

# An Overview of the Illinois Parentage Act of 2015

The new Act, which takes effect next month, is a complete rewrite of Illinois parentage law that reflects changes in cultural norms and reproductive technology in the 30 years since the current parentage law was enacted. Here's a brief summary of the provisions.

BY MARGARET A. BENNETT

**THE PARENTAGE ACT OF 2015, SIGNED BY GOVERNOR RAUNER ON JULY 21, 2015**, guarantees the right of every child to the physical, mental, emotional, and financial support of his or her two parents regardless of their legal relationship to one another.<sup>1</sup> The Act also extends rights and responsibilities to both parents. The law, codified at 750 ILCS 46/101 et seq., takes effect January 1, 2016. The new Act references each of the relevant provisions of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA"), thus affording children born to unmarried parents IMDMA protection.<sup>2</sup>

1. See Pub. Act 99-0090 (eff. Jan. 1, 2016).
2. 750 ILCS 46/802.



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## TAKEAWAYS >>

- The Illinois Parentage Act of 2015 is a complete rewrite of the Illinois Parentage Act of 1984. It acknowledges societal changes and shifting family dynamics, and also includes presumptions for children born of same-sex marriages and civil unions. Where possible, the drafters removed gender specific terminology, replacing “mother” or “father” with “parent,” and replacing “mother and child” or “father and child” with “parent-child.”

- The new Act recognizes a presumption of parentage in same-sex marriages, civil unions, and substantially similar legal relationships. It provides that a person is presumed to be the parent of a child born within 300 days of the person’s death or termination of the person’s marriage, civil union, or substantially similar legal relationship to the child’s mother. When more than two persons are presumed to be the parents of a child, the controlling presumption of parentage is the one that weighs more heavily on public policy and logic, after taking into consideration the child’s best interest.

- Proceedings to adjudicate parentage are governed by the ordinary rules of civil procedure. The parties are entitled to full discovery, to compel the testimony of all witnesses, and to have the case decided by a preponderance of the evidence.

The Centers for Disease Control and Prevention estimates that more than 40 percent of children are born to unmarried couples.<sup>3</sup> The new Act is an effort to acknowledge societal changes and shifting family dynamics since the Illinois Parentage Act of 1984 was enacted. In addition, the new Act includes presumptions for children born of same-sex marriages and civil unions. Where possible, the drafters removed gender-specific terminology, replacing “mother” or “father” with “parent” and replacing “mother and child” or “father and child” with “parent-child.”<sup>4</sup>

Rather than reworking old statutory architectures, outdated language, and confusing provisions, the Illinois Parentage Act of 2015 replaces the Illinois Parentage Act of 1984 (750 ILCS 45/1 et seq.).<sup>5</sup> The Parentage Act of 2015, the most significant revision since 1957, also eliminates arcane concepts such as “settlement orders” allowing the child’s alleged father to pay for release of the mother’s right to pursue a parentage action.

The decision to rewrite rather than modify the existing Parentage Act was initiated by the Illinois Family Law Study Committee (“IFLSC”), which also was the driving force behind the IMDMA rewrite discussed by André Katz and Erin Bodendorfer in the November *Journal* (see “ISBA Resources” sidebar). The IFLSC, comprised of judges, state representatives, and family law attorneys, was created in 2008 by the Illinois House of Representatives’ Resolution No. 870. For more about the committee, see the Katz/Bodendorfer article.

The drafters used the Uniform Parentage Act’s organizational structure of nine articles

with corresponding subsections. The new Act also includes new state-specific provisions not found in the Uniform Parentage Act, especially in regard to same-sex couples. Here is an article-by-article summary of the new Act.

### Public Policy and Definitions (Article 1)

This section reaffirms the principle that regardless of the parents’ marital status or the circumstances of a child’s birth, parents and children have equal rights with respect to each other.<sup>6</sup> Article 1 contains 22 definitions, including three separate definitions of “father” that account for the legal permutations of a man who is or may be the parent of a child.

The section limits a child to no more than two parents. Some states have statutes permitting a child to have a “de facto” parent, thus allowing more than two legal parents. The Illinois General Assembly rejected de facto parentage, as well as “hold out” provisions in the Uniform Parentage Act that allow someone to become a presumed parent by “holding out” the child as his or her own for a designated period.

### Parent-Child Relationship and the Establishment and Presumption of Parentage (Article 2)

The new Act retains the current presumptions of parentage (e.g., a man is presumed to be the parent of a child born to

3. Centers for Disease Control and Prevention, FastStats, Unmarried Childbearing, <http://www.cdc.gov/nchs/fastats/unmarried-childbearing.htm>.

4. See generally 750 ILCS 46/101 et seq.

5. See *id.*

6. *Id.*



**THE ILLINOIS PARENTAGE ACT OF 2015 IS THE MOST SIGNIFICANT REVISION OF PARENTAGE LAW SINCE 1957.**

his spouse during their marriage) but includes gender-neutral language in accordance with Illinois law and public policy.<sup>7</sup> It also recognizes the presumption of parentage in same-sex marriages, civil unions, and substantially similar legal relationships.

Additionally, Article 2 provides that a

person is presumed to be the parent of a child born within 300 days of the person's death or termination of the person's marriage, civil union, or substantially similar legal relationship to the child's mother. When more than two persons are presumed to be the parents of a child, the controlling presumption is the one that is most logical and consistent with public policy, after taking into consideration the child's best interest.

Under section 205 of the new Act, an action to declare the non-existence of the parent-child relationship may be brought by the child, the birth mother, or a presumed parent, providing it is commenced no later than two years after the petitioner knew or should have known the relevant facts.<sup>8</sup>

### **Voluntary Acknowledgement of Parentage (Article 3).**

This section is a thorough treatment of voluntary acknowledgments of paternity

(VAPs), including acknowledgment, denial, rescission, and challenges to the VAP.<sup>9</sup> A valid VAP is equivalent to a court adjudication of parentage, and conclusive presumptions contained in the 1984 Act have been eliminated. A VAP now may be signed prior to the birth of the child.

In addition, this section includes a new provision that an acknowledgment of paternity and any related denial of paternity may be challenged only on the basis of fraud, duress, or material mistake of fact by filing a verified petition within two years after the effective date of the acknowledgment.

### **Genetic Testing (Article 4)**

This section governs voluntary and court-ordered determinations of parentage through genetic testing.<sup>10</sup> The genetic testing provisions are almost verbatim from the amended section of the 1984 Act drafted by the Illinois State Bar Association Family Law Section Council, which took effect in 2011. If the genetic testing shows that the alleged father is not excluded and that the combined paternity index is at least 1,000 to 1 and there is at least a 99.9 percent probability of paternity, the alleged father is presumed to be the father. Therefore, section 45/11 of the Parentage Act of 1984 was re-codified at 750 ILCS 46/401-408.

### **Temporary Relief (Article 5)**

This section retains most of the statutory provisions from the 1984 Act related to temporary relief for child support and injunctive relief. New provisions expand court authority to enter temporary child support orders to a child's mother, a presumed parent, an individual petitioning the court to determine parentage, or an individual identified as the father through genetic testing.<sup>11</sup>

Temporary orders also may include provisions for custody and parenting time in accordance with the IMDMA.

### **ISBA RESOURCES >>**

- ISBA CLE, *Get Ready—It's Coming: Major Changes to Family Law Effective January 1, 2016* (Dec. 4, 2015), register at <http://www.isba.org/cle/2015/12/04/familylawchanges>.
- P. Andre Katz & Erin B. Bodendorfer, *The New and Improved Illinois Marriage and Dissolution of Marriage Act*, 103 Ill. B.J. 30 (Nov. 2015), <http://www.isba.org/ibj/2015/11/newandimprovedillinoismarriageanddi>.
- Mathew Hector, *New Legislation Brings Parentage Act Up to Date*, 103 Ill. B.J. 12 (July 2015), <http://www.isba.org/ibj/2015/07/lawpulse/newlegislationbringsparentageactdat>.
- Sean McCumber, *Child Support in Parentage Cases: Does In re Marriage of Turk Apply?*, Family Law (Sept. 2015), <http://www.isba.org/sections/familylaw/newsletter/2015/09/childsupportparentagecasesdoesremai>.
- Christopher W. Bohlen, *When Net Income is Neither Net nor Income*, Family Law (May 2015), <http://www.isba.org/sections/familylaw/newsletter/2015/05/whennetincomeneithernetnorincome>.
- Kelly M. Greco & Stephanie R. Hammer, *Challenging Voluntary Acknowledgments of Paternity*, 102 Ill. B.J. 432 (Sept. 2014), <http://www.isba.org/ibj/2014/09/challengingvoluntaryacknowledgments>.

7. *Id.* § 46/201 et seq.

8. *Id.* § 46/205.

9. *Id.* § 46/301 et seq.

10. *Id.* § 46/401 et seq.

11. *Id.* § 46/501 et seq.



Any order for temporary relief shall be entered without prejudice to any final determination.

### Proceedings to Adjudicate Parentage (Article 6)

A determination of parentage is governed by the ordinary rules of civil procedure.<sup>12</sup> The parties are entitled to full discovery, to compel the testimony of all witnesses, and to have the case decided by a preponderance of the evidence. This section discusses standing, jurisdiction, venue, and notice, as well as limitations to proceedings to adjudicate parentage.

Section 610, new to Illinois, is a modified version of section 608 of the Uniform Parentage Act. Under this section, a court may deny genetic testing based on nine enumerated factors or any factor the court determines to be relevant.<sup>13</sup> The drafters modified this section of the Uniform Parentage Act to allow a court to deny genetic testing when there is a proceeding involving the parentage of a child having a presumed, acknowledged, or adjudicated parent.

### Child of Assisted Reproduction (Article 7)

Prior to passage of the bill in the Illinois House of Representatives, this section was reserved and is anticipated to be submitted to the Illinois House of Representatives in January 2016. This section will include provisions for assisted reproduction (in vitro fertilization, surrogacy, and the like) and provisions addressing the death or divorce of a donor prior to implantation. This section will supersede the current statute addressing artificial insemination.<sup>14</sup>

### Relevant Standards of the IMDMA, Support, and Judgments (Article 8)

Article 8 provides that in determining custody, joint custody, removal, parenting time, parenting time interference, support for a non-minor disabled child, educational expenses for a non-

minor child, and related post-judgment issues, the court shall apply the relevant standards of the IMDMA.<sup>15</sup> Specifically, in determining the amount of child support award, the court shall use the guidelines and standards set forth in sections 505(a) and 505.2 of the IMDMA.

### Miscellaneous Provisions (Article 9)

This section provides that the burden of proof is by a preponderance of the evidence unless otherwise stated.<sup>16</sup> It also repeals the Illinois Parentage Act of 1984 and contains a severability clause.

### A new Act for the modern family

The Parentage Act of 2015 is the result of a contemporary understanding of biological, cultural, and legal principles and an evolving conceptualization of the modern family. The new Act guarantees that all children receive physical, mental, emotional, and financial support from both parents and validates the equal protection rights that same-sex presumptive parents enjoy under the Illinois Constitution.

**THE NEW ACT INCLUDES  
PRESUMPTIONS OF PARENTAGE  
FOR CHILDREN BORN OF SAME-SEX  
MARRIAGES AND CIVIL UNIONS.**

Thanks to the Parentage Act of 2015 and the collaborative effort of those who endeavored to create it, no Illinois child need be consigned to the legal, ethical, and moral abyss of an unrecognized parent-child relationship. **EB**

- 12. *Id.* § 46/601 et seq.
- 13. *Id.* § 46/610.
- 14. *Id.* § 40/1.
- 15. *Id.* § 46/801 et seq.
- 16. *Id.* § 46/901 et seq.



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