness

Upon a judgment for divorce, the court may make such judgment as it considers expedient relative to the care, custody and maintenance of the minor children of the parties and may determine with which of the parents the children or any of them shall remain or may award their custody to some third person if it seems expedient or for the benefit of the children. In determining the amount of the child support obligation or in approving the agreement of the parties, the court shall apply the child support guidelines promulgated by the chief justice of the trial court, and there shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. Upon a complaint after a divorce, filed by either parent or by a next friend on behalf of the children after notice to both parents, the court may make a judgment modifying its earlier judgment as to the care and custody of the minor children of the parties provided that the court finds that a material and substantial change in the circumstances of the parties has occurred and the judgment of modification is necessary in the best interests of the children. In furtherance of the public policy that dependent children shall be maintained as completely as possible from the resources of their parents and upon a complaint filed after a judgment of divorce, orders of maintenance and for support of minor children shall be modified if there is an inconsistency between the amount of the existing order and the amount that would result from application of the child support guidelines promulgated by the chief justice of the trial court or if there is a need to provide for the health care coverage of the child. A modification to provide for the health care coverage of the child shall be entered whether or not a modification in the amount of child support is necessary. There shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. The order shall be modified accordingly unless the inconsistency between the amount of the existing order and the amount of the order that would result from application of the guidelines is due to the fact that the amount of the existing order resulted from a rebuttal of the guidelines and that there has been no change in the circumstances which resulted in such rebuttal; provided, however, that even if the specific facts that justified departure from the guidelines upon entry of the existing order remain in effect, the order shall be modified in

accordance with the guidelines unless the court finds that the guidelines amount would be unjust or inappropriate under the circumstances and that the existing order is consistent with the best interests of the child. A modification of child support may enter notwithstanding an agreement of the parents that has independent legal significance. If the IV-D agency as set forth in chapter 119A is responsible for enforcing a case, an order may also be modified in accordance with the procedures set out in section 3B of said chapter 119A. The court may make appropriate orders of maintenance, support and education of any child who has attained age eighteen but who has not attained age twenty-one and who is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance. The court may make appropriate orders of maintenance, support and education for any child who has attained age twenty-one but who has not attained age twenty-three, if such child is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance due to the enrollment of such child in an educational program, excluding educational costs beyond an undergraduate degree. When the court makes an order for maintenance or support of a child, said court shall determine whether the obligor under such order has health insurance or other health coverage on a group plan available to him through an employer or organization or has health insurance or other health coverage available to him at a reasonable cost that may be extended to cover the child for whom support is ordered. When said court has determined that the obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor exercise the option of additional coverage in favor of the child or obtain coverage for the child.

When a court makes an order for maintenance or support, the court shall determine whether the obligor under such order is responsible for the maintenance or support of any other children of the obligor, even if a court order for such maintenance or support does not exist, or whether the obligor under such order is under a preexisting order for the maintenance or support of any other children from a previous marriage, or whether the obligor under such order is under a preexisting order for the maintenance or support of any other children born out of wedlock. If the court determines that such responsibility does, in fact, exist and that such obligor is fulfilling such responsibility such court shall take into consideration such responsibility in setting the amount to paid [1] under the current order for maintenance or support.

No court shall make an order providing visitation rights to a parent who has been convicted of murder in the first degree of the other parent of the child who is the subject of the order, unless such child is of suitable age to signify his assent and assents to such order; provided, further, that until such order is issued, no person shall visit, with the child present, a parent who has been convicted of murder in the first degree of the other parent of the child without the consent of the child's custodian or legal guardian.

Credits

Amended by St.1975, c. 400, § 29; St.1975, c. 661, § 1; St.1976, c. 279, § 1; St.1983, c. 233, § 76; St.1985, c. 490, § 1; St.1988, c. 23, § 66; St.1991, c. 173, § 1; St.1993, c. 460, §§ 60 to 62; St.1997, c. 77, § 2; St.1998, c. 64, §§ 194, 195; St.2011, c. 93, § 37, eff. July 1, 2012.

Notes of Decisions (525)

Footnotes

1 So in enrolled bill.

M.G.L.A. 208 § 28, MA ST 208 § 28

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Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)
Title III. Domestic Relations (Ch. 207-210)
Chapter 209C. Children Born Out of Wedlock (Refs & Annos)

M.G.L.A. 209C § 1

§ 1. Declaration of purpose; definition; responsibility for support

Currentness

Children born to parents who are not married to each other shall be entitled to the same rights and protections of the law as all other children. It is the purpose of this chapter to establish a means for such children either to be acknowledged by their parents voluntarily or, on complaint by one or the other of their parents or such other person or agency as is authorized to file a complaint by section five, to have an acknowledgment or adjudication of their paternity, to have an order for their support and to have a declaration relative to their custody or visitation rights ordered by a court of competent jurisdiction. For the purpose of this chapter, the term "child born out of wedlock" shall refer to any child born to a man and woman who are not married to each other and shall include a child who was conceived and born to parents who are not married to each other but who subsequently intermarry and whose paternity has not been acknowledged by word or deed or whose paternity has not been adjudicated by a court of competent jurisdiction; and a child born to parents who are not married to each other whose paternity has been adjudicated by a court of competent jurisdiction, including an adjudication in a proceeding pursuant to this chapter or prior law. Every person is responsible for the support of his child born out of wedlock from its birth up to the age of eighteen, or, where such child is domiciled in the home of a parent and principally dependent upon said parent for maintenance, to age twenty-one. Each person charged with support under this section shall be required to furnish support according to his financial ability and earning capacity pursuant to the provisions of this chapter.

Credits

Added by St.1986, c. 310, § 16. Amended by St.1998, c. 64, § 205.

Notes of Decisions (21)

M.G.L.A. 209C § 1, MA ST 209C § 1
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Chapter 209C. Children Born Out of Wedlock (Refs & Annos)

M.G.L.A. 209C § 6

§ 6. Presumption of paternity; mandatory joinder

Currentness

(a) In all actions under this chapter a man is presumed to be the father of a child and must be joined as a party if:

(1) he is or has been married to the mother and the child was born during the marriage, or within three hundred days after the marriage was terminated by death, annulment or divorce; or

(2) before the child's birth, he married or attempted to marry the mother by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child was born during the attempted marriage or within three hundred days after its termination; or

(3) after the child's birth, he married or attempted to marry the mother by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) he agreed to support the child under a written voluntary promise, or

(ii) he has engaged in any other conduct which can be construed as an acknowledgment of paternity; or

(4) while the child is under the age of majority, he, jointly with the mother, received the child into their home and openly held out the child as their child; or

(5) he has acknowledged paternity in a parental responsibility claim as provided in section four A of chapter two hundred and ten and the mother, having received actual notice thereof, has failed within a reasonable time, to object thereto; or

(6) with respect to a child born before April 13, 1994, with his consent and the consent of the child's mother, he is named as the child's father on the birth certificate as provided in section one of chapter forty-six.

(b) Notwithstanding the provisions of subsection (a), a husband or former husband shall not be required to be joined as a party if non-paternity of the child has previously been adjudicated in a proceeding between the husband and the mother of such child in a court or administrative agency of competent jurisdiction.

(c) Notice to a party joined as herein provided shall be sufficient if the summons is mailed to the last known address by a form of mail requiring a receipt and, if actual notice shall not be made as aforesaid, by publishing a copy of the notice once in each of three successive weeks in a newspaper designated by the court.

Credits

Added by St.1986, c. § 310, § 16. Amended by St.1993, c. 460, § 71; St.1998, c. 64, § 216.

Notes of Decisions (3)

M.G.L.A. 209C § 6, MA ST 209C § 6
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Chapter 209C. Children Born Out of Wedlock (Refs & Annos)

M.G.L.A. 209C § 21

§ 21. Action to determine mother and child relationship

Currentness

Any interested party may bring an action to determine the existence of a mother and child relationship. Insofar as practicable, the provisions of this chapter applicable to establishing paternity shall apply.

Credits
Added by St.1986, c. 310, § 16.

M.G.L.A. 209C § 21, MA ST 209C § 21
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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Massachusetts General Laws Annotated
Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)
Title III. Domestic Relations (Ch. 207-210)
Chapter 210. Adoption of Children and Change of Names (Refs & Annos)

M.G.L.A. 210 § 1

§ 1. Nature of adoption; district or juvenile court

Effective: July 8, 2008
Currentness

A person of full age may petition the probate court in the county where he resides for leave to adopt as his child another person younger than himself, unless such other person is his or her wife or husband, or brother, sister, uncle or aunt, of the whole or half blood. A minor may likewise petition, or join in the petition of his or her wife or husband, for the adoption of a natural child of one of the parties. If the petitioner has a husband or wife living, competent to join in the petition, such husband or wife shall join therein, and upon adoption the child shall in law be the child of both; provided, however, that the prayer of the petition may be granted although the spouse of the petitioner is not a party to the petition if the court finds: (i) the failure of the spouse to join in the petition or to consent to the adoption is excused by reason of prolonged unexplained absence, legal separation, prolonged separation, incapacity or circumstances constituting an unreasonable withholding of consent; (ii) the husband and wife are not in the process of an ongoing divorce; and (iii) the granting of the petition is in the best interests of the child. If a person not an inhabitant of this commonwealth desires to adopt a child residing here, the petition may be made to the probate court in the county where the child resides.

The district or juvenile court may, if it appears necessary or convenient, exercise the powers authorized by this chapter, but only in respect to a pending proceeding before such district or juvenile court.

Credits
Amended by St.1941, c. 44; St.1966, c. 370; St.1992, c. 379, § 59; St.1999, c. 3, § 15; St.2008, c. 176, § 116, eff. July 8, 2008.

Notes of Decisions (37)

M.G.L.A. 210 § 1, MA ST 210 § 1
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Chapter 210. Adoption of Children and Change of Names (Refs & Annos)

M.G.L.A. 210 § 5

§ 5. Failure to object after notice; proceedings

Currentness

If, after such notice, a person whose consent is required does not appear and object to the adoption, the court may act upon the petition without his consent, subject to his right of appeal, or it may appoint a guardian ad litem with power to give or withhold consent.

Notes of Decisions (10)

M.G.L.A. 210 § 5, MA ST 210 § 5
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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Massachusetts General Laws Annotated
Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)
Title III. Domestic Relations (Ch. 207-210)
Chapter 210. Adoption of Children and Change of Names (Refs & Annos)

M.G.L.A. 210 § 6

§ 6. Decree of court; force and effect; private hearings

Effective: July 8, 2008
Currentness

If the court is satisfied of the identity and relations of the persons, and that the petitioner is of sufficient ability to bring up the child and provide suitable support and education for it, and that the child should be adopted, it shall make a decree, by which, except as regards succession to property, all rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between the child and the petitioner and his kindred, and such rights, duties and legal consequences shall, except as regards marriage, incest or cohabitation, terminate between the child so adopted and his natural parents and kindred or any previous adopting parent; but such decree shall not place the adopting parent or adopted child in any relation to any person, except each other, different from that before existing as regards marriage, or as regards rape, incest or other sexual crime committed by either or both. The court may also decree such change of name as the petitioner may request. If the person so adopted is of full age, he shall not be freed by such decree from the obligations imposed by section six of chapter one hundred and seventeen and section twenty of chapter two hundred and seventy-three.

In evaluating whether a petitioner is of sufficient ability to provide suitable support for the child, the court shall give consideration to assurances by the department of children and families that it will provide an adoption subsidy for the child.

No decree shall be made under this section until there has been filed in the court a statement, signed and sworn to by the petitioner, or petitioners, setting forth the date of birth and place of residence of each adopting parent and such other facts relating to each such parent as would be required by section thirteen of chapter forty-six for the correction of the record of the birth of the person sought to be adopted, and also a copy of the birth record of such person; provided, that in case such person has been previously adopted, either a copy of the record of his birth amended to conform to the previous decree of adoption or a copy of such decree may be so filed; and, provided further, that the filing of any such copy may be dispensed with if the judge is satisfied that it cannot be obtained.

Every decree of adoption entered by the court shall include the words "This adoption is final and irrevocable."

The probate judge may determine that the hearing on any adoption petition shall be held in chambers. He shall, on the request of any party to an adoption proceeding, hold the hearing thereon in chambers, except that if said petition is contested, the consent of the other party or parties shall be required. No person shall be allowed to be present at any such hearing unless his presence is necessary either as a party or as a witness, and the probate judge shall exclude the general public from the hearing.

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Recommendations of the

Governor's Commission on CHILD SUPPORT

submitted to

MICHAEL S. DUKAKIS
Governor

Chairperson:
CATHERINE M. DUNN
Director, Governor's Office of Human Resources

October, 1985

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133

MICHAEL S. DUKAKIS
GOVERNOR

October 1, 1985

Dear Governor Dukakis:

I am pleased to present to you this report of the Child Support Commission appointed by you last December as required by the Child Support Enforcement Amendments of 1984 (Public Law 98-378).

The report is a summary of the work of 32 commissioners representing all aspects of the child support system. Over the past eight months, the Commission has examined the operation of child support collection and enforcement in Massachusetts and formulated recommendations based on its investigation.

The recommendations are designed to bring Massachusetts into compliance with the federal amendments and to create a child support system that is predictable, effective and fair.

Your strong commitment to improving the lives of children in the Commonwealth has been demonstrated by your policies and programs in the areas of day care, child nutrition and child protection. Improvement in child support enforcement and services will bring an additional measure of security to thousands of children in the state who are deprived of economic support which is rightfully theirs.

Addressing the issues raised by the Commission will require maximum cooperation between the executive, legislative and judicial branches of state government. The Commission stands ready to assist in this effort. We look forward to your response to our recommendations.

Sincerely yours,

Catherine M. Dunham

Catherine M. Dunham
Director, Governor's Office of Human Resources
Chairperson, Child Support Commission

ACKNOWLEDGEMENTS

Members of the Commission have given generously of their time for Commission meetings and Committee work. A special thanks to Commission members Frank Anderson, Carolyn Famiglietti, George Kelly, Jon Laramore and Marilyn Ray Smith for chairing the Committees established by the Commission.

The Massachusetts Society for Prevention of Cruelty to Children, Family Services Association of Greater Boston, Suffolk University Law School and Boston Municipal Court provided meeting space for the Commission and its Committees.

Secretary of Human Services Philip W. Johnston and Public Welfare Commissioner Charles Atkins fully supported the work of the Commission, including staff assistance and provision of a budget for the operation of the Commission.

Hugh Galligan, Director of Health & Human Services' Regional Office of Child Support Enforcement, met with the Commission and provided consultation to the Commission throughout its deliberations.

The staff support for the Commission was directed by Connie Williams, Chief Policy Analyst in the Governor's Office of Human Resources. She was assisted by Dennis Thomson, Patricia Lynch and Peter Atkins. From the Department of Public Welfare, Robert Bolster and Susan Solomon provided staff and research assistance. Linda Joyce-Smith provided secretarial services for the Commission including the production of this report. This report was written by Connie Williams and Jon Laramore in consultation with other Commission members. Staff assistants to the Judges, District Attorneys, Commissioner of Probation, Commissioner of Public Welfare and the Executive Office of Administration and Finance met regularly with the Commission and served on Committees. They were valuable resources on child support in their respective agencies.

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I. INTRODUCTION

A. Child Support and Its Social Context

Rising rates of divorce, separation and out-of-wedlock births during the past decade have increased the necessity for careful examination of social policies and practices related to family issues. One of the most visible of these issues is child support. However, one cannot consider child support without also paying attention to the total context in which child support occurs. The impact of child support policies and practices on children, custodial and non-custodial parents, and reconstituted families is far-reaching.

Policies related to child custody and the access of children to both parents are inextricably tied to continued emotional commitment and financial responsibility assumed by parents. While this Commission could not consider all of these issues in depth, it attempted to keep child support in this larger context.

Commission members held widely divergent points of view on many of these issues. There was, however, complete agreement that the emotional and economic costs of divorce, separation and single parenthood are high for all parties involved and no party pays a higher price than the innocent child. For this reason, all members of the Commission are committed to improving the Commonwealth's child support system.

An improved system will narrow the widening gap between children in one-parent and two-parent families. The staggering figures show that a two-parent family with children under 18 has a median income of $23,1833, while a single-parent family has a median income of just $7,393. That figure is only $4,588 when the children in the single-parent family are under 6.[1]

Many experts have linked this poverty to failure to collect child support.[2] More than half of existing child support orders are not fully paid, and even the average order that is paid amounts to just $1,700 per year.[3] When these amounts are taken together with the fact that most working women earn less than $10,000 annually, it is no wonder that most female-headed families have incomes below the poverty line.[4] The figures

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1 1980 Massachusetts census data.
2 Laramore, Economic Child Abuse, sources cited at 7.
3 U.S. Census data, 1981.
4 Roberts, ameliorating the feminization of Poverty, 16 Clearinghouse Review, 883, 885. House Hearing 98-41, Ways and Means Committee Hearing on Child Support, p. 15.

show that economic troubles multiply when families split, and that children's living standards often plummet when the chief breadwinner leaves the household.[5]

These families often turn to public assistance. According to the Office of Child Support Enforcement (OCSE) of the U.S. Department of Health and Human Services:

> "It is a fact that of those receiving Aid to Families with Dependent Children (AFDC) payments, 87% are receiving assistance because there is no father in the home to provide the support. As a result, mothers and children are left to their own meager resource, resulting in what many have termed the 'feminization of poverty.'
>
> It has been estimated that single parent families receiving government assistance cost the taxpayers $20 to $30 billion a year. In addition, the Census Bureau has reported that of the $9.9 billion owed in child support payments just in 1981, only $6.1 billion were actually collected."[6]

These compelling facts kept the Commission focused on the well-being of children.

II. BACKGROUND

The Governor's Child Support Commission was appointed by Governor Michael S. Dukakis in December, 1984 and sworn in on January 29, 1985. The Commission has 32 members who represent all constituencies interested in child support enforcement and all state agencies involved in the enforcement process. As chair of the Commission, the Governor appointed Catherine M. Dunham, Director of the Governor's Office of Human Resources.

Child Support is the financial support that parents are obligated to provide for the care and well-being of their children. For our purposes, child support is the cash payment by parents who are not the primary custodians of the children on whose behalf support is paid. The support obligation is based in law and the amount of support that is to be paid is often set by court order.

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[5] Weitzman, The Economics of Divorce, 28 U.C.L.A. Law Review 1181, 1238.

[6] OCSE Pamphlet, "Child Support...Now Help is Available."

A. State Commission on Child Support

Establishment of the Commission was mandated by the Child Support Enforcement Act Amendments of 1984, Federal Public Law 98-378. This statute promulgated new federal requirements to be met by all states as a condition of continued receipt of federal funding under Title IV-D of the Social Security Act. The law required commissions to examine each state's support enforcement system and to recommend improvements in the system.

According to the federal statute, section (c),

> "It shall be the function of each State Commission to examine, investigate and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children."

The Commission found that the federally-mandated changes were an important incentive in the examination of the support collection system in Massachusetts. It discovered that while Massachusetts ranks seventh among those states most successful in collecting child support, and has the highest ratio of child support collections to AFDC costs, that even greater effectiveness can be achieved in a better coordinated system.

The federal guidelines require the Commission to report by October 1, 1985 to the Governor and in turn to the Secretary of Health and Human Services. Hugh Galligan, Director of the Regional Child Support Enforcement Office, graciously agreed to extend this due date until mid-October. It was also the wish of several members that the Commission not disband at this time in order to attend to the implementation of its recommendations. The Commission agreed to continue for three months (until January 1, 1986).

This report focuses on the major recommendations agreed upon by the total Commission. They relate closely to the federally-mandated requirements with which the state must comply. The requirements are listed below.

An additional volume will contain full reports on the work of the committees, including recommendations not acted upon by the total Commission.

B. Requirements of the Federal Statute

The federal law mandates several important changes for Massachusetts, and the Commission has developed legislation to implement those requirements. A major theme of the legislation is the requirement that all states install certain support enforcement techniques that have proven effective in other locales. For example, the federal law looked to Massachusetts and a few other states to find models for income assignment laws that have increased collections.

Massachusetts already has some of the techniques required by federal law; therefore, the Commission did not have to address them. These include the availability of liens on property and the requirement to post security as tools for support enforcement. The state also meets the federal requirement that support orders include medical insurance whenever possible.

1. Masters

One of the more sweeping changes is the requirement that the state create an "expedited process" for the hearing of all support-setting and enforcement actions. This requirement stems from the success of such special systems in other jurisdictions, such as Illinois and Rhode Island. An "expedited process," under the law, is a system that hears cases more quickly than the court system and that is presided over by a judge-surrogate.

The federal requirement is that this system be used to hear all cases involving support enforcement and the setting of support orders. This requirement has been used in other states to reduce the role of judges in child support, but the system proposed by the Commission for Massachusetts retains most of their role.

2. Income Assignment

For the purpose of this report, "income assignment" is the distribution of a portion of earnings deducted from the non-custodial parent's net income and paid to the custodial parent for child support.

A second requirement of the federal statute is alteration of the state's income assignment statutes, c. 208, sec. 36; c. 209, sec. 32E; c. 273, sec. 5; and c. 273A, sec. 10. The federally mandated alterations are of marginal impact. The statute must be amended to require automatic

implementation of an assignment whenever the total arrearage in a case exceeds 30 days. Implementation of the assignment must be administrative, without provision for approval by a judge unless the obligor contests the fact that the arrearage exists. Income assignment also must be available in interstate cases, and as an additional remedy even in cases handled prior to enactment of the current statute, where no assignment was executed.

3. Tax Offset

Since 1975, the federal government has made available to the states a program allowing them to recoup child support owed to state welfare departments through interception of obligors' income tax refunds. Since 1982, Massachusetts has made this tool available to the Welfare Department for state tax refunds as well. Under the federal law, these programs must be opened to private individuals who are not involved in the welfare system.

4. Equal Services

The fourth federal mandate is that all services that any state provides to persons on welfare to help them collect support must be made available to those not on AFDC. The state must publicize the availability of these services in an effort to get more citizens to use the resources available to improve support collection.

5. Guidelines

Finally, by October 1, 1987, the state must have in place a system of numerical guidelines that may be used by all those who set child support orders to determine how much support should be given in a particular case. Guidelines are designed to bring uniformity to the current system and to deal with the failure of many support orders to meet children's most basic needs. The guidelines need not be binding, and may be promulgated by law, or by judicial or administrative action.

III. COMMISSION STRUCTURE

A. Commission Meetings

Between January 29 and October 1, 1985, the Commission met eight times, including one all-day meeting devoted to adopting recommendations developed by committees.

Commission meetings served as an important and useful forum for the exchange of information and a balancing of perspectives on

child support enforcement and its impact on children, as well as custodial and non-custodial parents. During these proceedings, members of the Commission developed appreciation for the impact of child support policies and practices on the lives of thousands of families.

B. Committees

During its first meeting in February, 1985, the Commission chose to proceed with its work in four committees, later adding a fifth. These committees, which benefited from the active participation of many Commission members, broke down the Commission's task into manageable areas and did the real work of the body. The four original committees were:

- Enforcement: George Kelly, Chair
- Expedited Procedures: Jon Laramore, Chair
- Guidelines: Marilyn Ray Smith, Chair
- Services to Non-AFDC Clients: Frank Anderson, Chair

(The Services Committee expanded its role to look at services delivered to families on welfare as well.)

After these committees finished the bulk of their work, a fifth committee on Legislation, chaired by Carolyn Famiglietti, was formed to help mold the Commission's work into a proposal for statutory change.

C. Public Hearings

Three public hearings were conducted by the Commission, one in each of the following locations: Springfield, Worcester and Boston. Sixty-three persons testified before the Commission. They represented a broad cross-section of citizens concerned and knowledgeable about every aspect of the child support system, including:

--custodial and non-custodial parents;
--civic and professional organizations;
--court personnel;
--attorneys and paralegals from legal service organizations;
--family law practitioners;
--law enforcement officials;
--social workers and family therapists;
--guidance counselors;
--legislators;
--district attorneys;
--mediation experts;
--children of divorce;
--men's groups; and,
--women's groups.

Written testimony submitted to the Commission is available in the Commission files.

D. Conferences and Speaking Engagements

Since the establishment of state child support commissions, the Department of Health and Human Services has sponsored regional and national conferences on child support. The Commission chairperson was invited to speak at a national conference in Colorado and a member of the Commission attended another national conference in South Carolina. In both instances, travel expenses were paid by the federal office of Child Support Enforcement.

One regional Health and Human Services conference in Vermont was attended by a commissioner and a staff person whose expenses were paid by the state IV-D agency. Several commissioners attended, at their own expense, the American Bar Association Conference on Child Support in Washington, D.C.

IV. THE COMMISSION'S MAJOR FINDINGS

It is the goal of the Commission that its recommendations result in the following:

- An efficient system. The time it takes to obtain and enforce a child support order should be shortened. An expedited process (master system) will accomplish this goal.
- A fairer system. The establishing of a formula to guide masters in setting support amounts will introduce fairness by treating persons in similar circumstances equitably.
- An adequate system. Adequate awards are more likely to occur if guidelines for setting support orders are in place.

In examining the system for support collection in Massachusetts, the Commission identified several overarching difficulties which were universally experienced.

- Fragmentation - The involvement in child support matters of executive branch agencies, the district and probate courts, and law enforcement agencies results in a complex system accountable to no single authority.
- Lack of Uniformity - The administration of child support varies widely in various jurisdictions in which it is carried out: 69 district courts, 13 probate courts, 11 district attorney offices, and over 60 Child Support Enforcement Units in the Department of Public Welfare. Those who use the system are aware that persons in similar circumstances cannot count on similar treatment.

- Inadequate Provision of Services - There is no client-oriented printed information available to inform citizens about the system and how to use it. All agencies with child support functions have other duties with greater claims on their resources than child support enforcement.

- Inadequate Use of Available Enforcement Tools - Two examples of the inadequate use of available enforcement tools are the underutilization of wage assignment under the current statue and the the inadmissibility of blood tests in determining paternity.

V. RECOMMENDATIONS OF THE COMMISSION

The implementation of the following recommendations will address the issues of fragmentation, lack of uniformity, inadequate services and inadequate enforcement. These recommendations are only a first step. Over the next three months the Commission will continue its deliberations. Many of the proposed changes require legislative action. Other changes may be carried out by executive or administrative action. These legislative changes will be presented for consideration as amendments to Senate 2357, the Child Support Bill, currently before the Senate Ways and Means Committee. The Commission hopes that the governor and the legislature will find its work helpful as they make decisions about child support enforcement in Massachusetts.

The Commission's work will be particularly useful in suggesting actions necessary to bring the Commonwealth into compliance with the 1984 federal amendments. Compliance with the federal regulations will produce a better coordinated approach to child support while increasing the possibility for increased revenue from the federal government. To these ends, the Commission makes the following recommendations.

A. Administration of Child Support Enforcement

The Commission recommends a strong IV-D (IV-D refers to part D of title IV of the Social Security Act) agency centralizing the collection, services and enforcement functions, sensitive to consumers including children, custodial and noncustodial parents, and providing equal services to AFDC and non-AFDC families.

Between October 1, 1985 and January 1, 1986, the Commission will address the functions of the IV-D agency. A report by a consultant engaged by the Regional Child Support Enforcement Office will be issued in October, 1985, and will address organizational concerns related to child support in Massachusetts. This report will be available to the Commission for potential guidance in its discussion of these issues.

B. Guidelines

The Commission reviewed a report from the Guidelines Committee based on extensive research and long deliberations. Because of the complexity of the subject matter, the Commission adopted the set of principles developed by the Committee and a process by which guidelines should be promulgated.

Principles Governing the Development of Guidelines

1. The economic impact on the child of family break-up should be minimized whenever possible.

2. Both parents should share responsibility for supporting their children, in proportion to their income.

3. Child support should meet a child's survival needs in the first instance, but to the extent either parent enjoys a higher standard of living, the child is entitled to share that higher standard.

4. The guidelines should be structured to accommodate the subsistence needs of parents at the low end of the income range, but should always require at least a token payment. This payment helps maintain a psychological bond between the absent parent and child, establishes a pattern of regular payment, to be increased when income goes up, and enables the enforcement agency to maintain contact with the obligor.

5. The guidelines should avoid creating adverse effects on other life decisions of the parents. The scope of the child support obligation should be predictable so that both parents can plan other parts of their lives accordingly. Second families, whether providing additional resources from a current spouse or creating new obligations for new dependents, should not affect pre-existing child support obligations.

6. The guidelines should take into account the non-monetary contributions of the custodial parent, such as time, services and opportunity costs.

7. The guidelines should be simple--easy to prove for the parties and easy to administer for the courts. Recognizing that subtlety would undoubtedly be sacrificed in some individual cases, the Committee nevertheless concluded that the benefits of simplicity in reducing opportunities for manipulating evidence and prolonging litigation outweighed its drawbacks.

8. The guidelines should reach most cases, again acknowledging the need for flexibility in the treatment of cases with unique circumstances.

Process for the Promulgation of Guidelines

The child support guidelines will be promulgated by a committee chaired by the Chief Administrative Justice of the Trial Court. This committee will include members of the judiciary appointed by the Chief Administrative Justice of the Trial Court and members of the Child Support Commission and others appointed by the Governor.

The Committee's decision will include consideration of socio-economic factors as well as legal ones, and guidelines should be in place at the time the master system is implemented.

C. Jurisdiction

All support orders should be set in civil proceedings, reserving criminal prosecution for punishment. A civil proceeding to obtain support only should, therefore, be created for married persons in the probate and district courts, while preserving criminal non-support jurisdiction in the district court.

Paternity proceedings shall be changed to civil proceedings to allow for faster processing of cases and a civil standard of proof. Blood and genetic tests should be allowed as evidence in these proceedings. Paternity proceedings should be within the jurisdiction of both the probate and district courts.

When support is set in the district court in a paternity matter, any issue concerning visitation or custody still must be heard in the probate court (but is not to be heard until the district court makes its decision on paternity or support). The probate court must respect the support order of the district court unless a substantial change of circumstances exists justifying modification of that order. Even after probate court action on custody or visitation, enforcement of the support order must be accomplished in district court. Any future modification based on changed circumstances may be brought in either probate or district court. Probate court may enforce any order it modifies.

D. Income Assignment

An immediate income assignment will automatically be ordered in every case unless the court or master, for good cause shown (including agreement of the parties that it should not be immediate), determines that it should be suspended. When a suspension of an income assignment is ordered, the suspension will remain in effect so long as the support order remains in effect. If the court or master choose not to order an immediate assignment, he or she will have to note reasons in writing.

In a case where an immediate assignment is not ordered, the conditions of suspension are as follows: when two weekly or one monthly payment is missed, the court has a responsibility to notify the obligor and his employer that the assignment is to be implemented. The obligor then has the option of requesting a hearing to get the assignment suspended again, if it was erroneously put into place. Only new cases and cases coming before the court for enforcement or modification are subject to this provision; other cases are treated as suspended as described above.

E. Expedited Process

To comply with federal law, there will be a master system to handle setting and enforcing support orders. When a person comes to court to obtain or enforce support, the case will be handled by the master.

Masters must be lawyers. Masters are to be full time employees of the judicial department with salaries set on the judicial department's pay scale. Members of the ten-person committee selecting masters are to be appointed by the Governor for a fixed term. The parental representatives on the committee are to be non-lawyers. The list formed by the committee shall contain more names than the number of masters needed, but not substantially more. The masters will be assigned to various courts by the chief administrative justices of the various court departments.

When a master acts in a support case, his order is reviewable by a justice. When one of the parties appeals, the judge hears all the evidence and argument over again (rather than reviewing the record) and may change the master's decision if it is legally incorrect, unsupported by substantial evidence, or arbitrary or capricious and after stating in writing his reasons.

If the decision is not appealed, the judge must review the master's decision and sign it if he approves it. If he does not approve it, he may alter it after calling in the parties for a hearing as described above and entering written findings based on the standard described above. The master's order shall be in effect by operation of law pending review or change by the judge unless the judge stays the order. If the judge stays the order, he must hold a hearing within seven calendar days of suspension. Appeals should be filed within three days of the master's decision.

F. Tax Intercept

The program allowing the IV-D agency to intercept state and federal income tax refunds to pay past due child support should be expanded to persons not receiving public assistance.

G. Notification of Credit Agencies

To comply with federal law, the state should notify credit reporting agencies when any obligor compiles a child support arrearage of $1,000 or more.

H. Continuation of Commission

To deal with issues of implementation and management, the term of the Child Support Commission should be extended to January 1, 1986.

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Marc Perlin
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Marilyn Ray Smith
Judge Samuel Zoll

The following persons also attended Commission meetings and participated on committees of the Commission:

Robert Anastas, Department of Public Welfare
Vincent Basile, Department of Probation
Jonathan Blodgett, Essex County District Attorney's Office
William Carito, Department of Public Welfare
Janet Corvini, Plymouth County District Attorney's Office
Mark Coven, Executive Office of Human Services
Naomi Goldstein, Executive Office of Administration and Finance
Joseph Green, Essex County District Attorney's Office
Elton Jenkins, Office of Chief Administrative Justice of the Trial Court
Deborah Propp, District Court Department of the Trial Court
William Ryan, Office of Chief Administrative Justice Probate and Family Courts
Helen Upshur, Representative Blanchette's Aide

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MEMORANDUM

TO: Stephen Rosenfeld, Catherine Dunham, Susan Schur and interested others
FROM: Nicki Famiglietti CNF
RE: Suggested Amendments to H. 2244 from Juvenile Court
DATE: March 10, 1986

There are several major issues of public policy implicated by the Juvenile Court's proposal suggesting certain amendments to H. 2244. This memorandum will first outline the changes proposed by the Juvenile Court and then briefly analyze the policy affected by the amendments.

Juvenile Court Proposal (keyed to their memo numbers)

1. Grants the IV-D agency the authority to request support in a pending care and protection case.

2. Grants the IV-D agency the authority to file an action for modification of a support order entered in a care and protection petition.

3. Grants the IV-D agency the right to intervene in a care and protecton action for purposes of obtaining support.

4. Adds, to the general statutory provision governing alimony and child support in the context of a divorce, the authority to order security for payment of support orders entered in the context of a care and protection matter.

5. Grants the Juvenile Court concurrent jurisdiction with the district, Boston municipal and probate and family courts in paternity cases, including jurisdiction over custody and

a major policy decision. Handling paternity and support cases would necessarily divert some, perhaps much, of the Juvenile Court's time and attention from children's issues to the problems of setting, collecting and enforcing support. The cost to children's services must be weighed in evaluating this expansion of juvenile court jurisdiction.

The child support enforcement network now is very fragmented. Further expansion of jurisdiction raises the prospect of increased balkanization. The Child Support Commission members recommended the jurisdictional boundaries contained in H. 2244 in the hope that the child support system would be less confusing to litigants and more accountable to all.

3. The decision to grant concurrent jurisdiction to probate, municipal and district courts reflected our concern that accessibility and convenience be preserved. Since juvenile courts are all located either in the same building as a district court or a probate court, there is no advantage of accessibility or convenience. The disadvantages of creating another overlapping jurisdiction, with new and untrained personnel to collect and enforce child support are obvious. The Boston municipal, probate and district courts already have substantial non-support experience and expertise. It is important to maintain their primacy in this field of specialty and to provide incentive for those courts to do that job increasingly well.

4. To link the filing of a paternity or non-support action with a care and protection action raises the likelihood that the proceedings will be at least somewhat coercive in nature since care and protection cases are involuntarily brought against the

family and affect the most significant issues of family life. Although care and protection are civil actions, they invoke the apparatus of the State in opposition to the individual. The Commission's goal was to make non-support and paternity cases less coercive than they now are making the proceedings totally civil in nature, and by allowing individual litigants to control the progress of their case.

5. H. 2244, in Sec. 10 on pp. 11-12, (required by federal law), mandates DSS to assign its rights to support for a child in foster care to the Welfare Department. The Welfare Department is not going to be in juvenile court on a regular basis since care and protection cases are brought by DSS or by private agencies. Only after DSS or if DSS obtained custody and were paying foster care benefits would an assignment of rights to DPW take place. The Welfare Department might then take any of a number of actions to obtain support. With improved IV-D procedures and simpler proof, DPW may already have a support order for the child from another court.

The concerns of the Juvenile Court are well-founded. All of us who participated in the Child Support Commission recognized the disincentives to filing paternity actions, the inefficient enforcement system and the lack of accountability which at present prevade the system. The Commission members believed that this legislation lays the foundation for the change necessary to remedy those deficiencies and improve the lives of children in Massachusetts.

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
GOVERNOR'S OFFICE OF HUMAN RESOURCES
ROOM 109, STATE HOUSE • BOSTON 02133

MICHAEL S. DUKAKIS
GOVERNOR

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727-6692

FACT SHEET

RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION ON CHILD SUPPORT

October 30, 1985

Federal legislation passed last year in Congress mandates that states take effective measures to maximize child support collections. States must take legislative action by the end of this legislative year or face economic sanctions from the federal government (up to a 5% reduction in reimbursements for the cost of the AFDC program).

To bring Massachusetts into compliance with the federal mandate and increase child support collections, the Governor's Commission on Child Support recommends changes in the following three key areas.

I. Tougher Enforcement of Child Support Orders

In order to ensure fairer and effective enforcement of support orders to children, the Commission recommends:

A. Automatic Income Assignment: Proven nationally to be the most effective method of guaranteeing consistent child support payments, automatic income assignments are recommended by the Commission in all cases except when: 1) both parties agree to a voluntary arrangement; or 2) a judge makes an exception. Reasons for an exception must be in writing.

B. Tax Intercepts: Interception of federal and state income tax refunds of persons owing past due child support.

C. Credit Agency Notification: Notification to credit agencies when absent parent owes $1,000 or more in past due child support.

II. Fairer, More Uniform Child Support Orders

The current child support system discourages payment of support orders because award amounts vary from court to court. To encourage compliance, the Commission recommends:

A. Guidelines: A simple (percentage) formula for use by the courts in deciding the amount of child support will be developed by a committee chaired by the Chief Administrative Justice of the Trial Court. Guiding principles will include fairness, uniformity, predictability and adequate levels of support.

-OVER-

III. More Efficient and Responsive Child Support System

The current child support system is inefficient, slow, complicated and hard to navigate. To make improvements in the system, recommendations include:

A. Court Master System: An expedited process for obtaining and enforcing support orders through court masters who will deal exclusively with child support cases in both probate and district courts.

B. Strong Child Support (IV-D) Agency: By January 1, 1986, the Commission will recommend where to locate a strong agency to administer the child support system in Massachusetts. The agency will:

--centralize all collections, services and enforcement;
--provide equal services to AFDC and non-AFDC families; and,
--be sensitive to all consumers, including children.

C. Civil vs. Criminal Process: Establishment of support orders and the determination of paternity will become a civil rather than criminal process.

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FACT SHEET
THE PROBLEM OF CHILD SUPPORT

Nationally

- 15 million children live in homes with an absent parent--usually the father. One-third of the children, approximately 5 million, live in poverty.
- Research studies suggest that:
  --approximately 30% of these families receive no child support whatsoever;
  --less than 50% of the families collect all they are due.
- In fiscal year 1983, $2 billion was collected in child support payments nationally; nearly $4 billion went uncollected.

Massachusetts

- In Massachusetts, approximately 137,000 single parent families (most of them headed by women) have annual incomes below $10,000. Adequate child support and decent job opportunities are the necessary building blocks to bring these families out of poverty.
- Massachusetts ranks among the top ten states in child support collections, yet it is estimated that over $100 million goes uncollected annually.
- Families, which include a dependent child who is deprived of the care and support of at least one parent, are entitled to Aid to Families with Dependent Children (AFDC). Families on AFDC assign their right to child support to the Department of Public Welfare (DPW) which can obtain support payments from absent parents in three ways:
  --through a District Court order;
  --through a Probate Court order; or
  --by voluntary agreement.
- 84,000 families and 150,000 children receive AFDC each month.
- Fully 92% of the caseload--77,000 of the 84,000 families--are eligible for welfare because they are not receiving the child support payments due them.
- Fewer than 20% receive all that is due them.
- Only 30,000 of the 77,000 families have an established child support order; money is collected from one-half (14,000) of the absent parents.
- The average collection is $1,800 per year.
- The DPW ranks 7th among states in child support collections ($45 million in FY'85; it ranks first in the ratio of child support collections to AFDC caseload size).
- It is estimated that one out of six absent parents not paying support earn over $25,000/year.

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Eighty-six

NEWS RELEASE
FROM THE OFFICE OF GOVERNOR MICHAEL S. DUKAKIS

July 22, 1986

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE
BOSTON, MA 02133

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James Dorsey 727-2759
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DUKAKIS SIGNS SWEEPING CHILD SUPPORT LEGISLATION; SAYS NEW LAW WILL PROVIDE ECONOMIC JUSTICE FOR VULNERABLE FAMILIES

Gov. Michael S. Dukakis today signed into law sweeping child support legislation designed to "ensure that vulnerable families are no longer victimized by parents who take their Visa bill more seriously than their child support order."

"Our new child support law will bring long overdue economic justice to mothers and children who rely on child support payments for financial support. And the changes will make the child support system fairer and easier to use," Dukakis said.

The governor signed the legislation into law at the Westborough District Court.

The new law toughens enforcement of support orders through automatic wage withholding, which has proven to be the most effective method of guaranteeing consistent child support payments. It also provides for the interception of federal and state income tax refunds from people who owe past due support and notification of credit agencies.

Finally, the law includes measures to ensure that there are fairer, more uniform support orders for both AFDC and non-AFDC families by centralizing collections and enforcement through the Department of Revenue, the new so-called "IV-D" agency, and by allowing for a civil, rather than criminal process for determining paternity. Child support services will now be available to all families, whether or not they are on AFDC.

Identifying inadequate child support as "one of the main causes of poverty among women and children nationally and in Massachusetts," Dukakis said that 92 percent of

-more-

the Department of Public Welfare's AFDC caseload, about 78,000 families and nearly 150,000 children, are on AFDC due to unmet child support. Fewer than 20 percent of families with support orders receive all the support due them.

This year the Massachusetts Department of Public Welfare will collect a record $80 million in child support orders, placing Massachusetts among the top ten states in child support collections. However, it is estimated that absent parents owe $100 million in child support payments. Nationally, about $2 billion is collected annually while an estimated $4 billion goes unpaid.

Guidelines for fairer, more uniform support order amounts will be established by a committee composed of seven members appointed by the governor, seven appointed by the chief administrative justice of the trial court and chaired by the chief administrative justice.

As part of the federal requirements mandated by Congress in 1984, Dukakis appointed a Governor's Child Support Commission in January 1985 and its recommendations were announced by the governor in October 1985. Legislation based largely on those recommendations died in the Legislature during the 1985 session. The new law reflects revisions made by the Commission's legislation committee, the Governor's Office of Human Resources, the courts and amendments made by the House of Representatives and Senate during 1986.

The governor was joined at the bill-signing ceremony by Chief Justice of the District Court Samuel E. Zoll; Westborough District Court Presiding Justice William F. Brewin; Worcester Division of Probate and Family Court Justice William McManus; Catherine M. Dunham, Child Support Commission Chair and Director of the Governor's Office of Human Resources; Welfare Commissioner Charles M. Atkins; Sens. Gerard D'Amico (D-Worcester) and John P. Houston (D-Worcester); and Rep. Susan D. Schur (D-Newton and John Driscoll (D-Northborough).

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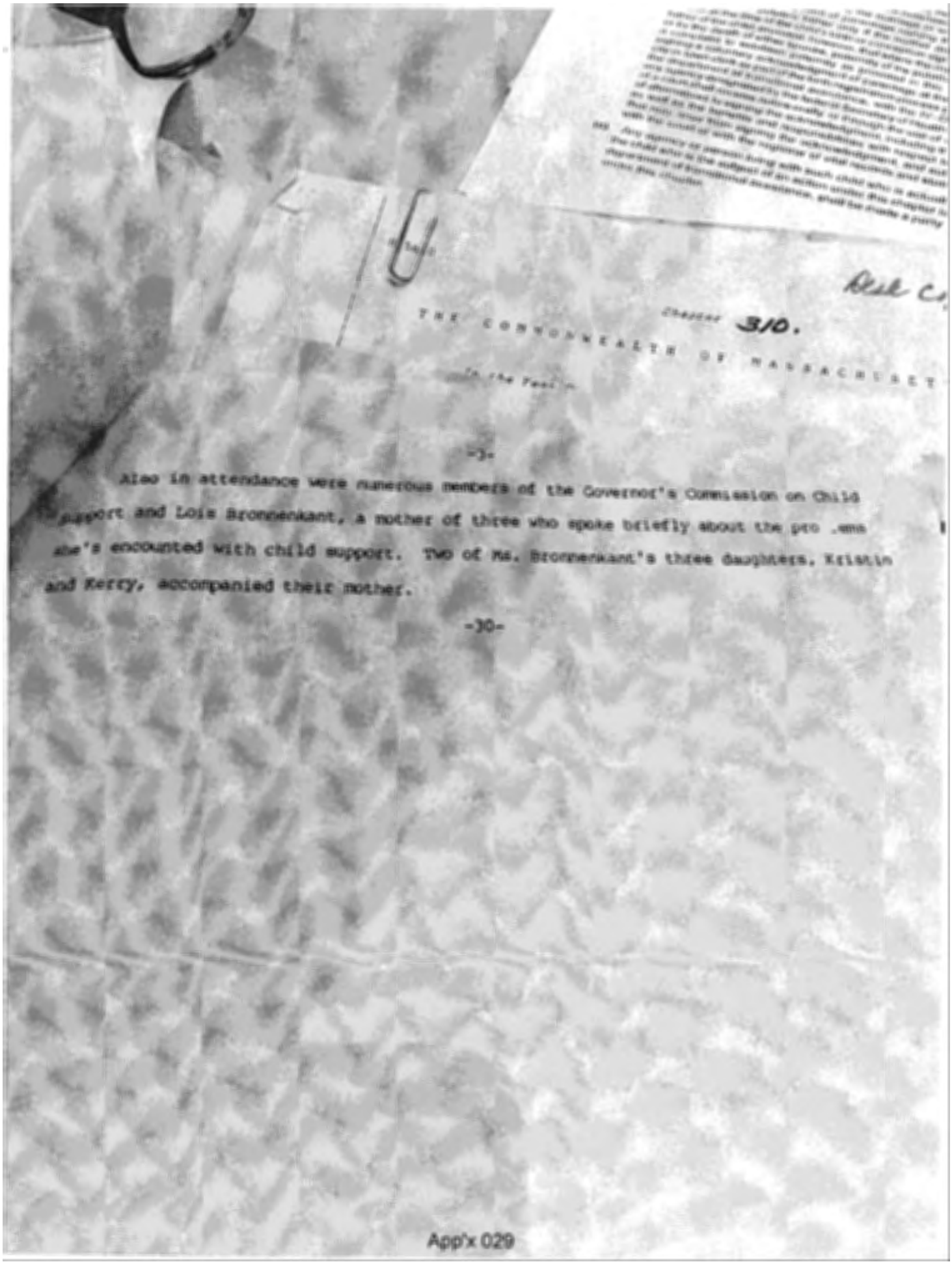

THE COMMONWEALTH OF MASSACHUSETTS

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Also in attendance were numerous members of the Governor's Commission on Child Support and Lois Bronnenkant, a mother of three who spoke briefly about the problems she's encounted with child support. Two of Ms. Bronnenkant's three daughters, Kristin and Kerry, accompanied their mother.

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UNIFORM PARENTAGE ACT

Section

Be it enacted .....

§ 1. [Parent and Child Relationship Defined]

As used in this Act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

COMMENT

See Comment under section 2, infra.

§ 2. [Relationship Not Dependent on Marriage]

The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

COMMENT

Sections 1 and 2, the major substantive sections of the Act, establish the principle that regardless of the marital status of the parents, all children and all parents have equal rights with respect to each other. As indicated in the Prefatory Note, recent U.S. Supreme Court decisions and lower federal and state court decisions require equality of treatment in most areas of substantive law. See, generally, H. Krause, Illegitimacy: Law and Social Policy 59-104 (1971).

The first two cases to reach the U.S. Supreme Court concerned Louisiana's wrongful death statute and held that statute unconstitutional insofar as it (1) discriminated against illegitimate children, holding them ineligible to recover for the wrongful death of their

mother (Levy v. Louisiana, 88 S.Ct. 1509, 391 U.S. 68 (1968)) and (2) denied a mother recovery for the wrongful death of her child (Glona v. American Guarantee & Liability Insurance Co., 88 S.Ct. 1515, 391 U.S. 73 (1968)).

It was a surprise when, within three years of deciding Levy and Glona, the U.S. Supreme Court reached a conclusion seemingly at odds with Levy and Glona. The Court had occasion to reconsider the question of the illegitimate child's legal position in a case involving inheritance, and refused to extend Levy or Glona to permit an acknowledged illegitimate child to inherit from his intestate father under Louisiana law. (Labine v. Vincent, 91 S.Ct. 1017, 401 U.S. 532 (1971).)

The surprise engendered by the Labine decision was surpassed when the Supreme Court again reversed its position on this subject in 1972. In a dramatic departure from Labine, the U.S. Supreme Court held that workmen's compensation benefits related to the death of their father are due dependent, unacknowledged, illegitimate children. (Weber v. Aetna Casualty & Surety Co., 92 S.Ct. 1400, 406 U.S. 164 (1972).) In January, 1973, the U.S. Supreme Court, finally substituting consistency for vacillation on this subject, decided that the illegitimate child is guaranteed a right of support from his father. (Gomez v. Perez, 93 S.Ct. 872 (1973).)

These decisions engendered a large number of decisions by lower federal courts and state courts at all levels which have broadly extended the legal relationship between the father and his child born out of wedlock. It should be noted, however, that several states had previously provided full (or nearly full) legal equality to illegitimates. To illustrate, Ore.Rev.Stat. § 109.060 (1969) provides:

> "[t]he legal status and legal relationships and the rights and obligations between a person and his descendants, and between a person and his parents, their descendants and kindred, are the same for all persons, whether or not the parents have been married."

See, also, N.D.Cent.Code § 56-01-05 (Supp.1969); Ariz.Rev.Stat.Ann. § 14-206 (1956); Alaska Stat. 25.20.050(a) (1962).

§ 3. [How Parent and Child Relationship Established]

The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this Act;

(2) the natural father may be established under this Act;

(3) an adoptive parent may be established by proof of adoption or under the [Revised Uniform Adoption Act].

COMMENT

This section introduces the portion of the Act which deals with the ascertainment of parentage.

§ 4. [Presumption of Paternity]

(a) A man is presumed to be the natural father of a child if:

(1) he and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;

(2) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

(i) if the attempted marriage could be declared invalid only

by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(3) after the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) he has acknowledged his paternity of the child in writing filed with the [appropriate court or Vital Statistics Bureau].

(ii) with his consent, he is named as the child's father on the child's birth certificate, or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(4) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(5) he acknowledges his paternity of the child in a writing filed with the [appropriate court or Vital Statistics Bureau], which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the [appropriate court or Vital Statistics Bureau]. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(b) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

COMMENT

In the situations described in subsection (a), substantial evidence points to a particular man as being the father of the child and formal proceedings to establish paternity are not necessary. A presumption of paternity arises in the described circumstances. Most of the situations correspond to instances in which current state law imposes a presumption of legitimacy.

Subsection (b) contemplates that a presumption raised under subsection (a) may be rebutted in appropriate circumstances. In accordance with current law in most states relating to the rebuttal of a presumption of "legitimacy", the presumption is difficult to rebut in that proof must be made by "clear and convincing evidence." Other details are covered in Sections 6(a) and (b).

§ 5. [Artificial Insemination]

(a) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the [State Department of Health], where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or

elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(b) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

COMMENT

This Act does not deal with many complex and serious legal problems raised by the practice of artificial insemination. It was though useful, however, to single out and cover in this Act at least one fact situation that occurs frequently. Further consideration of other legal aspects of artificial insemination has been urged on the National Conference of Commissioners on Uniform State Laws and is recommended to state legislators. A useful reference is Wadlington, Artificial Insemination: The Danger of a Poorly Kept Secret, 64 N.W.U.L.Rev. 777 (1970).

§ 6. [Determination of Father and Child Relationship; Who May Bring Action; When Action May Be Brought]

(a) A child, his natural mother, or a man presumed to be his father under Paragraph (1), (2), or (3) of Section 4(a), may bring an action

(1) at any time for the purpose of declaring the existence of the father and child relationship presumed under Paragraph (1), (2), or (3) of Section 4(a); or

(2) for the purpose of declaring the non-existence of the father and child relationship presumed under Paragraph (1), (2), or (3) of Section 4(a) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than [five] years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or non-existence of the father and child relationship presumed under Paragraph (4) or (5) of Section 4(a).

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 4 may be brought by the child, the mother or personal representative of the child, the [appropriate state agency], the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with Section 13(b), between an alleged or presumed father and the mother or child, does not bar an action under this section.

(e) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

COMMENT

This section consists of two major parts. Subsections (a) and (b) deal with the action to declare or dispute the existence of the father and child relationship presumed under Section 4(a). Attack on the presumptions based on marriage or on a relationship between the parents that resembles marriage is restricted to a limited circle of potential contestants and in point of time. Presumptions created in other circumstances may be attacked more freely.

Subsection (c) defines who may bring the action to ascertain paternity when no presumption applies. It is made clear that the child may bring the action. Moreover, since the Act contemplates that the principal interest involved in the action is that of the

child, Subsection (d) does not permit an agreement between the mother and an alleged or presumed father to bar an action to ascertain paternity. Cf. Comment on Section 9.

§ 7. [Statute of Limitations]

An action to determine the existence of the father and child relationship as to a child who has no presumed father under Section 4 may not be brought later than [three] years after the birth of the child, or later than [three] years after the effective date of this Act, whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until [three] years after the child reaches the age of majority. Sections 6 and 7 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

COMMENT

The three year provision stated in the first sentence of this Section will serve as an admonition that paternity actions should be brought promptly. In effect, however, this Section provides for a twenty-one-year statute of limitations, except that a late paternity action does not affect laws relating to distribution and closing of decedents' estates or to the determination of heirship. Since the U.S. Supreme Court decisions speak in terms of the child's substantive right to a legal relationship with his father, it was considered unreasonable to bar the child's action by reason of another person's failure to bring a paternity action at an earlier time. On the other hand, it is fully understood that such an extended statute of limitations will cause problems of proof in many cases. In part for that reason and also to provide every infant with the means to exercise his rights, rather than leave his fortunes to the whim of his mother or the views of the social worker, an earlier draft of the Act contained a provision in Section 6(c) which read as follows:

> "If a child has no presumed father under Section 4 and the action to determine the existence of the father and child relationship has not been brought and proceedings to adopt the child have not been instituted within [1] year after the child's birth, an action to determine the existence of the relationship shall be brought promptly on behalf of the child by the [appropriate state agency]."

While this provision was stricken from the final draft, state legislators may wish to consider such a procedure, especially if S. 2081, 93d Cong., 1st Sess., or a similar bill should be enacted. (See summary of S.2081 in Prefatory Note.)

§ 8. [Jurisdiction; Venue]

(a) [Without limiting the jurisdiction of any other court,] [The] [appropriate] court has jurisdiction of an action brought under this Act. [The action may be joined with an action for divorce, annulment, separate maintenance or support.]

(b) A person who has sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this Act with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by [rule or] statute, including [cross reference to "long arm statute"], personal jurisdiction may be acquired by [personal service of summons outside this State or by registered mail with proof of actual receipt] [service in accordance with (citation to "long arm statute")].

(c) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

COMMENT

The court having jurisdiction over actions under this Act should be identified here. To avoid multiplicity of actions, the bracketed clause would allow joinder of the action to ascertain paternity with an action for divorce, annulment, separate maintenance, or support. This might be considered in choosing the court which is given jurisdiction over

actions under this Act.

Subsection (b) provides a novel, but not unheard of, extension of the "long arm" concept. Cf. Poindexter v. Willis, 87 Ill.App.2d 213, 23 N.E.2d 1 (5th Dist.1967). The venue provision in Subsection (c) provides choices considered reasonable and convenient.

§ 9. [Parties]

The child shall be made a party to the action. If he is a minor he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the [appropriate state agency] as guardian ad litem for the child. The natural mother, each man presumed to be the father under Section 4, and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

COMMENT

This Section emphasizes that the child is a party to the action. While this is a departure from the law of a number of states which have viewed the mother as the sole party in interest, this provision is considered a necessary consequence of the U. S. Supreme Court decisions establishing the child's substantive rights vis-a-vis his father. The mother or father may not represent the child in the action, since their interests may conflict with those of the child.

§ 10. [Pre-Trial Proceedings]

(a) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. [The court may order that the hearing be held before a referee.] The public shall be barred from the hearing. A record of the proceeding or any portion thereof shall be kept if any party requests, or the court orders. Rules of evidence need not be observed.

(b) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.

(c) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

COMMENT

Sections 10 through 13 provide details concerning the pre-trial hearing. The purpose of the pre-trial hearing is to minimize inconvenience and embarrassment in the many cases which the Committee expects will be resolved on the basis of the voluntary compromise contemplated by Section 13.

§ 11. [Blood Tests]

(a) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(b) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiner of blood types.

(c) In all cases, the court shall determine the number and qualifications of the experts.

§ 12. [Evidence Relating to Paternity]

Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

COMMENT

It is expected that blood test evidence will go far toward stimulating voluntary settlements of actions to determine paternity. In this connection, proposed legislation currently pending in the U.S. Senate should be considered. Senate Bill 2081, 93d Congress, 1st Sess. (June 27, 1973), looks toward the establishment of a national system of federally assisted child support enforcement and provides for an efficient system of blood typing:

"REGIONAL LABORATORIES TO ESTABLISH PATERNITY THROUGH ANALYSIS AND CLASSIFICATION OF BLOOD

"Sec. 458. (a) The Secretary shall, after appropriate consultation and study of the use of blood typing as evidence in judicial proceedings to determine paternity, establish, or arrange for the establishment or designation of, in each region of the United States, a laboratory which he determines to be qualified to provide services in analyzing and classifying blood for the purpose of determining paternity, and which is prepared to provide such services to courts and public agencies in the region to be served by it.

"(b) Whenever a laboratory is established or designated for any region by the Secretary under this section, he shall take such measures as may be appropriate to notify appropriate courts and public agencies (including agencies administering any public welfare program within such region) that such laboratory has been so established or designated to provide services, in analyzing and classifying blood for the purpose of determining paternity, for courts and public agencies in such region.

"(c) The facilities of any such laboratory shall be made available without cost to courts and public agencies in the region to be served by it.

"(d) There is hereby authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

"SUPPORT COLLECTION SERVICES FOR OTHER INDIVIDUALS

"Sec. 459. The child support collection or paternity determination services established under this part shall be made available to any individual not otherwise eligible for such services under the preceding sections of this part upon application filed by such individual with the Attorney General or, if a State or political subdivision has a program approved under section 454, with such State or political subdivision as may be appropriate. The Attorney General (or a State or political subdivision) shall impose an application fee for furnishing such services. Any costs in excess of the fee so imposed shall be paid by such individual by deducting such costs from the amount of any recovery made."

Centralized blood typing facilities already exist in Oslo, Copenhagen and Stockholm and serve the whole of their respective countries. Over several decades, great expertise

has been developed. (See generally, Henningsen, Some Aspects of Blood Grouping in Cases of Disputed Paternity in Denmark, 2 Methods of Forensic Science 209 (1963); Henningsen, On the Application of Bloodtests to Legal Cases of Disputed Paternity, 12 Revue de Transfusion 137 (1969); P. Andresen, The Human Blood Groups 73 (1952).) The Scandinavian laboratories are distinguished not only in terms of their use of complex and advanced blood typing systems, but also in terms of highly developed safety procedures which assure accuracy of the results they report. This latter point may be the most important element of blood typing. There can be little doubt that it would be better not to admit blood tests into evidence at all than to admit unreliable evidence under the halo of scientific truth-as has too often been done in the United States where a recheck of even relatively simple tests revealed about one-third of them to have been in error! (See Wiener, Foreword, L. Sussman, Blood Grouping Tests-Medicolegal Uses, ix (1968); See also Wiener, Problems and Pitfalls in Blood Grouping Tests for Non-Parentage, 15 Journal of Forensic Medicine 106, 126 (1968).) The Copenhagen laboratory (and the practice in Stockholm and Oslo is similar) employs two sets of systems in "layers", the routine blood group determination resulting in exclusion of paternity for about 70 per cent of non-fathers and an extended blood group determination which increases paternity exclusions to about 90 per cent of non-fathers. While an exclusion figure approximating 90 per cent of men falsely named as fathers is impressive, cases which do not produce an exclusion are pursued further on the basis of a "blood group paternity index" by means of which the "probability" of the named man's paternity is estimated. (See Gl20urtler, Principles of Blood Group Statistical Evaluation of Paternity Cases at the University Institute of Forensic Medicine, Copenhagen, 9 Acta Medicinae et Socialis 83 (1956).) That index compares the frequency of a given father-mother-child blood constellation in a sample of actual fathers with the blood constellation in a sample of non-fathers and is related to the constellation obtained in the case in question. If the resemblance exceeds 95 per cent or falls below 5 per cent, the result is reported to the court. At the outer limits, this approach produces de facto inclusions or exclusions. In less extreme cases, it produces interesting circumstantial evidence. It is of particular value, of course, when the relative likelihood of paternity of several possible fathers is to be compared. See generally, Krause, Illegitimacy: Law and Social Policy, 123-44 (1971).

§ 13. [Pre-Trial Recommendations]

(a) On the basis of the information produced at the pre-trial hearing, the judge [or referee] conducting the hearing shall evaluate the probability of determining the existence or non-existence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(1) that the action be dismissed with or without prejudice;

(2) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge [or referee] conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge [or referee] conducting the hearing shall consider the best interest of the child, in the light of the factors enumerated in Section 15(e), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(3) that the alleged father voluntarily acknowledge his paternity of the child.

(b) If the parties accept a recommendation made in accordance with Subsection (a), judgment shall be entered accordingly.

(c) If a party refuses to accept a recommendation made under Subsection (a) and blood

tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge [or referee] shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(d) The guardian ad litem may accept or refuse to accept a recommendation under this Section.

(e) The informal hearing may be terminated and the action set for trial if the judge [or referee] conducting the hearing finds unlikely that all parties would accept a recommendation he might make under Subsection (a) or (c).

COMMENT

The settlement procedures contemplated by this Section are voluntary. If any party refuses to accept a settlement recommendation, the action will be set for trial. It is expected, however, that, as soon as reliable blood test evidence becomes available on a large scale, the great majority of cases will be settled consensually in the light of such evidence.

§ 14. [Civil Action; Jury]

(a) An action under this Act is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Subsections (b) and (c) of Section 10 and Sections 11 and 12 apply.

(b) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(c) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if he has undergone and made available to the court blood tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

[(d) The trial shall be by the court without a jury.]

COMMENT

Subsection (a) makes it clear that the action to establish paternity is a civil action. A number of states have continued to view the action as criminal or quasi-criminal, although a majority of states now treats the paternity action as a civil proceeding.

Subsections (b) and (c) deal with the problem of the exceptio plurium concumbentium and, more specifically, the problem of perjured testimony concerning alleged sexual access to the mother offered by other men on behalf of the alleged father. It is recognized that in rare cases, these provisions may result in the exclusion of "honest" evidence. However, the Committee concluded that this is outweighed by the need for closing the door to the wanton attacks on the mother's character that characterize too many paternity suits under present laws.

The use of a jury is not desirable in the emotional atmosphere of cases of this nature. The clause eliminating the jury is bracketed only because in some states constitutions may prevent elimination of a jury trial in this context.

§ 15. [Judgment or Order]

(a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(b) If the judgment or order of the court is at variance with the child's birth

certificate, the court shall order that [an amended birth registration be made] [a new birth certificate be issued] under Section 23.

(c) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(d) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(e) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts including

(1) the needs of the child;

(2) the standard of living and circumstances of the parents;

(3) the relative financial means of the parents;

(4) the earning ability of the parents;

(5) the need and capacity of the child for education, including higher education;

(6) the age of the child;

(7) the financial resources and the earning ability of the child;

(8) the responsibility of the parents for the support of others; and

(9) the value of services contributed by the custodial parent.

COMMENT

This section allows a wide range of court orders to be made relating to the child's support, custody, guardianship, visitation privileges, as well as to the payment by the father of the mother's expenses of pregnancy and confinement. Since current state law often does not provide guidelines to help the judge in setting support obligations, Subsections (d) and (e) provide flexible standards based on criteria now generally accepted.

§ 16. [Costs]

The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pre-trial proceedings, including blood tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by [appropriate public authority].

COMMENT

This allows the court to apportion the cost of litigation among the parties or, if a party is indigent, charge it to the appropriate public authority.

§ 17. [Enforcement of Judgment or Order]

(a) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this Act or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses

of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

(b) The court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(c) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

COMMENT

This Section provides suitable enforcement remedies.

§ 18. [Modification of Judgment or Order]

The court has continuing jurisdiction to modify or revoke a judgment or order

(1) for future education and support, and

(2) with respect to matters listed in Subsections (c) and (d) of Section 15 and Section 17(b), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under Section 15(d) may specify that the judgment or order may not be modified or revoked.

COMMENT

In accordance with current state law on this subject, the court is given continuing jurisdiction to modify or revoke judgments relating to support, custody and related matters.

§ 19. [Right to Counsel; Free Transcript on Appeal]

(a) At the pre-trial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(b) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

COMMENT

This permits each party to be represented by counsel regardless of financial circumstances.

§ 20. [Hearings and Records; Confidentiality]

Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this Act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the [appropriate state agency] or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

COMMENT

In view of the sensitive nature of paternity proceedings, the Committee considered it essential that such proceedings be kept in confidence.

§ 21. [Action to Declare Mother and Child Relationship]

Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this Act applicable to the father and child relationship apply.

COMMENT

This Section permits the declaration of the mother and child relationship where that is in dispute. Since it is not believed that cases of this nature will arise frequently, Sections 4 to 20 are written principally in terms of the ascertainment of paternity. While it is obvious that certain provisions in these Sections would not apply in an action to establish the mother and child relationship, the Committee decided not to burden these-already complex-provisions with references to the ascertainment of maternity. In any given case, a judge facing a claim for the determination of the mother and child relationship should have little difficulty deciding which portions of Sections 4 to 20 should be applied.

§ 22. [Promise to Render Support]

(a) Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to Section 6(d).

(b) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

COMMENT

This permits any written promise to furnish support for a child based on a supposed or alleged father and child relationship to be enforced in accordance with its terms, with the exception of stipulations that seek to bar a paternity action. Since existing law adequately covers this area, it was considered unnecessary to spell out that the agreement may be avoided if it is shown that the agreement was based on a mutual mistake or fraud relating to the existence of the father and the child relationship. In view of the possibly sensitive nature of such a promise, the provision relating to confidentiality is considered useful.

§ 23. [Birth Records]

(a) Upon order of a court of this State or upon request of a court of another state, the [registrar of births] shall prepare [an amended birth registration] [a new certificate of birth] consistent with the findings of the court [and shall substitute the new certificate for the original certificate of birth].

(b) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the [amended birth registration] [new certificate] but the actual place and date of birth shall be shown.

(c) The evidence upon which the [amended birth registration] [new certificate] was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

COMMENT

This provision permits the issuance of an amended or new birth certificate to assure confidentiality. It resembles provisions in many adoption acts which permit the issuance of a new or amended birth certificate after an adoption has been completed.

§ 24. [When Notice of Adoption Proceeding Required]

If a mother relinquishes or proposes to relinquish for adoption a child who has (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under [the appropriate State statute] [the Revised Uniform Adoption Act], unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

COMMENT

This section provides that a father whose identity is presumed under Section 4 or whose paternity has been formally ascertained, must be given notice of an adoption proceeding relating to his child.

§ 25. [Proceeding to Terminate Parental Rights]

(a) If a mother relinquishes or proposes to relinquish for adoption a child who does not have (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the [_____] court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

(b) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(c) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with Subsection (e). If any of them fails to appear or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.

(d) If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of an appeal upon the expiration of [6 months] after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

(e) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father [in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state, or] in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. [If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.]

COMMENT

Subsection (a) deals with the case in which the father has not been formally ascertained and the mother seeks to surrender the child for adoption. In the light of the U.S. Supreme Court's decisions in Stanley v. Illinois, 92 S.Ct. 1208 (1972); Rothstein v. Lutheran Social Services of Wisconsin and Upper Michigan, 92 S.Ct. 1488 (1972) and Vanderlaan v. Vanderlaan, 92 S.Ct. 1488 (1972) and related state court decisions, it is considered essential that the unknown or unascertained father's potential rights be terminated formally in order to safeguard the subsequent adoption.

Subsections (b) through (e) provide a procedure by which the court may ascertain the identity of the father and permit speedy termination of his potential rights if he shows

no interest in the child. If, on the other hand, the natural father or a man representing himself to be the natural father claims custodial rights, the court is given authority to determine custodial rights. It is contemplated that there may be cases in which the man alleging himself to be the father is so clearly unfit to take custody of the child that the court would proceed to terminate his potential parental rights without deciding whether the man actually is the father of the child. If, on the other hand, the man alleging himself to be the father and claiming custody is prima facie fit to have custody of the child, an action to ascertain paternity is indicated, unless a voluntary acknowledgment can be obtained in accordance with Section 4(a)(5) of this Act.

Subsection (d) raises serious constitutional questions in that it attempts to cut off after a given period any claim seeking to reopen a judgment terminating parental rights. While of questionable constitutionality, such a provision is not without precedent. A similar provision is contained in Section 15(b) of the revised Uniform Adoption Act, approved by the Commissioners on Uniform State Laws in 1969, and other similar provisions are contained in the adoption acts of a number of states. Moreover, it must be considered that the case of adoption differs from other situations. The parent's claim to his child can hardly be compared to a person's claim to property. The Supreme Court itself recognized that the interest of the child is heavily involved in these cases when remanding the Rothstein case to the Wisconsin Supreme Court, requiring that the court give "due consideration [to] the completion of the adoption proceedings and the fact that the child has apparently lived with the adoptive family for the intervening period of time." Cf. Armstrong v. Manzo, 380 U.S. 545 (1965).

Subsection (e) seeks to conform to the following footnote in Stanley v. Illinois:

> "We note in passing that the incremental cost of offering unwed fathers an opportunity for individualized hearings on fitness appears to be minimal. If unwed fathers, in the main, do not care about the disposition of their children, they will not appear to demand hearings. If they do care, under the scheme here held invalid, Illinois would admittedly at some later time have to afford them a properly focused hearing in a custody or adoption proceeding.
>
> "Extending opportunity for hearing to unwed fathers who desire and claim competence to care for their children creates no constitutional or procedural obstacle to foreclosing those unwed fathers who are not so inclined. The Illinois law governing procedure in juvenile cases . . . provides for personal service, notice by certified mail or for notice by publication when personal or certified mail service cannot be had or when notice is directed to unknown respondents under the style of 'all whom it may concern.' Unwed fathers who do not promptly respond cannot complain if their children are declared wards of the State. Those who do respond retain the burden of proving their fatherhood."

This footnote might be interpreted to require publication in all cases in which a child with unascertained paternity is surrendered for adoption. The Committee considered, however, that there will be many such cases in which it will be highly probable that publication will not lead to the identification of the father. In view of that and the fact that in nearly all cases publication will lead to substantial embarrassment for the mother, the Committee thought it appropriate to allow the court to determine whether, in the particular circumstances of each case, publication would be likely to lead to the identification of the father. One serious consequence that might result from an indiscriminate publication requirement is that some mothers may be caused to withhold their children from adoption even where adoption would be in the child's best interest.

1990 Note: Subsections (b)--(e) of this Section are no longer recommended by the Conference. Compare the 1988 Uniform Putative and Unknown Fathers Act (especially Sections 3 and 4).

§ 26. [Uniformity of Application and Construction]

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

§ 27. [Short Title]

This Act may be cited as the Uniform Parentage Act.

§ 28. [Severability]

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

§ 29. [Repeal]

The following acts and parts of acts are repealed:

(1) [Paternity Act]

(2)

(3)

§ 30. [Time of Taking Effect]

This Act shall take effect on _____.

COMMENT

Sections 26-30 are the customary clauses which may be placed in such order in the bill for enactment as the legislative practice of the state prescribes. A specific listing of statutes which are repealed by the enactment of this Act should be listed in section 29.

CHAP. LVI.

An Act respecting Cases of Divorce and Alimony.

SEC. 1. BE *it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That after a libel for divorce, whether from the bonds of matrimony, or from bed and board, shall have been filed in the office of the Clerk of the Supreme Judicial Court, the said court shall have power at any term thereof, whether holden in the county where such libel is filed, or in any other county, on application by petition, to prohibit the husband from imposing any restraint upon the personal liberty of the wife, during the pendency of such libel; and also to make such order or decree concerning the care and custody of the minor children of the parties, or any or either of them, as under the circumstances of each case, the said court shall judge expedient, and for the benefit of such children. And whenever a decree of divorce shall be rendered, the said court shall have power to make such further order and decree as to them may appear expedient, concerning the care, custody and support of such minor children, or any or either of them; and to determine, with which of the parents the said children, or any or either of them, shall remain. And after such decree rendered, the said court shall have power, from time to time, on application by petition, to revise, alter, and amend such order or decree, relative to the care, custody and support of such children, or any or either of them, as the circumstances of the parties, respectively, and the benefit of such children, may, in their judgment, require.

Pendency of Libels.

Support of Children.

SEC. 2. *Be it further enacted,* That in all cases, where alimony may be decreed, the said court shall have power, in their discretion, to order adequate security to be given for the payment of such alimony, under such limitations as the said court may judge proper. And all such orders and decrees, made pursuant to the provisions of this act, shall and may be enforced and carried into execution, by process of at-

Powers of the Court.

tachment, or other proper process, as the circumstances of each case may require. And the said court shall have power, at their discretion, to grant costs for petitioners or respondents, in cases arising under this act.

[Approved by the Governor, February 12th, 1821.]

CHAP. LVII.

An Act to incorporate the Lancaster Cotton Manufacturing Company.

Persons incorporated.

SEC. 1. BE *it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That David Poignand, Samuel Plant, Benjamin Rich, Isaac Bangs, and Seth Knowles, together with such others as may hereafter associate with them, and their successors, be, and they are hereby made a corporation, by the name of the Lancaster Cotton Manufacturing Company, for the purpose of manufacturing cotton, in the Town of Lancaster, in the County of Worcester; and for that purpose shall have all the powers and privileges, and be subject to all the duties and requirements contained in an act passed the third day of March, in the year of our Lord one thousand eight hundred and nine, entitled "an act defining the general powers and duties of manufacturing corporations."

Powers and privileges.

Limitation of real estate.

SEC. 3. *Be it further enacted,* That said corporation may be lawfully seized and possessed of such real estate, not exceeding the value of thirty thousand dollars, and such personal estate, not exceeding the value of seventy thousand dollars, as may be necessary and convenient for carrying on the manufacture of cotton, in the said Town of Lancaster.

[Approved by the Governor, February 12th, 1821.]

hundred and twelve, authorizing the city of Springfield to lay out said streets as public ways, is hereby confirmed, and the city of Springfield is authorized to lay out and extend said streets or ways in accordance with the provisions of said decree. The bridges carrying the railroad tracks over said streets, and the abutments thereof, shall be subject to the approval of the board of railroad commissioners.

Bridges, etc., subject to approval of railroad commissioners.

Repeal.

SECTION 4. All acts and parts of acts inconsistent herewith are hereby repealed.

SECTION 5. This act shall take effect upon its passage.

Approved April 26, 1913.

Chap. 563 AN ACT RELATIVE TO ILLEGITIMATE CHILDREN AND THEIR MAINTENANCE.

Be it enacted, etc., as follows:

Courts having jurisdiction of complaints in cases of maintenance, etc., of illegitimate children.

SECTION 1. Whoever, not being the husband of a woman, gets her with child shall be guilty of a misdemeanor. Proceedings under any section of this act may be begun in the municipal, district or police court having jurisdiction in the place where the defendant lives, and if there be no such court, then in any municipal, district or police court in the county; or in the municipal, district or police court having jurisdiction in the place where the mother of the illegitimate child lives; and if there be no such court, then in any municipal, district or police court in the county. If no court has jurisdiction as aforesaid, proceedings may be begun before a trial justice in the county where such defendant or such mother lives.

Adjudication to be final unless appeal is made to superior court.

SECTION 2. If the defendant pleads guilty or nolo contendere, or is found guilty, the court or justice shall enter a judgment adjudging him the father of such child; but such adjudication shall not be made after a plea of not guilty, against the objection of the defendant, until the child is born or the court or justice finds that the mother is at least six months advanced in pregnancy. No provision of law limiting adjournments or continuances shall apply to proceedings under any section of this act. At the sitting when such adjudication is made, if made after a plea of not guilty, the defendant may appeal therefrom to the superior court as in other criminal cases. Such adjudication, whether any sentence be imposed or not, shall be final and conclusive unless an appeal from such adjudication to the superior court be taken as hereinbefore provided, or, if such adjudi-

cation, be made by the superior court, unless set aside upon an appeal taken not later than three days thereafter under the provisions of section thirty-two of chapter two hundred and nineteen of the Revised Laws, or upon exceptions. Such adjudication may be entered by the superior court notwithstanding exceptions have been alleged or an appeal has been taken. The court or justice making such adjudication may within one year thereafter grant a new trial for any cause.

New trial may be granted for cause.

SECTION 3. If the court or justice having jurisdiction of any case under any section of this act becomes satisfied that no living child will be born of which the defendant at the time of making the complaint was the father, or that the defendant and the mother have married each other and the child has become or will be the legitimate child of the defendant, or that adequate provision has been made for the maintenance of the child, the complaint may be dismissed and any adjudication vacated; and if the court or justice certifies that such provision has been made, no further complaint shall be maintained under any section of this act.

Complaint may be dismissed in certain cases, etc.

SECTION 4. If the child has not been born at the time of such adjudication, the court or justice having jurisdiction of the case shall continue the case from time to time until the child is born. At any time after such adjudication, after inquiring into the respective means of the defendant and the mother, the court or justice having jurisdiction of the case may make an order for the payment to the mother or to a probation officer of a sum of money to be determined by the court or justice for the expenses of the confinement of the mother, and for failure to comply with such order may order that the defendant be committed to jail, as for a contempt of court, for a term not exceeding two months, unless he shall sooner comply with the order of the court.

Court may make order for payment of money by defendant for certain expenses.

Penalty for failure to comply with order of court.

SECTION 5. After such adjudication, the court or justice having jurisdiction of the case may make such order as may be considered expedient relative to the care and custody of the child, and afterward from time to time may revise and alter the said order, as justice and the welfare of the child require, and the order shall be binding on all persons.

Court may make order relative to care, etc., of child.

SECTION 6. After such adjudication, and after the child has been born, the defendant shall be liable to contribute reasonably to the support of the child during minority, and shall be subject upon the original complaint under section one of this act, to all the penalties and all the orders for the support and maintenance of the child provided in the case

Liability of defendant for support of child, etc.

of a parent who is found guilty of unreasonably neglecting to provide for the support and maintenance of a minor child by chapter four hundred and fifty-six of the acts of the year nineteen hundred and eleven and acts in amendment thereof and in addition thereto; and the practice thereby established shall, so far as it is applicable, apply to proceedings under this section and the preceding sections of this act.

Penalty for neglect to provide for support of child, etc.

SECTION 7. Any father of an illegitimate child, whether such child shall have been begotten within or without this commonwealth, and whether such child shall have been begotten before or after the taking effect of this act, who neglects or refuses to contribute reasonably to the support and maintenance of such child shall be guilty of a misdemeanor, and, upon conviction thereof, shall be liable to all the penalties and all the orders for the support of the child provided in the case of a parent who is found guilty of unreasonably neglecting to provide for the support and maintenance of a minor child by chapter four hundred and fifty-six of the acts of the year nineteen hundred and eleven and acts in amendment thereof and in addition thereto; and the practice thereby established shall, so far as it is applicable, apply to proceedings under this section. If there has been any final adjudication under this act, such judgment, order or adjudication shall be conclusive on all persons in proceedings under this section; otherwise, the question of paternity shall be determined in proceedings under this section: *provided, however*, that no proceedings shall be maintained under the provisions of this act in any case where proceedings have been begun under chapter eighty-two of the Revised Laws and acts in amendment thereof or in addition thereto.

Final adjudication to be conclusive, etc.

Proviso.

Proceedings in case of appeal.

SECTION 8. Appealed proceedings under this act shall be placed on the trial list for each sitting of the superior court for the trial of criminal cases until tried, and shall have precedence next after the cases mentioned in section thirty-two of chapter one hundred and fifty-seven of the Revised Laws.

Repeal not to affect pending proceedings.

SECTION 9. Chapter eighty-two of the Revised Laws and all acts in amendment thereof or in addition thereto are hereby repealed; but this repeal shall not affect any proceeding begun before the first day of July, in the year nineteen hundred and thirteen.

Time of taking effect.

SECTION 10. This act shall take effect on the first day of July in the year nineteen hundred and thirteen.

Approved April 29, 1913.

Evidence.
1893, 262, § 1.
R. L. 212, § 45.
1905, 307.
1906, 501, § 1.
1907, 563, § 26.
1908, 104.
1909, 180.
1911, 456, § 7.
219 Mass. 197.
223 Mass. 150.
263 Mass. 25.
264 Mass. 485.

SECTION 7. No other or greater evidence shall be required to prove the marriage of the husband and wife, or that the defendant is the parent of the child, than may be required to prove the same facts in a civil action. In any prosecution begun under section one, both husband and wife shall be competent witnesses to testify against each other to any relevant matters, including the fact of their marriage and the parentage of the child; provided, that neither shall be compelled to give evidence incriminating himself. Proof of the desertion of the wife or child, or of the neglect or refusal to make reasonable provision for their support and maintenance, shall be prima facie evidence that such desertion, neglect or refusal is wilful and without just cause. In no prosecution under sections one to ten, inclusive, shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply.

Want of custody of child no defence.
1917, 163.
1918, 257, § 455.

SECTION 8. In proceedings under section one against a parent, relative to any minor child, it shall not of itself be a defence that the defendant has ceased to have custody or the right to custody of such child on his own acquiescence or by judicial action.

1919, 5; 148. 1920, 2. 244 Mass. 281.

Payment for labor of convict.
1911, 456, § 8.
1912, 264; 310.
1924, 381.

SECTION 9. If the court imposing a sentence under section one, finds the wife or child, as the case may be, of the defendant to be in destitute or needy circumstances, the superintendent, master or keeper of the reformatory or penal institution where he is confined upon such sentence shall pay over to the probation officer of such court at the end of each week, out of the annual appropriation for the maintenance of such reformatory or penal institution, a sum equal to fifty cents for the wife and an additional amount equal to twenty-five cents for each dependent minor child for each day's hard labor performed by the person so confined, and shall state the name of the person for whose labor the payment is made. The probation officer shall pay over said sum in the manner provided in section five for the payments therein provided for.

Uniformity of construction.
1911, 456, § 9.

SECTION 10. The nine preceding sections shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states enacting their provisions.

ILLEGITIMACY.

Getting woman with child. Jurisdiction and venue.
C. L. 55, § 2.
1692–3, 18, § 5.
1785, 66, § 2.
R. S. 49, § 1.
1851, 96, §§ 1, 2.
1853, 57, § 11.
1857, 300, § 1.

SECTION 11. Whoever, not being the husband of a woman, gets her with child shall be guilty of a misdemeanor. Proceedings under this section or any of the eight following sections shall be begun, if in the superior court, in the county in which is situated the place where the defendant or the mother of the illegitimate child lives, and, if begun in a district court, in the court having such place within its judicial district.

1859, 239, §§ 1, 2, 6.
G. S. 72, §§ 1, 3, 13.
1863, 127, § 5.
P. S. 85, §§ 1, 3, 22.
1885, 289.
R. L. 82, §§ 1, 3, 22.
1904, 159.
1913, 563, §§ 1, 9.
1931, 256, § 4.
3 Met. 209.
13 Met. 372.
15 Gray, 50.
4 Allen, 365.
193 Mass. 528.
229 Mass. 157.
235 Mass. 383.
236 Mass. 362.
239 Mass. 592.
267 Mass. 591.

Adjudication of paternity. Appeal. New trial.
C. L. 55, § 2.

SECTION 12. If the defendant pleads guilty or nolo contendere, or is found guilty, the court shall enter a judgment adjudging him the father of the child; but such adjudication shall not be made after a plea of not

upon a complaint for modification and a showing of a substantial change or circumstances of parties and as the benefit of the spouse or child requires.

(f) No proceedings under this section shall be commenced or entertained if there is a prior pending action between the spouses or regarding the child entitled to support under chapters two hundred and seven, or chapter two hundred and eight or under section thirty-two of this chapter. If an action under chapters two hundred and seven, two hundred and eight or section thirty-two of this chapter is filed after the commencement of proceedings or after a judgment under this section, any support order or judgment issued in such action shall supersede any support order or judgment and any income assignment made under this section. Nothing herein shall prevent the probate and family court department in any proceeding under chapters two hundred and seven, two hundred and eight or section thirty-two of this chapter from entering an order or judgment enforcing any order or judgment under this section which has not been paid or entering an order or judgment enforcing provisions for payment contained in a judgment entered under this section.

(g) The administrative justices of the district, Boston municipal and probate and family court department of the trial court shall jointly promulgate a form of complaint for use under this section which shall be in such form and language to permit a plaintiff to prepare and file such complaint pro se.

SECTION 15. Section 1 of chapter 209A of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by striking out the definition of "Family or household member" and inserting in place thereof the following definition:–

"Family or household member", household member, former household member, a spouse, former spouse or their minor children, blood relative or person who, though unrelated by blood or marriage, is the parent of the plaintiff's minor child.

SECTION 16. The General Laws are hereby further amended by inserting after chapter 209B the following chapter:–

CHAPTER 209C.
CHILDREN BORN OUT OF WEDLOCK.

Section 1. Children born to parents who are not married to each other shall be entitled to the same rights and protections of the law as all other children. It is the purpose of this chapter to establish a means for such children either to be acknowledged by their parents voluntarily or, on complaint by one or the other of their parents or such other person or agency as is authorized to file a complaint by section five, to have an adjudication of their paternity, to have an order for their support and to have a declaration relative to their custody or visitation rights ordered by a court of competent jurisdiction. For the purpose of this chapter, the term "child born out of wedlock" shall refer to any child born to a man and woman who are not married to each other and shall include a child who was conceived and born to parents who are not married to each other but who subsequently intermarry and whose paternity has not been

acknowledged by word or deed or whose paternity has not been adjudicated by a court of competent jurisdiction; and a child born to parents who are not married to each other whose paternity has been adjudicated by a court of competent jurisdiction, including an adjudication in a proceeding pursuant to this chapter or prior law. Every person is responsible for the support of his child born out of wedlock from its birth up to the age of eighteen, or, where such child is domiciled in the home of a parent and principally dependent upon said parent for maintenance, to age twenty–one. Each person charged with support under this section shall be required to furnish support according to his financial ability and earning capacity pursuant to the provisions of this chapter.

Section 2. Paternity may be established by the registration of an acknowledgment of parentage executed by both parents and filed with the court pursuant to section eleven or pursuant to an action to establish paternity filed pursuant to this chapter. Actions to establish support obligations or for custody or visitation rights may also be filed pursuant to this chapter.

Section 3. (a) The district, Boston municipal and the probate and family court departments of the trial court shall have concurrent jurisdiction over complaints to establish paternity or support and the registration of voluntary acknowledgments of parentage; provided, however, that the district and Boston municipal court departments shall have no jurisdiction of custody or visitation matters under this chapter. Complaints to establish paternity or support or for voluntary acknowledgments of parentage which also include a request for an order relative to custody or visitation shall be filed only in the probate and family court department.

(b) Any party to an action for paternity or support which is pending or was previously adjudicated by the district or Boston municipal court departments who seeks an order relative to custody or visitation may, after the adjudication or voluntary acknowledgment of paternity and entry of an order or judgment for support, file an action in the probate and family court department to determine custody or visitation. The probate and family court department shall proceed to adjudicate custody or visitation. The judgment of the court may include an order modifying any support order or judgment previously issued by the district or Boston municipal court departments, if there has been a substantial change of circumstances, as provided in section twenty.

(c) The juvenile court department shall have concurrent jurisdiction to adjudicate paternity and support and to accept registration of voluntary acknowledgments of parentage under this chapter, provided that actions brought under this chapter are joined or consolidated with actions brought under section twenty–four of chapter one hundred and nineteen and, provided further, that the action under section twenty–four of chapter one hundred and nineteen is initiated before the filing of a complaint under this chapter.

(d) Unless modified as provided in subsection (b) above, a prior order or judgment for support entered in the district or Boston municipal court department shall remain in full force and effect and shall be enforced in the Boston municipal court department or in the division of the district court department in which the original order or judgment for support was entered. In the event of a modification of a support order, the register of probate for the county in which the action for custody or visitation

was filed shall notify the clerk-magistrate of the appropriate district or Boston municipal court in which support was previously adjudicated. The clerk-magistrate shall make entry in the docket of the fact that the case shall thereafter be heard only in the probate and family court department.

(e) An order or judgment for support entered in the juvenile court department shall remain in full force and effect and shall be enforced in the division of the juvenile court department in which the original order or judgment of support was entered during the pendency of an action pursuant to section twenty-four of chapter one hundred and nineteen. Six months after the dismissal or final order of commitment pursuant to section twenty-four of chapter one hundred and nineteen, the order or judgment of support shall expire. At the time of such dismissal or final order of commitment, the clerk-magistrate shall notify the parties and the IV-D agency, as set forth in chapter one hundred and nineteen A, of the date of expiration of the support order or judgment. If, before the expiration of the order or judgment of support, any of the parties or said IV-D agency files an action for support in the Boston municipal court department or the appropriate division of the district or probate and family court departments, the prior order or judgment shall be transferred to that court department and shall remain in full force and effect and shall be enforced and modified in said court department.

Section 4. Complaints under this chapter to establish paternity, support, custody or visitation of a child and written voluntary acknowledgments of parentage shall be filed in the judicial district or county in which the child and one of the parents lives. If neither of the parents lives in the same judicial district or county as the child then the complaint shall be filed in the judicial district or county where the child lives. The fact that the child was conceived, was born, or lives outside the commonwealth does not bar a proceeding to establish paternity pursuant to this chapter. Service of the complaint shall be made in accordance with applicable rules of court. In addition to those otherwise authorized to serve civil process, any officer authorized under the laws of the commonwealth to serve criminal process may serve any process under this chapter.

Section 5. (a) Complaints under this chapter to establish paternity, support, visitation or custody of a child may be commenced by the mother, whether a minor or not; by a person presumed to be or alleging himself to be the father, whether a minor or not; by the child; by the child's guardian, next of kin, or other person standing in a parental relation to the child; by the parent or personal representative of the mother if the mother has died or has abandoned the child; by the parent or personal representative of the father if the father has died; by the authorized agent of the department of social services or any agency licensed under chapter twenty-eight A provided that the child is in their custody; or, if the child is or was a recipient of any type of public assistance, by the department of public welfare; provided, however, that if the mother of the child was or is married and the child's birth occurs during the marriage or within three hundred days of its termination by death, annulment or divorce, complaints under this chapter may not be filed by a person presumed to be or alleging himself to be the father unless he is or was the mother's husband at the time of the child's birth or conception.

(b) Voluntary acknowledgments of parentage may be executed by the mother and the putative father, whether either or both is a minor, and may be registered pursuant to section eleven only if the signatures of the mother and the father are notarized. If the mother of the child was or is married and the child's birth occurs during the marriage or within three hundred days of its termination by death, annulment or divorce, a voluntary acknowledgment of parentage may only be executed by the mother, the putative father and the mother's husband at the time of the child's birth or conception. If such acknowledgment is executed with the department of public welfare or with any official of a court, such acknowledgment shall not be registered unless the mother and the father were informed in writing at the time the acknowledgment was executed that such acknowledgment would be registered with the court and could form the basis of a claim against the mother or the father for support of the child whose parentage is acknowledged.

(c) Any agency or person living with such child who is actually furnishing support to the child or, if the child who is the subject of an action under this chapter is a recipient of public assistance, the department of public welfare shall be made a party to any action for paternity or support under this chapter.

(d) The department of public welfare may not file complaints solely for custody or visitation, but shall be permitted to file actions for paternity or support; provided, however, that said department shall be permitted to maintain an action for paternity or support even if issues related to custody or visitation are raised.

(e) In actions under this chapter relative to custody or visitation, the child, if the child is fourteen years of age or older, shall be made a party to such action.

Section 6. (a) In all actions under this chapter a man is presumed to be the father of a child and must be joined as a party if:

(1) he is or has been married to the mother and the child was born during the marriage, or within three hundred days after the marriage was terminated by death, annulment or divorce; or

(2) before the child's birth, he married or attempted to marry the mother by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child was born during the attempted marriage or within three hundred days after its termination; or

(3) after the child's birth, he married or attempted to marry the mother by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) he agreed to support the child under a written voluntary promise, or

(ii) he has engaged in any other conduct which can be construed as an acknowledgment of paternity; or

(4) while the child is under the age of majority, he, jointly with the mother, received the child into their home and openly held out the child as their child; or

(5) he has acknowledged paternity in a parental responsibility claim as provided in section four A of chapter two hundred and ten and the mother, having received actual notice thereof, has failed within a reasonable time, to object thereto; or

(6) with his consent and the consent of the child's mother, he is named as the child's father on the birth certificate as provided in section one of chapter forty-six.

Section 7. Actions under this chapter shall be civil actions. The plaintiff in an action filed to establish paternity may be represented by the IV-D agency, as set forth in chapter one hundred and nineteen A. In actions in which custody or visitation are contested, court may appoint counsel to represent either party wherever the interests of justice require.

The burden of proof in proceedings under this chapter to establish paternity shall be by clear and convincing evidence.

Section 8. On complaint to establish paternity, the court shall make a judgment establishing or not establishing paternity which shall be determinative for all purposes. The age of the person alleged to be the father in any action under this chapter, including a registration of parentage, shall not be a bar to the establishment of paternity or entry of a support order pursuant to section nine. If the child or the mother on behalf of the child is a recipient of public assistance and if the department of public welfare has not been made a party as required by section five, the court shall notify the department of the judgment. If the judgment is at variance with the child's birth certificate, the court may order that a new birth certificate be issued under section thirteen of chapter forty-six.

Section 9. (a) If the court finds that a parent is chargeable with the support of a child, the court shall make an order in accordance with subsection (c) requiring a parent to pay weekly or at other fixed periods a sum for and toward the current support and maintenance of such child. An order or judgment of support pursuant to this chapter may be entered notwithstanding the default of the defendant or his failure to appear personally. When the court makes a judgment or order for maintenance or support of a child and such child is not covered by a private group health insurance plan, the court shall determine whether the obligor under such judgment or order has health insurance or a group plan available to him through an employer or organization that may be extended to cover the child for whom support is ordered. When the court has determined that the obligor has such insurance, the court shall include in the support judgment or order a requirement that the obligor exercise the option of additional coverage in favor of such child. In addition, the court may order one party to pay the other party including the department of public welfare a sum for past support including payment for medical expenses consistent with the provisions of subsection (f).

(b) Upon demand by either party, including the department of public welfare, the other party shall be compelled to provide a financial statement, except that the department of public welfare shall not be compelled to provide a financial statement for a recipient of public assistance, and, provided further, if no party makes such a demand, the court may require a financial statement of each party.

(c) In determining the amount to be paid or in approving the agreement of the parties, the court shall apply the standards established by the chief administrative justice of the trial court or, in the absence of such standards, shall consider all relevant facts, including but not limited to:

(1) needs of persons entitled to support including necessary shelter, food, clothing, medical care and education;

(2) relative financial means of each parent, including their standard of living, age, health, station, occupation, amount and sources of income, including unearned income, vocational skills, employability, estate, liabilities and opportunity of each for future acquisition of capital assets and income;

(3) earning ability of each parent;

(4) age of the child;

(5) need and capacity of the child for education, including higher education;

(6) value of services, including those as a homemaker, contributed by the custodial parent; and

(7) the amount necessary for the obligor's minimum subsistence, including food, shelter, utilities, clothing and the reasonable expenses necessary to travel or obtain employment.

(d) It shall not be a defense that the parent from whom support is sought has ceased to have custody or the right to custody of a minor child for whom support is sought, or that the custodial parent is interfering with the other parent's right of visitation.

(e) If the child on whose behalf support is ordered is a recipient of benefits pursuant to chapters one hundred and seventeen or one hundred and eighteen of the General Laws and the department of public welfare has not been made a party as required by section five, the court shall notify the department of the order or judgment or support.

Section 10. (a) Upon or after an adjudication or voluntary acknowledgment of paternity, the court may award custody to the mother or the father or to them jointly or to another suitable person as hereafter further specified as may be appropriate in the best interests of the child.

In awarding custody to one of the parents, the court shall, to the extent possible, preserve the relationship between the child and the primary caretaker parent. The court shall also consider where and with whom the child has resided within the six months immediately preceding proceedings pursuant to this chapter and whether one or both of the parents has established a personal and parental relationship with the child or has exercised parental responsibility in the best interests of the child.

In awarding the parents joint custody, the court shall do so only if the parents have entered into an agreement pursuant to section eleven or the court finds that the parents have successfully exercised joint responsibility for the child prior to the commencement of proceedings pursuant to this chapter and have the ability to communicate and plan with each other concerning the child's best interests.

(b) Prior to or in the absence of an adjudication or voluntary acknowledgment of paternity, the mother shall have custody of a child born out of wedlock.

(c) If either parent is dead, unfit or unavailable or relinquishes care of the child or abandons the child and the other parent is fit to have custody, that parent shall be entitled to custody.

(d) If a person who is not a parent of the child requests custody, the court may order custody to that person if it is in the best interests of the child and if the written consent of both parents or the surviving parent is filed with the court. Such custody may also be ordered if it is in the best interests of the child and if both parents or the surviving parent are unfit to have custody or if one is unfit and the other files his written consent in court.

Section 11. (a) In lieu of or in conclusion of proceedings to establish paternity, the written voluntary acknowledgment of parentage executed jointly by the putative father, whether a minor or not, and the mother of the child, whether a minor or not, may be filed with and approved by a court of competent jurisdiction and proper venue.

After filing, either parent, or the department of public welfare if the child who is the subject of the acknowledgment is or was a recipient of public assistance, may, upon notice to the other parent or the department of public welfare, move for approval of the acknowledgment. The court shall approve the acknowledgment unless either parent objects. Upon approval, the acknowledgment shall have the same force and effect as a judgment adjudicating paternity. In any subsequent action under this chapter, a prior approved acknowledgment as to paternity shall be res judicata as to that issue which shall not be reconsidered by the court.

(b) If a mother and father execute a voluntary acknowledgment of parentage as provided in (a), they may also make agreements regarding custody, support and visitation. Such agreements may be filed with any court with jurisdiction pursuant to this chapter; provided, that any such agreement which includes issues of custody or visitation must be filed with a division of the probate and family court department. Such agreements, if filed with and approved by the court, in the manner described in (a), shall have the same force and effect as a judgment of the court; provided, however, that the court shall have the same power to investigate the facts regarding custody, support and visitation prior to entering an order relative to those issues as it would have if no agreement had been filed; and provided further, that an agreement regarding custody and visitation shall be approved only if the court finds it to be in the best interests of the child.

(c) Voluntary acknowledgments and agreements made pursuant to this chapter shall be acknowledged in the presence of a notary public.

(d) If the child is a recipient of public assistance, no agreement regarding support shall be approved by the court unless the department of public welfare has had an opportunity to be heard. Any such agreements shall be admissible in a proceeding under this chapter, and the court shall have the authority to order and enforce payment of any sums due under such written agreement.

Section 12. In actions under this chapter, the trial shall be by the court without a jury. In an action to establish paternity, the court may exclude the general public from the room where the trial is held and may admit only persons directly interested in the case, including officers of the court and witnesses.

Section 13. In all actions to establish paternity or in which paternity of a child is an issue, all complaints, pleadings, papers, documents, or reports filed in connection therewith, docket entries in the permanent docket and record books shall not be available for inspection, unless

a judge of the court where such orders are kept, for good cause shown, shall otherwise order; provided however, that the child, his mother, the man adjudicated to be the father and the department of public welfare, when the child who is or was the subject of the complaint is a recipient of public assistance or the attorney for any of them, shall have access to and the right to obtain copies of the papers, docket books and judgments in actions pursuant to this chapter. Such complaints, reports, pleadings papers, and documents, permanent docket and record books shall be segregated. A separate permanent docket book and index shall be provided and shall likewise be segregated.

Section 14. An action to establish paternity of a child may be instituted during pregnancy of the mother but shall only be filed by the mother or her representative. In the case of any complaint brought prior to the birth of the child, no final judgment on the issue of paternity shall be made until after the birth of the child.

Section 15. During the pendency of an action under this chapter, the court may upon motion of any party, enter temporary orders to restrain interference with the personal liberty of any of the parties or the child.

The court may, in like manner, upon motion of any party or of a next friend on behalf of the child, and upon notice to the other parties, enter temporary orders providing for the support of the child or relative to the care and custody of the child or visitation rights with the child in accordance with the provisions of sections nine and ten.

All orders entered pursuant to this section shall continue in force until modified or revoked or until final judgment is granted, violations of such orders may be punished as contempt or enforced in the manner provided in section twenty.

Section 16. (a) Both the plaintiff and the defendant are competent to testify in proceedings hereunder.

(b) Upon refusal of any witness, including a party, to testify under oath and produce evidence, the court may order him or her to testify under oath and produce evidence, concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence may tend to incriminate him the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury in his testimony. The refusal of a witness who has been granted immunity, to obey an order to testify or produce evidence may be punished as civil contempt of the court.

(c) In an action pursuant to this chapter, the mother and the man alleged to be the father shall be competent to testify and no privilege or disqualification created under chapter two hundred and thirty–three shall prohibit testimony by a spouse or former spouse which is otherwise competent. If the mother is or was married, both she and her husband or her former husband may testify to non–access and parentage of the child.

(d) In an action to establish paternity, testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at any time other than the probable time of conception of the child is inadmissible in evidence unless offered by the mother.

(e) In an action to establish paternity, the court may view the mother, the child, and the putative father to note any resemblance among the

parties notwithstanding the absence of expert testimony.

(f) All other evidence relevant to the issue of paternity of the child, custody of a child or support of a child shall also be admissible.

Section 17. In an action to establish paternity, the court may, on the motion of any party or upon its own motion, order the mother, the child, and the putative father to submit to one or more blood or genetic marker tests, to be performed by a duly qualified physician or other such expert. The report of the results of blood grouping or genetic marker tests, including a statistical probability of the putative father's paternity based upon such tests, shall be admissible in evidence and shall be weighed along with other evidence of the putative father's paternity; provided, however, such report shall only be admissible in accordance with accepted principles of science, statistics, and equity; provided, further, that such report shall not be considered as evidence of the occurrence of intercourse between the mother and the putative father; and provided, however, that such report shall not be admissible absent sufficient evidence of intercourse between the mother and the putative father during the period of probable conception. If the report of the results of blood tests or an expert's analysis of inherited characteristics is disputed, the court may then order that an additional test be made at the same laboratory or different laboratory at the expense of the party requesting additional testing. Verified documentation of the chain of custody of blood specimens is competent evidence to establish such chain of custody. The fact that any party refuses to submit to a blood test shall be admissible. The cost of making any tests ordered pursuant to this section shall be chargeable against the party making the motion. The court in its discretion may order the costs of such testing to be apportioned among the parties provided, however, the court may not direct the department of public welfare to pay for such tests, unless said department is the moving party. Payment for the costs of such tests shall be considered a necessary expense and if any party chargeable with the costs of the blood tests is indigent as provided in section twenty-seven A of chapter two hundred and sixty-one, the court may direct payment of such costs by the commonwealth regardless of the type of tests requested by the moving party.

Section 18. Each judgment or order of support which is issued, reviewed or modified pursuant to this chapter shall conform to and shall be enforced in accordance with the provisions of section twelve of chapter one hundred and nineteen A.

Section 19. A judgment of support issued in conclusion of a proceeding under this chapter or a temporary support order issued under section fourteen may be enforced with one or more of the following methods:

(1) contempt in accordance with sections thirty-four and thirty-four A of chapter two hundred and fifteen;

(2) execution of the judgment;

(3) attachment of or lien against property;

(4) trustee process, in accordance with the provisions of chapter two hundred and forty-six;

(5) equitable actions to reach and apply for the enforcement of judgments; and

(6) any other civil remedy available for the enforcement of judgments or for the enforcement of support or custody orders entered under

chapter two hundred and eight, two hundred and nine, and two hundred and seventy–three A.

Section 20. A court with original jurisdiction pursuant to section three has continuing jurisdiction, upon a complaint filed by a person or agency entitled to file original actions, to modify judgments of support, custody or visitation whenever a substantial change in the circumstances of the parties or the child has occurred, provided however, that no modification concerning custody or visitation shall be granted unless the court also finds it to be in the child's best interests to do so.

Section 21. Any interested party may bring an action to determine the existence of a mother and child relationship. Insofar as practicable, the provisions of this chapter applicable to establishing paternity shall apply.

Section 22. (a) A decree entered on a petition filed pursuant to chapter two hundred and ten shall be a bar to a proceeding under this chapter.

(b) A proceeding under chapter two hundred and seven, two hundred and eight, two hundred and nine, two hundred and seventy–three, or two hundred and seventy–three A shall not be a bar to any proceeding under this chapter. An action brought under this chapter may be consolidated with an action brought under chapters two hundred and seven, two hundred and eight, two hundred and nine or two hundred and seventy–three A if both actions are pending in the same department of the trial court.

(c) If an action under chapter two hundred and seven, two hundred and eight, or two hundred and nine, is filed after the commencement of proceedings or after a judgment under this chapter, any order or judgment for support of a child issued in the annulment, divorce or separate support proceedings shall supersede any prior order or judgment for support of the same child under this chapter; and any assignment made under this chapter shall be superseded by an assignment made in the divorce, separate support, or annulment proceeding; provided, however, that nothing herein shall prevent the court in such annulment, separate support or divorce proceeding from entering an order or judgment enforcing any previous support order or judgment for support under this chapter which has not been paid, consistent with the provisions of section nine.

(d) No proceeding hereunder shall be barred by a prior finding or adjudication under any repealed sections of chapter two hundred and seventy–three or by the fact that a child was born prior to the effective date of this chapter.

Section 23. (a) If, after adjudication of paternity or voluntary acknowledgment of parentage, the parents of the child intermarry, any order or judgments of the court relative to support, custody, visitation and restraint on personal liberty shall be null and void and the court shall have no continuing jurisdiction over the parties under this chapter.

(b) If, after proceedings are commenced but before an adjudication of paternity is issued, the parents intermarry, the court may adjudicate paternity hereunder but shall have no other jurisdiction over the child or the parents under this chapter.

(c) An action under this chapter may be commenced after the intermarriage of the parents of the child only to determine paternity.

Section 24. The administrative justices of the district, Boston municipal and the probate and family court department of

the trial court shall jointly promulgate forms for complaints, agreements and registrations of parentage for use under this chapter, which shall be in such form and language to permit a person to prepare and file such forms pro se.

SECTION 16A. Chapter 211B of the General Laws is hereby amended by inserting at end thereof the following section:-

Section 15. There shall be established a committee on Child Support Guidelines in compliance with Section 467 of the Social Security Act (P.L. 98-378). The committee shall be advisory to the chief administrative justice of the trial court and shall consist of fifteen members, seven of whom shall be appointed by the chief administrative justice of the trial court, six of whom shall be appointed by the governor, at least five of whom served on the governor's commission on child support established by Executive Order on January twenty-eight, nineteen hundred and eighty-five, at least one of whom shall be a custodial parent and at least one of whom shall be a non-custodial parent, the commissioner of revenue, and the chief administrative justice of the trial court who shall be chairman. The committee shall report on such guidelines no later than January first, nineteen hundred and eighty-seven and shall filed said report with the clerk of the house of representatives and the clerk of the senate. No sooner than ninety days subsequent to the filing of said report, the chief administrative justice shall promulgate such child support guidelines for use by judges and hearing officers.

In determining support orders, in developing the recommendations for its report, the committee on child support standards shall consider all relevant social, economic, and legal principles. The committee shall be guided by the following principles: to minimize the economic impact on the child of family breakup, to encourage joint parental responsibility for child support, in proportion to or as a percentage of income, to provide the standards of living the child would have enjoyed had the family been intact, to meet a child's survival needs in the first instance, but to the extent either parent enjoys a higher standard of living entitle the child to share that higher standard, to protect a subsistence level of income of parents at the low end of the income range whether or not they are on public assistance, to take into account the non-monetary contributions of the custodial and non-custodial parent, to minimize problems of proof for the parties and of administration for the courts, and to allow for orders and wage assignments that can be adjusted as income or decreases.

SECTION 17. Chapter 215 of the General Laws is hereby amended by striking out section 4, as appearing in the 1984 Official Edition, and inserting in place thereof the following section:-

Section 4. Probate courts shall have exclusive original jurisdiction of actions by married women relative to their separate estate, of actions relative to the care, custody, education and maintenance of minor children provided for by sections thirty and thirty-seven of chapter two hundred and nine, and of actions relative to paternity, support, and custody of minor children provided for in chapter two hundred

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SENSIBLE CHILD SUPPORT

[THIRD Edition]

Boston Globe (pre-1997 Fulltext) - Boston, Mass.
Date: May 17, 1986
Start Page: 14
Section: EDITORIAL PAGE

Document Text

The absence of reasonable guidelines to govern child-support orders encourages parents to neglect their financial responsibility to their children. On Monday the Massachusetts House will consider a bill that would bring order to an inequitable and chaotic system.

The standard of living improves for most fathers after divorce, but deteriorates for most mothers and children. Yet, some men are ordered to pay minimal amounts; others are saddled with support orders so steep they need two jobs to survive.

The bill would establish a commission of gubernatorial appointees and judges to draft uniform, statewide guidelines for child-support orders. The guidelines would require parents to share the expenses of their children in an attempt to provide them the standard of living they had when the family was intact.

The system would make child-support payments an automatic payroll deduction. Responsibility for locating absent parents and enforcing child- support orders would fall to a single state agency, instead of to 83 courts and 14 district attorneys. The bill also takes the long-overdue step of decriminalizing paternity out of wedlock.

If the state fails to beef up child-support enforcement, it could lose $25 million in federal funds. The Reagan administration believes that improved child support will reduce public welfare costs.

Most women become dependent on welfare because the father of their children refuses to pay support. Because many of these fathers may be impossible to identify or unable to provide support, the bill may have more impact on non-welfare parents.

The bill recognizes that children are a joint financial responsibility of parents, regardless of marital status. It should minimize the money battles that feed struggles over custody and visitation.

It also would remove many of the excuses parents have used to dodge responsibility. By cushioning the economic impact of divorce upon children, the bill puts the interests of children first.

Abstract (Document Summary)

The absence of reasonable guidelines to govern child-support orders encourages parents to neglect their financial responsibility to their children. On Monday the Massachusetts House will consider a bill that would bring order to an inequitable and chaotic system.

The system would make child-support payments an automatic payroll deduction. Responsibility for locating absent parents and enforcing child- support orders would fall to a single state agency, instead of to 83 courts and 14 district attorneys. The bill also takes the long-overdue step of decriminalizing paternity out of wedlock.

A 'NO' TO GAY MEN AS FOSTER PARENTS

Chicago Tribune

May 31, 1985 Friday, SPORTS FINAL EDITION

Section: TEMPO; Pg. 3; ZONE: C

Length: 791 words

Byline: Ellen Goodman, Washington Post Writers Group.

Body

Donald Babets and David Jean lead the kind of lifestyle that would be considered superstraight if they were not ***gay***. Babets, 36, works for the Boston Fair Housing Commission. Jean, 32, is ***a*** nutritionist and business manager of ***a*** home for unwed mothers. Babets is ***a*** Sunday school teacher, and Jean ***a*** music director for his church.

These ***men*** share ***a*** mortgage and ***a*** vegetable garden, ***a*** relationship of nine years' duration and one new experience. They have been publicly ruled unfit to take care of children.

More than ***a*** year ago, these two ***men*** applied to become ***foster parents***. They answered the questionnaires from the State of Massachusetts and the personal questions of social workers. They went through home visits and through ***a*** six-week training program and then they waited. Finally, with the permission of the mother, they were given care of two young and battered brothers, one of them aged 1/2, the other 22 months old.

But two weeks later, in the glare of publicity, those boys were taken away. Two weeks after that, on May 24, ***a*** new state policy emerged that virtually ensures ***no*** more children will be placed with ***gay*** people in Massachusetts. The policy may become ***a*** model for other states that are now reviewing their own rules.

It was, to put it mildly, not the finest hour for the Massachusetts Department of Social Services. It placed the children after ***a*** lengthy investigation and took them away after ***a*** single newspaper story. Nor was it the finest hour for the ***gay*** community, which expressed more concern for their own best interests than those of the children.

The rest of this wildly emotional controversy over two would-be ***foster parents*** was charged with attitudes toward homosexuality that ranged from discomfort to phobia.

At the phobic end of the continuum, there were more than ***a*** few people who suggested that every homosexual is ***a*** potential child abuser. ***A*** juvenile-court judge said that he would resist placing young boys with ***gay men*** because of the risk of sexual abuse. Would he have similar qualms about placing young girls with the largest sex abuser, heterosexual ***men***? ***A*** state senator said children should be placed with "those persons whose sexual orientation presents ***no*** threat to the well-being of the child."

Even at the milder pole of opinions, there were genuine concerns about "proper role models for children," "sexual identity," the "right" environment. But once the debate focused on words like "normal" and "family," once the state was asked if it gave official approval to ***gay***

foster parents, Babets and Jean never had **a** chance.

I have never understood the need of **gay** couples to define their relationships as "family." I am uncomfortable with those **gay** women who deliberately go out to "get" children of their own through artificial insemination. There is **no** right to be **a parent**, and as the Massachusetts secretary of human services said in announcing the state's new policy, there is surely **no** "right" to be **a foster parent**.

But this tale isn't about **gay** rights, it's about children's needs. In the best of all possible worlds, each child would have its own caring mother and father. In the best of all possible worlds, **no** child would have to adjust to **a parent** who was this "different." But then, in the best of all possible worlds, **no** child would be abused or neglected or ever be in need of **foster** care.

In Massachusetts there are 6,500 **foster** children. They are, as Philip Johnston, secretary of Human Services, said, "our most traumatized, damaged and troubled children." To care for these children, **a foster parent** is paid between $7 and $10 **a** day for **a** maximum of 18 months. It is **no** wonder that the state has **a foster**-home shortage of about 25 percent.

In the public mind, perhaps, the state can choose between Babets and Jean, or Ozzie and Harriet. But in real life, the choices are often meager and not every **foster parent** has altruistic motives. How many of the critics of these two **gay men** have volunteered to be **foster parents** themselves?

Frankly, this was **an** issue that deserved **a** good leaving alone. Until the current flap, there was **no** set policy for or against **gay parents** in any state. Homosexuality was **an** issue, not the issue. **Gay men** and women were also judged on caring and character. These two **men** passed the test.

There are some who regard homosexuality as **a** sin that absolutely disqualifies people from child care. But what I see are two abused children who found two understanding, loving caretakers. The children lost those caretakers because their names were Don and David.

Column.

Classification

Subject: CHILDREN (90%); **FOSTER** CARE (89%); **GAYS** & LESBIANS (89%); US STATE GOVERNMENT (78%); SINGLE **PARENTS** (77%); CHILD ABUSE (75%); APPROVALS (72%); NUTRITION (72%); HOUSING AUTHORITIES (72%); JUVENILE COURTS (70%); LEGISLATIVE BODIES (69%); SEXUAL ASSAULT (67%); SEX OFFENSES (67%); INVESTIGATIONS (64%); EDITORIALS & OPINIONS (50%)

Industry: HOUSING AUTHORITIES (72%)

Geographic: BOSTON, MA, USA (79%); MASSACHUSETTS, USA (93%)

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Family Circle;

For Nancy Springer, a 1991 court case over custody of her children was a victory. But the precedent-setting legal decision nearly destroyed her family six years later. Here is what happened after the lawyers went home.

The San Francisco Chronicle

AUGUST 29, 1999, SUNDAY,, SUNDAY EDITION

Section: SUNDAY CHRONICLE;; RELATED STORY ATTACHED

Length: 2627 words

Byline: ***Elaine Herscher***, Chronicle Staff Writer

Body

The tanker truck barreled through a blind intersection on a country road near Oklahoma City and smashed broadside into Nancy Springer's blue Subaru.

Nancy survived for only a few minutes. Her 13-year-old son, Micah, and a friend were airlifted to a nearby hospital.

Micah had no father, but he told the hospital authorities repeatedly that he did have another mother -- Nancy's former partner, who lived in Berkeley.

No one listened. No one dialed the phone numbers in California he kept giving them. Before Micah was taken to surgery for a badly broken left arm, he was already a ward of the court and on his way to becoming a foster child.

Micki Graham heard about the accident late that night when a Berkeley cop knocked on her door with the number of a children's hospital chaplain in Oklahoma.

Shaking nearly uncontrollably, she dialed the hospital. She and Micah's older sister Kate were up all night crying and packing. They caught a plane at 6 a.m. The pilot flew way too slowly for Micki.

"Mom," Micah said as Micki swept into his hospital room that afternoon. "You got here."

But a judge had ruled six years earlier that, in the eyes of the law, Micki Graham wasn't mom. Now, in an Oklahoma hospital, that ruling meant that as soon as Micah was well enough, some couple would be taking him.

The horror of Micah being sent to live with strangers while he had a beloved parent who wanted him had been set in motion in 1991 with the case of Nancy S. vs. Michele G. It was a predecent-setting case that involved Micah's two mothers, and now it was threatening to throw their injured son into the foster-care system.

One of the best-known child custody cases in California, Nancy S. vs. Michele G. resulted in a landmark appellate court decision that has since been used to refuse parenting rights to perhaps hundreds of lesbians and some gay men who were not the birth parents of children they raised.

The legal precedent set in Nancy S. vs. Michele G. has meant that the nonbiological mother has no rights to custody or visitation over the objections of the birth mother.

Under the law, children belong only to biological or adoptive parents. The California courts have made exceptions in some cases for "de facto" parents who proved they served as parents in every way, but no exceptions have ever been made for second mothers not connected to the children by birth.

Judges reason they can grant parental rights to the other mother only if it can be proved that the birth mother is unfit. Proof that the children are harmed by being torn away from the other parent has never swayed the courts.

Nancy S. vs. Michele G. was used again just last month when the California Supreme Court turned down an appeal by another Berkeley woman who raised two girls with her former partner.

But gay and civil rights advocates wonder if the precedent would be applied so universally if the courts and the Legislature understood what really happened to Nancy and Michele's family after the lawyers went home.

Michele, known to all as Micki, and her children have not spoken publicly about their personal situation until now. Kate is a 19-year-old college student, more than capable of speaking for herself, and Micah is a 15-yr-old with strong opinions of his own.

"Being a judge is a very important thing in this society," Kate says. "You have to be able to do what's right, rather than what's easier."

Nobody, says Micki, ever sifts through the fallout of these cases; no one ever looks at what becomes of the children.

"If this makes these judges think about what they're doing, if it generates a dialogue, if it gets lawyers trying to find ways of solving these things out of court, that's good. That's what's important." Micki says.

"If there's a message in my case at all, the message is that you cannot do this to children."

FAMILY HISTORY

Micki and Nancy met in college in the summer of 1969, when they were scarcely older than Kate is now.

Nancy had just received her teaching credential; Micki was in art school. By August of that year, the two young women were living together.

Micki -- "more butch but more maternal," she says -- was the one who always wanted children. Nancy had become an elementary school teacher and thought she had more than enough contact with kids every day.

At Micki's urging, Nancy finally changed her mind. But by then Micki had had surgery that precluded having a baby. Nancy agreed to be the birth mom and to be inseminated by an unknown donor.

Kate was born in June 1980 and given a last name different from both her mothers in honor of Micki's Quaker great-grandmother. Four years later, Micah followed and shared his sister's unique last name. Micki's name appears under "Father" on both birth certificates. Nancy never disputed that Micki provided for the children materially, spiritually and emotionally.

"I did much more parenting than Nancy ever did," Micki said. "She was a good parent, but she was never as involved with the children as I was. In a heterosexual relationship, I was like the mother. I put them to bed, I fed them, I got them dressed in the morning."

Micah was 6 months old and Kate was 4 in January 1985 when Nancy moved out of the family's house in Berkeley.

"Nancy said she wanted out. She had lost herself," Micki said. "One night we were sleeping in the same bed, and the next, she's setting up on the couch. We went from having a relationship to her hating me, and I don't know why."

Their breakup came long before judges began granting second-parent adoptions to lesbians. That didn't come until the late 1980s -- and in the beginning only in San Francisco and Alameda counties. Back then, courts that allowed them were viewed as almost underground railroads where only the most liberal judges presided. Such

adoptions are still not available to large numbers of the state's lesbian and gay couples because most family-court judges simply will not entertain them.

In these procedures, the nonbiological mother adopts the child and assumes the same rights and responsibilities as the birth mother. If the parents break up, the adoptive mother has the same leverage in court as any father to get custody and visitation of the children.

Micki, with no legal role as a parent, had no leverage whatsoever when Nancy decided to leave.

Nancy took the baby and left Kate with Micki. Kate recalls always being more attached to Micki.

"Micki really felt more like my mom than Nancy," she says. "I knew that Micki would do anything for me. (Nancy) wasn't emotionally there. It was really boring being with her. She'd read or talk on the phone. I wasn't a huge priority."

For more than three years, Micki and Nancy had an arrangement. Kate's primary residence was with Micki; Micah's with Nancy. The children stayed regularly at each of their moms' houses and were together several days a week -- until Nancy pulled Kate out of school one day in September 1988 and told her Micki was no longer her mom.

"I just remember that I got really mad and screamed and stomped around," says Kate, who was 8 at the time.

That afternoon, Micki opened her front door to a man with a restraining order keeping her away from the kids. He also had a copy of Nancy's court motion making clear that Micki was not a parent. There was also a document for her to sign, stipulating, in exchange for shared custody at Nancy's discretion, that Micki had no formal parental rights.

Micki was frightened and dumbfounded. If she signed the paper, she could resume her connection with the children. But, she said, "I just couldn't do it. What would that be saying to them, that I didn't fight for them . . . that I was willing to sign a paper saying I wasn't their parent? They would have grown up thinking they were expendable.

"And besides, it was a lie. They were everything to me."

In her papers, Nancy described Micki as "extremely volatile and impulsive" and a possible danger to the children. Nancy told the authorities that a friend said Micki had threatened to kill Kate, then take her own life.

Micki says that was also a lie. If she were so dangerous to Kate, she argues, why would Nancy have offered her shared custody?

Weeks went by before Micki was allowed to see the children, and then it was through a family court mediator in downtown Oakland. Nancy, the children and the mediator were waiting for her in a playroom set up for family visits.

"The minute I walked in, Micah came running over to me and said, Mommy, where have you been?'" Kate was silent.

As soon as Micki and the children were alone, Kate burst into tears. "Take me home, Mommy. Please take me home now," Micki recalls her saying.

"And for the whole rest of the time, all I did was sit there and hold her while she cried," says Micki, her own eyes tearing as she remembers. "And I couldn't take her home."

Nancy filed in Alameda County Superior Court in 1989 to have Micki formally declared a nonparent with access to the children only at Nancy's discretion. Nancy won. Micki appealed and lost again two years later. But even while

they were fighting in court, Kate's state of mind began to alarm both women. A psychologist found that Kate was suffering the kind of clinical depression kids undergo when they lose a parent.

Kate doesn't remember her depression clearly, but Micah says what he and his sister went through "just kind of crushes you."

"Kate was so depressed," he says, sitting on the couch at home close by his sister. "If I had been old enough to know what was going on, I probably would have been, too."

The people left behind can only guess why Nancy was so adamant about getting Micki out of the picture. But Kate says now that if she had been given the unthinkable choice at age 8 of picking one parent, it "most definitely" would have been Micki.

Does she think Nancy knew that?

"I told her enough," Kate says.

THE ACCIDENT

In the clutch, Nancy was wiser than the judges who gave her what she wanted.

When Kate became depressed, Nancy let her return to living part-time with Micki. After that, Kate simply found more and more reasons to stay, and gradually, even after the 1991 decision, Nancy acquiesced. Part-time segued into full-time.

By the time Nancy fell in love with a woman in Oklahoma whom she met on the Internet, Kate's life -- high school, competitive skating practice at the local rink -- was firmly established with Micki in Berkeley.

Then Nancy announced in summer of 1996 that she was moving to the Midwest.

"There was no way I was going to live in Oklahoma," Kate says. "She might have asked me once and never brought it up again. I told her, Don't take Micah.' "

Micah says he had no objection to going, but when he got there, he didn't like it. "Not enough diversity," he says now.

Shortly before the car crash, Nancy's relationship with her new partner dissolved, and Micki told Nancy she and Micah were welcome to come back to Berkeley and stay with her until they got resettled.

The accident happened the day before the Fourth of Julyholiday in 1997. Nancy, Micah and his friend were returning from a day of fishing when the truck slammed into their car.

Micki showed up at the hospital with no legal claim to Micah, and children's protective services was unpersuaded by their family history. A judge would have to decide after the holiday weekend, Micki was told. To make matters more stressful, she had been out of work.

"There was no way an Oklahoma judge was going to give Micah to me, a known lesbian who had only just gotten a job," she says.

But no one in Nancy's family who supported her quest to be the children's only mother was coming forward now to claim Micah. Even Nancy's parents called from Newport Beach saying they should release the boy to Micki. If he wasn't going to be allowed to go home with Micki, Micah was planning to run away and get to her however he could.

Micki continued pleading her case with social services. The night before she would have to appear in court, Micki finally got through to someone. She believes some highly placed, but closeted, gay state workers greased the wheels for her and Kate to take Micah home.

With Nancy's death at age 52, Micki Graham, the parent without portfolio, had metamorphosed into the only person qualified for the job.

"I feel so bad that in order for me to have children it took Nancy's dying," she says.

INTRANSIGENT COURTS

Using Micki and Nancy's case as what she thought was a perfect example, attorney E. Elizabeth Summers argued in a similar case in April that children raised by gays and lesbians are not granted the same protection as those raised by heterosexual parents.

Summers was hoping the appeals court would reverse a Superior Court ruling and order visitation for Kathleen Crandall, who had been the other mom to two girls, now 17 and 12.

Summers submitted briefs explaining to the judges what really happened to Nancy S. and Michele G. She said that given the growing numbers of lesbian and gay parents, a groundbreaking judgment in favor of children's access to both parents is "as inevitable as Brown v. the Board of Education" -- the 1954 Supreme Court case that overturned "separate but equal" schooling.

The appellate court didn't buy it.

The state Supreme Court didn't buy it either last month, when it declined to review Crandall's rejection by the appellate court.

"This will be the law someday. There will be visitation rights for the other mother, the other father," Summers said recently.

But no one expects that soon.

TOGETHER FOR GOOD

Micki Graham is now Micah's legal guardian. She was also guardian to Kate until she turned 18. Micki had no trouble getting the guardianships. It was what the children and Nancy's family wanted.

She will formally adopt both Micah and Kate soon, which will at last make her their legal parent.

Looking back, what most horrifies her is how completely things had to deteriorate before the kids got her back. Kate had to be pronounced clinically depressed; Micah had to become an orphan.

"How could you say the best interest of a kid is to be torn away from a person they've known since birth?" Kate asks.

"I don't know," says her brother, "how anybody could think that's a smart thing to do to a child."

EFFECTS OF THE RULING

The case of Nancy S. vs. Michele G. began in Alameda County in 1989 when Nancy Springer took her former partner, Michele Graham, to court to have Graham formally declared a nonparent of the couple's two children.

The Alameda County Superior Court agreed that, as the children's birth mother, Nancy should have exclusive parental rights and Micki would have none.

Micki took the case to the state Court of Appeal in San Francisco, arguing that the children considered her a "de facto" parent and it was against their best interests for her to be removed from their lives.

The appellate court ruled in 1991 that Micki was not a parent under the law -- that is, a biological or adoptive mother. Further, Nancy and Micki did not have a legal marriage. (As a stepparent, Micki would have had the same rights as a natural parent after a divorce, but gay and lesbian couples are not allowed to marry.)

The case effectively declared that former gay and lesbian partners, even if they acted as parents from the moment of conception, have no standing even to appear in court to petition for access to the children.

The National Center for Lesbian Rights, based in San Francisco, estimates that Nancy S. vs. Michele G. has blocked perhaps hundreds of lesbians from getting visitation with children they raised.

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-- ***Elaine Herscher***

Graphic

PHOTO (4), (1) MAKING PLANS: Kate, right, talked with Micki about the school supplies she'll need when she moves to Southern California to attend college., (2) BACKYARD ROMP: Micki and Kate played with their dog in the yard of the home they share with Micah in Berkeley. / Photos by Susanna Frohman/The Chronicle, (3) TOGETHER: Kate and Micah were photographed together a year before Nancy Springer and Micki Graham separated. / Courtesy of Michele Graham, (4) MOTHERLY LOVE: Micki Graham, left, kissed 19-year-old Kate Newlin, whom she raised and will soon adopt, along with Kate's brother Micah. / Susanna Frohman/The Chronicle

Classification

Subject: FAMILY LAW (89%); DECISIONS & RULINGS (89%); CHILD CUSTODY & SUPPORT (89%); PARENTAL DUTIES & RIGHTS (89%); GAY PARENTING (89%); SAME SEX PARENTAL RIGHTS (85%); FOSTER CARE (77%); GAYS & LESBIANS (76%); APPELLATE DECISIONS (74%); JUDGES (74%); BONE FRACTURES (72%); ADOPTION (72%); PARENTING (72%); LAW COURTS & TRIBUNALS (69%); APPEALS COURTS (69%)

Company: BAY AREA INSURANCE SERVICES (59%); BAY AREA INSURANCE SERVICES (59%)

Industry: CHILDREN'S HOSPITALS (77%); AIRCRAFT PILOTS (67%)

Geographic: OKLAHOMA CITY, OK, USA (78%); CALIFORNIA, USA (93%); OKLAHOMA, USA (91%)

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Certificate of Service

I, C. Thomas Brown, certify that on this day I served by hand an original and seventeen copies of the foregoing brief with the clerk of this Court. I further certify that I served two copies of the foregoing brief on counsel for each party separately represented in this matter by sending such copies by first class mail to:

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