A Report on the Uniform Parentage Act (UPA 2017): Developments in State Law Regarding the Rights of Children

American Academy of Matrimonial Lawyers

2023-24 Legislation Committee[1]

Chair: Rebecca Byrd

Vice Chairs: Michael I. Flores and Greg Beane

Members: Richard Alderman, Amy Amundsen, Allison Anders, Alisha Ankers, Julie Auerbach, Shelby Benton, Jennifer Bingham, Elizabeth (Liz) Bransdorfer, Lori Buiteweg, Julie Colton, Amy Cores, Gary Debele, Mary Cushing Doherty, Martin Friedlander, Rebekah Frye, Lisa Hawrot, Jennifer Helland, Leigh Kahn, Kim Kaszuba, Steven Kriegshaber, Angela Lallemont, Keith Maples, Rob McAngus, Catherine Miller, Lorie Nachlis, Michael Newell, Catherine "Kit" Petersen, Dana Prescott, Philip Schipani, John Tannenberg, Linda Lea Viken, Daniel Webb, Rory Weiler, Marshal Willick.

State Contributors

- CALIFORNIA – Alysia Evans; Stephen Hamilton
- DELAWARE – Curtis Bounds
- FLORIDA - Kim Kaszuba
- MAINE - Dana Prescott
- MASSACHUSETTS – Michael I. Flores
- MICHIGAN – Elizabeth Bransdorfer, Lori A. Buiteweg, Lisa Speaker
- NEW JERSEY – Cassie Murphy, Noel Tonneman
- OHIO – Ryan Nolin

---

[1] This paper is the work of the Legislation Committee of the AAML and may not represent the policies or views of the AAML, its membership, or the Journal. The Committee would like to thank Professors Nancy Levit and Mary Kay Kisthardt for their editing and suggestions.

- PENNSYLVANIA – Julie Colton, Mary Cushing Doherty, Catherine McFadden, Carolyn Zack
- TEXAS - Keith Maples, Lauren Melhart
- VIRGINIA – Colleen Quinn

Introduction

The American Academy of Matrimonial Lawyers (AAML), through its mission to promote excellence and ethical practices in family law, serves an important role of ensuring that policies in the United States adequately support and protect families, particularly the children nurtured within families.[2] A core obligation, within that mission, is providing policy leadership and analysis to the legal community and state judicial systems when legal reforms, laws, and policies need to adapt to evolving scientific, social, and policy changes to family formation. This Report by the AAML's Legislation Committee is intended to provide an outline of policy and case law developments following the enactment of the Uniform Parentage Act (2017).[3]

Over the last several decades, there have been enormous changes to the formation and reformation of family systems as well as the status of legal parentage in the United States. Use of the term *parent* is not just limited to biological or birth parents but may include kinship, adoption, guardianships, de facto parents, state agencies, stepparents, and as a result of surrogacy, and IVF. This means that not just married or nonmarried families with children in preadolescence and adolescence are separating, but even younger ages at which children under age five or in pre-school are living in separated and divorced families.[4] With

---

2 *See Mission*, American Academy of Matrimonial Lawyers, https://aaml.org/mission/ (last visited Mar. 22, 2024).

3 *See* Unif. Parentage Act (Unif. L. Comm'n 2017), higherlogicdownload.s3.amazonaws.com; Jamie D. Pedersen *The New Uniform Parentage Act of 2017*, Am. Bar Ass'n (2017), https://www.americanbar.org/groups/family_law/publications/family-advocate/2018/spring/4spring2018-pedersen/.

4 Comprehensive tables and data may be found at *Marriage and Divorce,* U.S. Census Bureau, https://www.census.gov/topics/families/marriage-and-divorce.html (last visited Mar. 22, 2024). For additional readings, see Lydia R. Anderson et al., *Living Arrangements of Children: 2019*, U.S. Census Bureau (Feb. 2022); Alison Aughinbaugh et al., *Marriage and Divorce: Patterns by Gender, Race, and Educational Attainment*, Mo. Labor Rev, U.S. Bureau of Labor Statistics (2013),

recent constitutional protections for LGBTQ families, those family systems also experience marriage and separation, though that demographic data is still evolving. At the same time, advances in medicine and access to fertility healthcare have spurred growth in rates of children born through assisted reproduction with and without surrogacy. Many of these topics have been explored by scholars and practitioners in this Journal over the past decade.[5]

What this translates to, unfortunately, is a higher probability of litigation between parents as family systems form and reform. As the complexity of parenting arrangements within family systems shifts, parenting plans must adjust over the developmental lifespan of a child. Given the societal importance of maintaining healthy parenting arrangements in order to protect the psychological and emotional well-being of children, it is imperative that child custody laws provide consistent security for children no matter how their family is formed.

---

https://www.bls.gov/opub/mlr/2013/article/marriage-and-divorce-patterns-by-gender-race-and-educational-attainment.htm; Gøsta Esping-Andersen & Francesco C. Billari, *Re-theorizing Family Demographics*, 41(1) Population & Development Rev. 1 (2015); Natasha V. Pilkauskas & Christina Cross. *Beyond the Nuclear Family: Trends in Children Living in Shared Households*, 55.6 Demography 2283 (2018).

[5] *See* Katharine K. Baker, *Equality, Gestational Erasure, and the Constitutional Law of Parenthood*, 35 J. Am. Acad. Matrim. Law. 1 (2022); Courtney G. Joslin & Douglas NeJaime, *How Functional Parent Doctrines Function: Findings from an Empirical Study*, 35 J. Am. Acad. Matrim. Law. 589 (2022); J. Thomas Oldham, *Changing Norms in the United States for Resolving Custody Disputes Between a Parent and a Non-Parent,* 35 J. Am. Acad. Matrim. Law. 299 (2022); Jeffrey A. Parness, *Choosing Parentage Laws in Multistate Conduct Cases,* 35 J. Am. Acad. Matrim. Law. 699 (2022); Dana E. Prescott & Gary A. Debele, *Shifting Ethical and Social Conundrums and Stunningly Anachronistic Laws: What Lawyers in Adoption and Assisted Reproduction May Want to Consider*, 30 J. Am. Acad. Matrim. Law. 127 (2017); Camille Workman, Comment, *The 2017 Uniform Parentage Act: A Response to the Changing Definition of Family*, 32 J. Am. Acad. Matrim. Law. 233 (2019). The Journal has also published extensive bibliographies in this area of policy and law. *See* Nancy Levit & Allen Rostron, *Assisted Reproductive Technologies: An Annotated Bibliography 2013-2018*, 31 J. Am. Acad. Matrim. Law. 241 (2018); Allen Rostron, *Annotated Bibliography of Selected Issues in Family Law: Addiction, Advance Healthcare Directives, the Uniform Parentage Act, and Self-Represented Litigants*, 32 J. Am. Acad. Matrim. Law. 251 (2019); Allen Rostron, *Constitutional Issues in Family Law: An Annotated Bibliography (Part 1 of 2)*, 35 J. Am. Acad. Matrim. Law. 381 (2022).

At the outset of this report, it is important to address what we mean by the term "legal parentage." Legal parentage is the legal relationship between a parent and a child from which all rights and responsibilities flow. In the United States, legal parentage and its status connects with rights and responsibilities, including inheritance rights, social security survivor and disability benefits, access to other benefits such as TANF and Medicaid, health and dental insurance, child support, educational contributions, custody, parenting time, and decision making. Legal parentage may provide a stable relationship for children and can be foundational to their well-being.[6] For many families, the issue of establishing legal parentage never comes up since legal parentage is clear because of marriage between the parents or genetic connections between the parents and child. Indeed, for many families, the issue of parentage is straightforward, assumed, and uncontested. For those families, such as LGBTQ families, who are formed through adoption, assisted reproduction or surrogacy, legal parentage is a foundational legal and moral issue that may be barred or contested by state policies.

The Uniform Parentage Act (UPA) was first promulgated by the Uniform Law Commission in 1973 to provide guidance to states on the issue of parentage after key U.S. Supreme Court cases concluded that children born to never-married parents must be treated equally to children born to married parents. The UPA has been a successful uniform law and has been widely adopted throughout the country.[7] Over the decades, the UPA has been debated and updated to reflect advances in law, science, and changes in recognition of the formation and definition of families in the Unites States.

In 2017, the Uniform Parentage Act was updated to reflect medical advances in the realm of assisted reproduction and surrogacy and to encompass the constitutional developments

---

6 *See* Clare Huntington, *Pragmatic Family Law,* 136 Harv. L. Rev. 1501, 1507 (2023) (arguing that courts' ratification of children's living arrangements provides stability for the children).

7 Matthew P. Clark, *Use It or Lose It: Revising Louisiana's Process to Establish Paternity,* 84 La. L. Rev. 409, 448 (2023) ("A total of 22 states have adopted some version of the UPA, including seven states that have adopted the language of the 2017 revision and 15 states that have adopted the language of previous versions.").

articulated in *Obergefell v. Hodges*[8] and *Pavan v. Smith*[9] to protect LGBTQ families and the children born within those families. Through a deliberative process led by Senator Jamie Pedersen of Washington State and Professor Courtney Joslin of the University of California, numerous stakeholders engaged over months to draft and consider an update to the UPA that advanced the needs of children in a consistent, child-centered manner.[10]

As State Senator and Uniform Act Commissioner Jamie D. Pedersen summarized, UPA 2017 contained five major improvements from earlier versions of the UPA. First, UPA 2017 ensures its provisions apply equally to children born to LGBTQ parents. This is accomplished by, among other things, providing for inclusive language in presumptions of parentage and voluntary acknowledgements of parentage. Second, this version provides a clear and high standard for establishing legal parentage for de facto parents. Third, UPA 2017 includes a provision that precludes the establishment of parentage for children born through sexual assault. Fourth, the Model Act substantially updates surrogacy provisions, echoing laws in Delaware and Maine, to make surrogacy statutes more protective of all parties, to provide guidance for genetic surrogacy, and to reflect modern practice. Fifth, and finally, UPA 2017 contains a new article 9 to address protections for children born through donated gametes, including ensuring access to non-identifying medical information about the gamete donor.[11]

Endorsed by major organizations including the American Bar Association and the National Child Support Enforcement Association, according to the Uniform Law Commission, the 2017 version of the act has already been adopted with (in some cases significant) variations in eight states (California, Colorado, Connecticut, Maine, Massachusetts, Rhode Island, Washington State, and Vermont) and bills remain pending in five states during the 2023 legislation session (Hawai'i, Kansas, New Mexico, and Pennsylvania).[12] On behalf of the legislation committee, we hope this overview of the UPA 2017 is helpful. We believe that UPA

---

8 576 U.S. 644 (2015).

9 582 U.S. 563 (2017).

10 *See supra* text at note 3.

11 Jamie D. Pedersen, *The New Uniform Parentage Act of 2017* (2018), https://www.americanbar.org/groups/family_law/resources/family-advocate/archive/new-uniform-parentage-act-2017/.

12 For a map of states that have passed or considering passage of UPA 2017, see Parentage Act - Uniform Law Commission (uniformlaws.org).

2017 provides a positive and important framework for updating parentage laws in each state to protect children's relationships with those parents who have established a bond as required by the UPA.[13] While we urge AAML chapters and fellows to support state-level efforts to pass these parentage equality measures in their home states, we are also mindful of the harm that chronic litigation in family courts may do to children, so that balancing test between protecting the stability and attachments of children and preventing chronic litigation remains ever present.

I. Historical Background and General Trends of the Uniform Parentage Act

The Uniform Law Commission (ULC) originally promulgated the UPA in 1973 in response to U.S. Supreme Court decisions holding that differential treatment of nonmarital children was unconstitutional.[14] To address that concern, the first version removed the legal status of illegitimacy and provided a series of presumptions used to determine a child's legal parentage. It also addressed an early form of alternative insemination. A core principle of the UPA 1973 was to ensure that all children and all parents have equal rights with respect to each other, regardless of the marital status of the parents.

The next major revision to the UPA occurred in 2002 when it was amended to add a nonjudicial acknowledgement of paternity procedure ("Recognition of Parentage" process or "ROP" in most

---

13 Naomi Cahn, *The New "ART" of Family: Connecting Assisted Reproductive Technologies & Identity Rights*, 2018 U. Ill. L. Rev. 1443; Courtney G. Joslin, *Nurturing Parenthood Through the UPA (2017)*, 127 Yale L.J. 589 (2017); Mary Kay Kisthardt & Richard A. Roane, *Who Is a Parent and Who Is a Child in a Same-Sex Family—Legislative and Judicial Issues for LGBT Families Post-Separation, Part II: The US Perspective*, 30 J. Am. Acad. Matrim. Law. 55 (2017); Allen Rostron, *Annotated Bibliography of Selected Issues in Family Law: Addiction, Advance Healthcare Directives, the Uniform Parentage Act, and Self-Represented Litigants*, 32 J. Am. Acad. Matrim. Law. 251 (2019); Daniel Schwartz, *Gestational Surrogacy Contracts: Making a Case for Adoption of the Uniform Parentage Act*, 33 Wis. J.L. Gender, & Soc'y 131 (2018); Sydney H. Willmann, *Commercial Surrogacy and the Sale of Children Under the Revised Uniform Parentage Act of 2017*, 49 Cumb. L. Rev. 157 (2018); Camille Workman, *The 2017 Uniform Parentage Act: A Response to the Changing Definition of Family*, 32 J. Am. Acad. Matrim. Law. 233 (2019).

14 *See* Pedersen, *supra* note 11.

states) that would be equivalent to a court adjudication of parentage. This revision also included provisions governing genetic testing and rules for determining the parentage of children conceived with assisted reproductive technologies. The UPA also included a paternity registry and optional provisions authorizing surrogacy agreements.

Between the UPA 2002 being approved by the ULC and the UPA 2017 being approved by the ULC on July 19, 2017, the U.S. Supreme Court decided *Obergefell v. Hodges* (providing for the legalization of same-sex marriage)[15] and *Pavan v. Smith* (addressing the marital presumption of parentage for married same-sex parents).[16] As societal recognition of nontraditional family systems and legal accessibility to marriage expanded, medical science was providing a means for parents to have children through assisted reproduction and surrogacy. As Professor Courtney Joslin summarized:

> First, the UPA (2017) expands the ways in which a nonbiological parent may establish her or his parentage. The Act carries over the holding-out provision, but revises it so that it applies equally to men and women. It also adds a new provision on de facto parents, under which someone who has been acting as a parent can legally establish his or her parentage. Finally, the Act updates the assisted reproductive technology (ART) provisions to permit individuals of any gender to establish their parentage based on proper consent to the ART procedure. All ART provisions of the UPA (2017) apply equally without regard to the sex, sexual orientation, or marital status of the intended parents. Second, by adopting the UPA (2017), states would bring their parentage statutes into compliance with the Supreme Court's decisions in Obergefell v. Hodges, Pavan v. Smith, and Sessions v. Morales-Santana by removing gender-based distinctions. These Supreme Court decisions make clear that family law provisions that discriminate on the basis of gender or sexual orientation may be constitutionally suspect. The UPA (2017) addresses this potential constitutional infirmity by removing most of the gender distinctions in the Act. As a result, most of the provisions in the Act apply without regard to gender or sexual orientation.[17]

Concurrently, state family courts and legislatures were developing legal definitions and tests to determine parentage for a whole host of persons who were acting like parents who lacked

---

15 135 S. Ct. 2584 (2015).

16 137 S. Ct. 2017 (2017).

17 Courtney G. Joslin, *Nurturing Parenthood Through the UPA (2017)*, 127 Yale L.J. F. 589, 592 (2017-2018).

biological or legal parentage relationships to the children for whom they were providing care and parenting. This included various third parties such as biologically related persons (e.g., grandparents and other kinship relatives), non-biologically related adults (e.g., stepparents and stepsiblings), and many LGBTQ persons in relationships with other parents and their children. All these third-party caregivers were seeking to obtain court-ordered recognition as de facto parents. The constitutional and legal challenges raised complex issues concerning limitation or expansion of the number of legally recognized parents that a child could have through a family court order.

The current version of UPA 2017 has five overarching goals as listed above. The UPA 2017 is organized to address the five goals in ten articles which provide comprehensive guidance for the establishment of parentage. Article 1 contains definitions. Article 2 outlines the pathways to parentage under UPA 2017 as well as presumptions of parentage including the marital and non-marital presumption. Article 3 addresses voluntary acknowledgements of parentage, the simple, voluntary, administrative process the federal government requires states to have to establish parentage as close to birth as possible. Article 4 contains provisions about a paternity registry for termination or adoption cases. Article 5 outlines provisions about genetic testing for parentage through genetic connection. Article 6 consists of provisions regarding the establishment of parentage under the different pathways and includes provisions to address competing claims of parentage and to preclude parentage establishment by a perpetrator of sexual assault resulting in a child. Article 7 comprehensively addresses parentage of children born through assisted reproduction, and Article 8 addresses parentage of children born through gestational and genetic surrogacy. Article 9 provides access to non-identifying medical information for children born with the help of gamete providers. Article 10 is a miscellaneous or catch-all section.

As noted above, eight states thus far have enacted the UPA 2017: California, Connecticut, Colorado, Massachusetts, Maine, Rhode Island, Vermont, and Washington. The process for enactment and the resulting legislation is instructive for practitioners in other states who are interested in the UPA 2017 and how it might be challenged, debated, and possibly enacted.

1. *Connecticut, 2021*

In Connecticut, after a long process of careful consideration of UPA 2017, none of the involved stakeholders ultimately opposed what became the Connecticut Parentage Act.[18] The Family Law Section of the state bar association, the State Department of Public Health, and the family and juvenile courts needed the most persuading, but they eventually came around. Most supportive were the probate courts and attorney generals' offices, perhaps because they saw most directly the negative impact the prior law had on LGBTQ families. The most challenging provisions dealt with de facto parentage and the "holding out" presumption, while the easiest portions to pass were those dealing with assisted reproductive technology (ART). Given that Connecticut never had any equitable parentage provisions, this new law spelled out clearly how this would occur: the new law would treat the person as a legal parent only if they established parentage by signing a voluntary admission of parentage with the birth parent or by being adjudicated a parent.

The de facto parentage and holding out presumptions were included and contained significant protections for survivors of domestic violence so that evidence of abuse could be used to defeat a parentage claim in certain circumstances. Regarding genetic surrogacy, the Connecticut law rejected the post-birth withdrawal of a consent period and instead treated the intended parents as the legal parents provided the agreement had been validated by a probate court. With widespread support, Connecticut adopted the alternative allowing a court to recognize more than two parents for a child if not doing so would be detrimental to the child.

2. *Maine, 2021*

Maine took a very comprehensive approach in its efforts to review and revise its parentage laws; it had rejected significant portions of UPA 2002 regarding ARTs as being unworkable. It assembled a Family Law Advisory Commission with a broad array of stakeholders to revise the state's parentage laws, and by statute, this Commission will exist indefinitely. Maine's new Parentage Act became the model for UPA 2017 rather than Maine adopting the UPA. The 2021 law was simply a small bill to fix a few provisions

18 Conn. Gen. Stat. Ann. §§ 46b–450 to § 46b–599 (2022).

from the larger revisions before 2017, updating Maine law to have expanded access to voluntary acknowledgements of parentage (VAP) as recommended by UPA 2017.

The effort in Maine focused extensively on addressing concerns of gestational carriers and intended parents wanting an orderly process for assisted reproduction and basically made statutory what ARTs attorneys had been doing previously with declaratory judgment petitions and pre-birth parentage determinations. It also focused on the rights and interests of all persons acting as parents to have a process to establish and secure their parental status. Our sources in Maine indicate they had no opposition to their parentage reform efforts, no doubt because of the broad numbers of stakeholders all working together towards the goal of parentage reform.[19]

Maine's eventual recognition of de facto parenting as a potential legal right followed (though not in a linear fashion) from passage of the Grandparent's Visitation Act in 1995 which, in turn, evolved from policy and research arguments that children benefit from maintaining consistent and stable relationships with healthy adult attachments and kinship.[20] The Legislature requested input from advisory committees, scholars, practitioners, stakeholders, and the judiciary who weighed in with extensive discussion of the various sections of the UPA.[21] In a complex case that comingled

---

19 Communications of attorneys Chris Berry; Polly Crozier; Kathleen Delisle, with the author.

20 The scope of this section is intended as a summary of the development of Maine law. The topic of third-party rights and responsibilities for children, however, requires sensitive recognition of race, socio-economic status, and culture, as well as systemic social problems like poverty, addiction, homelessness, and the criminalization and imprisonment of a generation of parents. For a selective group of policy and research articles, see Angela R. Ausbrook & Amy Russell, *Gay and Lesbian Family Building: A Strengths Perspective of Transracial Adoption*, 7 J. GLBT Fam. Stud. 201 (2011); L. Reinhard D'Arcy, *Recognition of Non-Biological, Non-Adoptive Parents in Arkansas, Florida, Mississippi, and Utah: A De Facto Parent Doctrine to Protect the Best Interests of the Child*, 13 J. Gender, Race, & Justice 441 (2010); Courtney G. Joslin, *De Facto Parentage and the Modern Family*, 40 Fam. Advoc. 31 (2017); Jeffrey A. Parness, *Comparable Pursuits of Hold Out and De Facto Parentage: Tweaking the 2017 Uniform Parentage Act*, 31 J. Am. Acad. Matrim. Law. 157 (2018); Mary O'Leary Wiley, *Adoption Research, Practice, and Societal Trends: Ten Years of Progress*, 72 Am. Psychol. 985 (2017).

21 Maine Family Law Advisory Commission, Report to Maine Legislature Joint Standing Committee on Judiciary on LD 222 "An Act to Update the Maine

the MPA, parentage definitions, DNA testing, judicial estoppel, and parental termination, *In re Child of Nicholas P.*,[22] the court reviewed the breadth of federal and state law now implicated by the MPA, and derivatively, the UPA when states are considering enactment.

> Curiously, and in a way that demonstrates the frailty of his position, the father rests his contention entirely on his analysis of only one of the ways to become a parent pursuant to the MPA— genetic parentage— when in fact the MPA recognizes fifteen different ways to become a parent: (1) by admitting to parentage in a pleading or under oath; (2) by default; (3) by implication; (4) by affording full faith and credit to a determination of parentage from another state, by birth; (6) by adoption; (7) by a recorded acknowledgement of paternity; (8) by presumption; (9) by an adjudication of de facto parentage; (10) by an adjudication of parentage based on genetic testing; (11) as a result of a refusal to submit to genetic testing ordered by the court, through assisted reproduction as to a spouse; (13) through assisted reproduction with a written agreement; (14) through assisted reproduction after a lab error; and (15) through a gestational carrier agreement.[23]

Some of the sections, such as those regarding surrogacy and IVF, and consent to parentage and withdrawal of consent, required more discussion and others, such as de facto parenting, were already part of the legal fabric in Maine. The cases below summarize the development of the law of de facto parents in Maine in a variety of judicial contexts. What is unique about this body of case law is the application of de facto parenting to families beyond just divorce and separation.[24] Petitions and arguments for de facto parenting have arisen in guardianship, adoption, and child protection. Few of these variations were anticipated by the UPA, but are rather predictable, when considering the dramatic changes in

---

Parentage Act" (Feb. 12, 2021), https://legislature.maine.gov/doc/5650; Andrew L. Weinstein, *The Crossroads of a Legal Fiction and the Reality of Families*, 61 Maine L. Rev. 317 (2017).

22 218 A. 3d 247 (Me. 2019).

23 *Id*. at 254 n.11 (sources omitted).

24 *See, e.g.,* Gardner v. Greenlaw, 284 A.3d 93, 99 (Me. 2020) ("In summary, because the best interests determinations required in a guardianship proceeding are not identical to those in a proceeding for de facto parentage, issue preclusion does not prevent the court from considering the grandmother's complaints for de facto parentage. For the reasons noted above, however, if the grandmother has standing to pursue de facto parentage, issue preclusion will constrain the parental rights and responsibilities that she may be awarded.").

family formation, and the creativity of lawyers with clients seeking this relief in high-stakes cases.

In *Davis v. McGuire*,[25] the Maine Supreme Judicial Court, referred to historically as the Law Court, summarized the common law development of de facto parenting, as follows:

> In our case law that preceded the 2017 enactment of the MPA, which contains the statutory authority governing de facto parenthood, we discussed what a petitioner is required to prove to be adjudicated as a de facto parent so that the state does not unconstitutionally intrude into the parents' fundamental relationship with his or her child. In those cases, we held that, in order to establish the compelling state interest needed to justify governmental interference with a parent child relationship, the petitioner must prove the existence of "exceptional circumstances."[26]

Under the Maine Parentage Act (MPA), the legislation codified some of the factors for standing[27] but the Law Court made clear that the burden of proof *as to each factor for standing* by a preponderance of the evidence was on the petitioner. Pursuant to section 1891(2)(C) of the MPA, to demonstrate standing, the party claiming de facto parenthood must present "prima facie evidence" of the statutory elements that are necessary to ultimately establish the existence of a de facto parent relationship with the child by: (1) filing an affidavit along with the complaint, stating "specific facts" that track the elements of a de facto parenthood claim; (2) the adverse party may file a responsive affidavit along with a responsive pleading; and then (3) the court reviews the parties' submissions and either makes a determination based on the parties' submissions whether the claimant has demonstrated standing, or, "in its sole discretion, if necessary and on an expedited basis, hold[s] a hearing to determine disputed facts that are necessary

---

25 186 A.3d 837 (Me. 2018).

26 *Id*. at 843 n.8.

27 *Id*. at 843 n.7 ("Although those cases predated and therefore were not governed by the MPA, which became effective on July 1, 2016, *see* 19-A M.R.S. § 1891 (2017), *enacted by* P.L. 2015, ch. 296, §§ A-1, D-1, our discussion in these cases regarding the procedure at the standing and plenary hearing stages is relevant to and aligned with 19-A M.R.S. § 1891. Further, the legislative history of the MPA indicates that the de facto parentage section of the MPA is intended to codify the existing common law doctrines that "require an explicit determination of standing as a prerequisite for maintaining an action, [and] recognize the elevated burden of proof that a person claiming such status must satisfy.").

and material to the issue of standing."[28] The statutory test intrinsic in the exchange of affidavits to establish the prima facie evidence means establishing *all* of the following factors:

A. The person has resided with the child for a significant period of time;
B. The person has engaged in consistent caretaking of the child;
C. A bonded and dependent relationship has been established between the child and the person, the relationship was fostered or supported by another parent of the child and the person and the other parent have understood, acknowledged or accepted that or behaved as though the person is a parent of the child;
D. The person has accepted full and permanent responsibilities as a parent of the child without expectation of financial compensation; and
E. The continuing relationship between the person and the child is in the best interest of the child.[29]

In *Davis*, however, the trial court found that though Davis had a bonded and dependent relationship with the child and that the mother had fostered that relationship, Danielle did not understand, acknowledge, or accept Davis as a parent even though Danielle accepted Davis's care for her son. The court, therefore, "correctly drew the proper distinction, which can be nuanced and subtle, between the role of a nurturing and involved caregiver and one who acts with and is recognized as being fully equivalent to a parent."[30]

In tracing that history, the court noted that a prior plurality opinion held that, for a de facto parenthood adjudication to be constitutional, the exceptional circumstance must establish harm

---

28 *Id.* at 842; *see also* Libby v. Estabrook, 234 A.3d 197, 200 (Me. 2020) ("We conclude that Libby's assertions, if believed, could have led to a finding that he has standing. Most importantly, Libby avers that he and the mother essentially coparented the child for a majority of the child's life and that Estabrook's involvement with the child was "sporadic and inconsistent" for most of this time. If true, these attestations could demonstrate that the mother understood that and behaved as though Libby occupied the parental vacuum that Libby says existed because of Estabrook's lack of engagement with the child for a significant period of the child's life.").

29 *Davis*, 186 A.3d at 846 (quoting 19-A Me. Rev. Stat. § 1891(3)(A)-(E)).

30 *Id*. at 847.

to the child from the loss of the de facto parenting relationship.[31] The statutory elements of proof of de facto parenthood found in 19-A Maine Revised Statutes §1891(3), however, do not explicitly include that factor.[32] Maine case law explained that an "exceptional circumstance" sufficient to overcome constitutional rights, in this context, required evidence that the child's life would be substantially and negatively affected if the person who has undertaken a permanent, unequivocal, committed, and responsible parental role is removed from that role.[33]

In a subsequent case, *In re Child of Philip S.*,[34] involving the interrelationship of child protection cases brought by the state and de facto standing under the MPA, the trial court granted the uncle and aunt's motion to intervene in the child protection matter, denied their motion for placement, and dismissed for a lack of standing their family matter complaint seeking to establish de facto parentage. Analyzing the factors for establishing standing to assert de facto parentage in the family matter under sections 1891(2)(C), (3)(A)-(E), the court found that (A) the child had not resided with the uncle and aunt for a "significant period of time" in the circumstances of the case; (B) the uncle and aunt were not the child's consistent caregivers; (C) the child did not have a bonded and dependent relationship with them of a nature that the father ever accepted as parental; (D) the uncle and aunt had not intended to accept permanent responsibility for the child before the commencement of the child protection matter; and (E)

---

31 Pitts v. Moore, 90 A.3d 1169 (Me. 2014). The court adopted the test from Massachusetts:

> We define a "permanent, unequivocal, committed, and responsible parental role" by looking to the elements of de facto parenthood employed in Massachusetts:
>
> A de facto parent is one who has no biological relation to the child [as a parent], but has participated in the child's life as a member of the child's family. The de facto parent resides with the child and, with the consent and encouragement of the legal parent, performs a share of caretaking functions.

Id. at 1179 (quoting E.N.O. v. L.M.M., 711 N.E.2d 886, 891 (Mass. 1999)).

32 *See* Kilborn v. Carey, 140 A.3d 461 n.1 (Me. 2016) (pointing out that the MPA's formulation of de facto parenthood does not require a showing of harm to the child).

33 Thorndike v. Lisio, 154 A.3d 624, 627 (Me. 2017).

34 223 A.3d 114 (Me. 2020).

changing the child's residence again to live with the uncle and aunt, who are increasingly in conflict with the Department, is not in the best interest of the child given his mental health needs.[35]

In *Young v. King*,[36] the court held that the denial of adoption was a factor for establishing MPA standing.[37] The court reaffirmed that prima facie evidence for standing "requires only some evidence on every element of proof necessary to obtain the desired remedy [or judgment]" and that if the presented evidence "is uncontested, then the court must accept the evidence as true and determine whether the uncontested evidence constitutes prima facie evidence of the statutory elements laid out in § 1891(3) of the MPA."[38] On that basis, the court vacated the dismissal and remanded for an evidentiary hearing. In *In re Adoption by Stefan S.*,[39] the court held that under Maine law, open adoption was barred under Maine's version of the Uniform Probate Code and that the MPA did not alter that policy outcome.

In *Lamkin v. Lamkin*,[40] the court addressed de facto status under MPA and the Grandparent Visitation Act (GVA) and held that any differences were a function of statute, and that such differences meant the following:

> In a GVA proceeding, a court may award the limited rights of visitation or access, but only to the extent that the award does not "significantly interfere with any parent-child relationship or with the parents rightful authority over the child." 19-A M.R.S. § 1803(3). This contrasts with de facto parenthood proceedings, as well as child protection and guardianship cases, where there is the prospect of a much more profound disruption of a parents relationship with his or her child because the full panoply of parental rights and responsibilities can be awarded to third persons, thereby requiring a stronger justification to allow the case to progress to a plenary hearing. Therefore, not only do the elemental standing requirements differ in the two types of proceedings, but the overall principle and nature of standing in a de facto parenthood case must be seen conceptually as more substantial than in GVA cases in order to justify the deeper level of governmental intrusion into a parent's constitutionally protected interests.[41]

---

35 *Id*. at 117-18.
36 208 A.3d 762 (Me. 2019).
37 *Id*. at 764.
38 *Id*. at 769.
39 223 A.3d 468 (Me. 2020).
40 186 A.3d 1276 (Me. 2018).
41 *Id*. at 1283.

This distinction between GVA standing and de facto parenting standing may not matter in most states now. Yet, as the dissent aptly pointed out, "our opinions construing the GVA have effectively made it impossible for grandparents to establish standing. Regardless, I believe that the GVA—which has neither been repealed by the Legislature nor held facially unconstitutional by this Court—and its statutory requirements should control our analysis."[42]

In *Doe v. Batie*,[43] the court examined the intersection of the MPA and restraining orders in domestic violence and abuse cases. In this case, the biological father sought a protection from abuse order against the maternal grandmother on behalf of his two minor children. The maternal grandmother argued that the court erred as a matter of fact and law by finding that she committed abuse within the meaning of protection from abuse law and the court vacated the judgment. In that case, the biological mother tried to authorize the maternal grandmother to take or keep the children after her death. The court noted that without a court order pursuant to the Maine Parentage Act,[44] or the Grandparents and Great Grandparents Visitation Act,[45] the grandmother had no such legal rights.

3. *Rhode Island, 2020*

Because Rhode Island has been allowing full de facto parentage since 2001, enacting the portion of the UPA 2017 addressing that topic was not difficult. With regard to the issue of the number of parents that would be permitted, Rhode Island took a middle approach, noting that three-parent adoptions had been happening and that there would be no explicit preclusion of more than two parents in the parentage law being enacted.[46] The most significant impact of the new statute has been the widespread use of voluntary acknowledgments to establish parentage with no adverse consequences.

---

42 *Id*. at 1288 (Jabar, J., dissenting); *see* Dorr v. Woodard, 140 A.3d 467, 474-77 (Me. 2016) (Jabar, J., dissenting) (discussing the demise of each possible avenue to establish standing pursuant to the GVA).

43 240 A.3d 62 (Me. 2020).

44 19-A Me. Rev. Stat. §§ 1831-1939 (2020).

45 19-A Me. Rev. Stat. §§ 1801-1806 (2020).

46 15 R.I. Gen. Laws § 15-8.1-501(b) (2021).

4. *California, 2018*

Prior to 2017, California had already made several changes to its parentage laws that aligned it with the UPA (2017). For example, California was the first state to expressly allow a court to find that a child can have more than two legal parents.[47] It adopted that provision in 2013. The UPA 2017 drafting committee modeled the multi-parent provisions on California's existing law. California also updated many, although not all, of its parentage presumptions to apply equally to same-sex couples prior to 2017. In 2018, California enacted AB 2684, which more fully aligned California law with the recently promulgated UPA 2017.

While there was broad support for expanding VAPs to protect children born to same-sex couples, some practitioners were concerned about allowing married women to sign VAPs. Prior to the enactment of the UPA 2017, California did not allow married women to sign VAPs. The compromise solution was to broaden the class of people who could sign VAPs, but to do so in a way that is slightly more limited than what is set forth in the UPA 2017. Specifically, in California, VAPs can be signed either by: (1) an unmarried woman and the person identified as the only possible genetic parent; or (2) the woman who gave birth and the intended parent of a child conceived through assisted reproduction.[48] Once the process was so limited, there was broad support for this change.

As noted above, California had already updated one of its marital presumptions to make it gender neutral: the rebuttable marital presumption included in California Family Code section 7611(d). Initially, there was some resistance from the family bar to updating California's so-called "conclusive marital presumption" to be gender neutral.[49] But after some wordsmithing and discussion, the changes to sections 7540 and 7541 (the rebuttal provision) were widely supported and endorsed.

The family law section, judges, and the child support enforcement community were all key stakeholders. In the end, they all worked very closely together. In substance, the entire UPA 2017 except for Article 4 (the paternity registry) has been enacted in California. Some provisions, however, look different. For example, it might appear that

47 Cal. Fam. Code § 7612(c) (West 2023).

48 Cal. Fam. Code § 7571.

49 Cal. Fam. Code § 7540.

California did not enact the de facto parent provision in section 609 of the UPA 2017, but in substance, California law does embrace de facto parentage. It just does so through its previously existing broad holding out presumption that was retained in the process.[50] California's holding out presumption is based on the UPA 1973. Unlike the holding out presumption in the UPA 2017, the original version of the holding out presumption does not include any time restrictions or requirements. In addition, as noted above, California had already enacted some of what the UPA 2017 includes. Thus, the entire UPA was not included in the 2018 bill.

Expanding the range of families who can establish parentage via the VAP process has been a major advancement for children and families, particularly low-income families for whom going to court and getting court orders of parentage can be an insurmountable hurdle. The California child support community has really led the way in getting this process up and running and are strong advocates of the expansion.

Removing the written consent requirement for intended parents is also an important advancement for children and families created through ART. Prior to the enactment of AB 2684, for an intended parent to be recognized as a legal parent under the assisted reproduction provision, they had to establish that they had consented in writing to the assisted reproduction. But, as the drafters of the UPA 2017 realized, there are cases where the person consented in fact even when there is no written consent. In such cases, rigid application of a rule that requires written consent can produce results that seem "inequitable and harmful to the child."[51] Accordingly, in 2018, the California legislature added language from the UPA 2017 that allows a court to find consent to the assisted reproduction even in the absence of written consent "if the court finds by clear and convincing evidence that, prior to the conception of the child, the woman and the intended parent had an oral agreement that the woman and the intended parent would both be parents of the child."[52]

California, for example, adopted much of UPA 2017, and made certain amendments so that its legislation does not mirror the Uniform Parentage Act. Following UPA section 204(a)(1), the

---

50 Cal. Fam. Code § 7611(d).

51 Courtney G. Joslin, *Preface to the UPA (2017)*, 52 Fam. L.Q. 437, 468 (2018).

52 Cal. Fam. Code § 7613(a)(2).

California statute identifies the presumed parent who is or was married to the person who bore the child and the child is born during the marriage, or within 300 days of termination of the marriage or was conceived while the spouses were cohabiting or the parents later marry and list both as parents on the birth certificate.[53] California specified the presumption of parentage when the presumed parent made a voluntary written promise to support or was court-ordered to support the child.[54] The statute includes an exception if the spouse is not a genetic parent of the child and the spouse's parentage of the child is challenged within the first two years of the child's life.[55] But the law extends beyond UPA 2017 section 301 which simply allows voluntary acknowledgment by an alleged genetic father of the child:

> Except as provided in Sections 7575, 7576, and 7577, a completed voluntary declaration of paternity, as described in Section 7574, that has been filed with the Department of Child Support Services shall establish the paternity of a child and shall have the same force and effect as a judgment for paternity issued by a court of competent jurisdiction. The voluntary declaration of paternity shall be recognized as a basis for the establishment of an order for child custody, visitation, or child support.[56]

Prior to an unmarried mother leaving the hospital after giving birth, the staff witnesses both parents' signatures on a voluntary declaration of parentage (VDOP), which is forwarded to the Department of Child Support Services. A copy is also given to each parent. Prenatal clinics may also offer a voluntary declaration of parentage to be signed by the parents. Both parents may seek recission of the VDOP within 60 days of execution.[57] Once a father signs a VDOP and it is filed with the child support docket, there is a two-year deadline to rescind the VDOP based on fraud, duress, or mistake of fact. Public policy assumes that if a person has declared parentage and acted as a parent for two years, that person cannot seek a reversal of parental responsibilities even if another biological father is identified. Unlike UPA 2017, there is no declaration procedure for denial of parentage in California after two years.

---

53 Cal. Fam. Code §§ 7540, 7611.
54 Cal. Fam. Code § 7611.
55 Cal. Fam. Code § 7541,
56 Cal. Fam. Code § 7530(d).
57 Cal. Fam. Code § 7612(f).

California included optional UPA language that does not preclude a child from having three (or more) parents.[58] While many states have a list of factors to assess the best interests of the child like UPA section 613, California opted to forego best interest factors in this set of circumstances. Under the California UPA, the court will determine whether removing a child from stable placement will cause detriment to the child; it does not require a finding of unfitness by a person with a claim to parentage. Because its parentage legislation allows recognition of more than two parents, a former stepfather and his new spouse who have accepted primary parenting responsibility of a child could both be recognized as additional parents as well as the biological mother and father. A biological father can seek parental status even if there is a presumed father.

In *C.A. v. C.P.*,[59] the wife had an affair with the biological father during her marriage. The wife and husband stayed together and raised the child as their own and allowed the biological father to have an "alternate parenting" role until the child was three. The biological father held the child out as his own and the court found the child was bonded to all three parents. The court concluded after trial that the biological father was a third parent, finding the conclusive presumption in favor of the husband was not an exclusive presumption. Analyzing California's version of the UPA, the appellate court rejected the argument that the three-parent statute was not meant to be applied where a stable marriage exists. The relevant policy allows a three-parent result "in very narrow situations when necessary to prevent detriment to the child" and that if the Legislature wanted to limit the bill's application to cases where no stable marriage existed, it easily could have said so rather than direct courts to consider "all relevant factors."[60]

5. *Vermont, 2018*

Vermont based its statute on the Maine statute which tracks closely but not completely with the UPA 2017.[61] The Legislature did not have any major objections to any of the provisions and it only took a year from when a select legislative committee began work on the bill until it was signed by the governor. The bill reportedly sailed

---

58 Cal. Fam. Code § 7601.

59 29 Cal. App. 5th 27 (2018).

60 *Id.* at 29.

61 Vt. Stat. Ann. tit. 15C §§ 101 to 809 (2018).

through committees of both chambers of the legislature and passed almost unanimously. The most significant impact was the ability to get pre-birth orders in ART cases. The bill has also greatly benefitted same-sex couples since they no longer must go through an adoption of their own children, with parentage based simply on pleadings being filed and without a court appearance being necessary. According to one practitioner, the *de facto* parentage section appears to be working well, used by people who would otherwise be divested of a parental relationship with children where they have been living within a parental role, and no floodgates concerns seem to have materialized.

6. *Washington, 2018*

In Washington, by far the most controversial aspects of the UPA 2017 were the ART provisions. Washington enacted nearly all the provisions of UPA 2017 but, while some state left out the sections on ARTs, Washington included those provisions with some modifications that offer protection and set standards for all parties.[62] Concerns raised about regulating agencies involved in facilitating ART procedures were added, as were limits on the numbers of surrogacies that were allowed, all to address some of the questions of conservative legislators and members of the public who testified. After the law passed, the state had a large influx of surrogacy agencies come into the state based on the new business regulations. As reported, no significant issues have emerged regarding the de facto parentage provisions.

7. *Other States*

Other states where there have been active legislative efforts to enact some version of UPA 2017 have included Nevada, Pennsylvania, and Massachusetts. On August 9, 2024, Governor Maura Healy signed the Massachusetts Parentage Act into law.[63]

---

62 Wash. Rev. Code § 26.26A.100 (2023).

63 Mass.gov., *Governor Healey Signs Parentage Act, Ensuring Equality for All Families in Massachusetts*, https://www.mass.gov/news/governor-healey-signs-parentage-act-ensuring-equality-for-all-families-in-massachusetts (August 9, 2024). In Massachusetts, the enactment of comprehensive parentage legislation modeled after UPA 2017 stalled due to staunch opposition to the statutory codification of de facto parent recognition. While Massachusetts common law recognizes de facto parent status, coalitions of stake holders, including legal services, bar associations, and LGBTQ advocacy groups, lined up on either side of the debate over whether to codify de facto parent status and how to articulate the status in statutory form. The legislation represented the culmination of years of struggle between these competing groups.

Most other states continue to operate under a version of UPA 2002 and some even operate with the first version from 1973 with local revisions that have occurred over the years. Because of the rapidly changing landscape across the country in terms of family formation and ongoing litigation by persons acting as parents who want to be considered and determined to be legal parents, these legislative efforts to enact some version of UPA 2017 will undoubtedly continue as case law evolves.[64]

II. Holding Out and De Facto Parentage Doctrines

A. *Changes Under the UPA 2017*

After the National Conference of Commissioners on Uniform State Laws (NCCUSL) in July 2017 approved and recommended UPA 2017, writers immediately began analyzing the updated UPA. Some recommended tweaking it. In a 2018 article, Professor Jeffrey A. Parness focused on two sections of the 2017 UPA establishing parentage based on "holding out" and "de facto" doctrines.[65] Professor Gregg Strauss argued in 2019 that de facto parenthood is either redundant or unconstitutional, suggesting that in four circumstances UPA 2017 recommends legislation that is in conflict with existing laws and should not be enacted, specifying: preconception agreements, informal adoption, misrepresentation of parentage, and child abandonment.[66]

---

64 *See Enactment History*, Parentage Act - Uniform Law Commission, https://www.uniformlaws.org/committees/community-home?communitykey=c4f37d2d-4d20-4be0-8256-22dd73af068f#LegBillTrackingAnchor; Jessica Feinberg, *The Boundaries of Multi-Parentage*, 75 SMU L. Rev. 307 (2022) ("While the "rule of two" remains in place in many jurisdictions, in recent years statutes and judicial decisions recognizing that a child can have more than two legal parents in certain circumstances have increased significantly. As the discussion below demonstrates, there is a clear trend toward states recognizing multi-parentage. This trend shows no signs of slowing down, and legal recognition of multi-parentage likely will become even more widespread in the coming years.").

65 Parness, *supra* note 20.

66 *See* Gregg Strauss, *What Role Remains for De Facto Parenthood*, 46 Fla. St. U.L. Rev. 909 (2018).

Professors Courtney G. Joslin and Douglass NeJaime examined the practical operation of functional parent doctrines and found that functional parents have been recognized in thirty-four states, whether under UPA legislation, other state laws, or reported appellate decisions.[67] The analysis below highlights examples of states that have expanded physical or legal custodial rights, far short of full parentage status contemplated by UPA 2017. The purpose of this section is to compare these evolving parentage doctrines and whether they indicate a state is trending towards passage of UPA 2017 and whether more states are trending toward consistency across the United States. The constitutional arguments will, however, continue to be raised in various states that debate passage of UPA 2017, especially with the possibility of more dramatic changes in rights of privacy following the U.S. Supreme Court's *Dobbs v. Jackson Women's Health* decision in 2022.[68]

While there are varying criteria, the holding out doctrine was often codified in states whose laws follow the 1973 Uniform Parentage Act, the 2002 Uniform Parentage Act (also referred to as UPA 2000 as amended in 2002), and most recently the UPA 2017. Some states have developed standards for holding out based on common law principles and appellate decisions. The doctrine of de facto parentage, for the purpose of the Joslin and NeJaime article about functional parents includes a psychological parent, *in loco parentis*, equitable parent, and parent by estoppel. Parness argued that UPA 2017 recognized holding out and de facto parentage as "imprecise parentage" because they arise at no distinct time.[69]

Parness contrasted the holding out and de facto doctrines with establishing parentage by clearly marking discrete points in time: birth, marriage to the birth mother, voluntary acknowledgement, and adoption. With the holding out and de facto doctrines, the status is based on a look-back to circumstances to establish a parent child relationship. After comparing the two types of imprecise parentage, Parness argued that UPA 2017 should be amended so de facto parentage is treated similarly to holding out parental

---

67 *See* Courtney G. Joslin & Douglas NeJaime, *How Functional Parent Doctrines Function: Findings from an Empirical Study*, 35 J. Am. Acad. Matrim. Law. 589 (2022).

68 *See generally* Linda C. McClain & James E. Fleming, *Ordered Liberty after* Dobbs, 35 J. Am. Acad. Matrim. Law. 623 (2022).

69 Parness, *supra* note 20, at 165 (noting precise parentage arises at giving birth, marriage to birth mother, adoption, completion of assisted reproductive technology, and voluntary acknowledgement of parentage).

status. Parness also suggested that the parties' standing to petition to establish de facto parentage should be broadened. He questioned whether states are consistent in considering parentage to include both the custodial "caretaker" rights as well as support responsibilities. To understand the impact of Parness's suggestion, it is helpful to reflect on the origin of holding out legislation and then look at the adjudication of de facto custody rights.

The holding out parentage presumption in UPA 1973 includes, "A man is presumed to be the natural father of the child if: . . . (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."[70] The presumption of paternity could be determined in litigation "at any time" pursued by "any interested party."[71] When the UPA 2002 was issued, holding out parentage was changed to mean: "A man is presumed to be the father of a child if for the first two years of the child's life he resided with in the same household with the child and openly held out the child as his own."[72]

Under UPA 2002 the goal was to recognize parentage outside marriage and the scope was limited to those fathers who lived with the child for the first two years of the child's life. The presumption could be overridden, and parentage disproved if the presumed father never openly held out the child as his own during the first two years. Furthermore, the override adjudication could involve a range of petitioners including the child, the child's mother, and a man whose paternity is to be adjudicated. The father who is the presumed parent was restricted from objecting to his status unless he commenced litigation not later than two years after the birth of the child to avoid the two years hold out presumption. In UPA 2017 a revised presumption provides that "an individual is presumed to be a parent of a child if the individual resided in the same household with the child for the first two years of life of the child, including periods of temporary absence, and openly held out the child as the individual's child."[73]

---

70 *Id.* at 158, citing 1973 Unif. Parentage Act § 4(a)(4) [hereafter 1973 UPA].

71 *Id.*, citing 1973 UPA § 6(b).

72 *Id.*, citing Unif. Parentage Act, as amended in 2002, § 204(a)(5).

73 *See* Leslie Joan Harris, *The Basis for Legal Parentage and the Clash Between Custody and Child Support,* 42 Ind. L. Rev. 611 (2009) (The 1973 UPA provides that a man is presumed to be the child's father if he has taken the child into his home and held himself out as the father for two years. Unif. Parentage Act § 4(a)(4) (1973). The 2002 UPA requires that the period of holding out occur

Moreover, UPA 2017 no longer spoke of fatherhood and extended the holding out parentage to any individual residing with the child for two years and holding out the child as one's own. Adjudication to overcome the presumption cannot be sought after the child is two years old, even if the presumed parent was not in the same household or residence, unless the court finds there are already two or more presumed parents. Recognizing that the holding out doctrine originated in support law, to secure a second parent's obligation to pay support, the payor who is holding out would be obligated to pay. The New Mexico Supreme Court ruled in this way in an important interpretation of this provision of the UPA:

> It is inappropriate to deny Chatterjee the opportunity to establish parentage, when denying Chatterjee this opportunity would only serve to harm both Child and the state. In our view, it is against public policy to deny parental rights and responsibilities based solely on the sex of either or both of the parents. The better view is to recognize that the child's best interests are served when intending parents physically, emotionally, and financially support the child from the time the child comes into their lives. This is especially true when both parents are able and willing to care for the child. Therefore, we hold that the Legislature intended that Section 40-11-5(A)(4) be applied to a woman who is seeking to establish a natural parent and child relationship with a child whom she has held out as her natural child from the moment the child came into the lives of both the adoptive mother and the presumptive mother.[74]

Many of the cases that address functional parent doctrines arise when holding out parentage does not apply or when a person seeks caretaker, visitation, or custodial rights as a de facto parent. The analysis here examines a range of states that have developed de facto parentage doctrines based on litigation or legislation. Under UPA 2017, the de facto parent is more than a custodian. UPA 2017

---

for the first two years of the child's life and is, therefore, more limited than the 1973 version. Unif. Parentage Act § 204(a)(5) (2002)).

74 Chatterjee v. King, 280 P.3d 283, 293 (N.M. 2012); *see also In re* Guardianship of Madelyn B., 98 A.3d 494, 460-61 (N.H. 2014) ("The policy goals of ensuring legitimacy and support would be thwarted if our interpretation of RSA 168-B:3 failed to recognize that a child's second parent under that statute can be a woman. Without that recognition, a child in a situation similar to Madelyn's could be entitled to support from, and be the legitimate child of, only her birth mother. See RSA 168-B:2, 7. Two adults — Melissa and Susan — intentionally brought Madelyn into the world and held her out as their child; we cannot read RSA 168-B:3 so narrowly as to deny Madelyn the legitimacy of her parentage by, and her entitlement to support from, both of them.") (citation omitted).

extends parentage to the right to inherit, make claims under probate court statutes, and other rights based upon that legal status. In short, the legal impact is broader. The issue of whether there is child support obligation remains a source of debate. Courts may be loath to obligate the de facto parent to also pay child support in addition to another parent who has shared caretaker or custodial rights. That interplay remains for future legislative and state appellate court policy debate.[75]

B. *State Recognition of Functional Parent Doctrines*

Professors Joslin and NeJaime set forth categories of functional parentage doctrines in their Appendix of 34 jurisdictions that recognize "holding out" and the de facto or other equitable categories of parentage.[76] The authors reviewed 669 appellate decisions, in which 47% of the cases were from three states: Kentucky (122), Pennsylvania (108), and California (82). Of these three, only California has passed UPA 2017. The purpose of the study was to address complaints about the pitfalls of recognizing the importance of functional parents. The analysis refuted the argument that the doctrine would be used as a threat by an abusive former partner, a path for a nanny to seek status as a de facto parent, or that a capable biological parent would be forced to co-parent with a third party.[77]

---

75 *See e.g.*, Green v. Carter, 2024 N.C. App. LEXIS 229, **36-37 ("Indeed, imposing even secondary liability for child support based solely upon Partner's de facto parental relationship with Alisa and her custodial rights would be contrary to the long-established law applicable to heterosexual couples in the same situation. A parent's romantic partner or a stepparent may have a close and loving relationship with the biological child of her partner and may even have custodial rights under North Carolina General Statute Section 50-13.2, but the romantic partner or stepparent has no secondary child support obligation unless it was voluntarily assumed in writing. *See* N.C. Gen. Stat. § 50-13.4. Ironically, any attempt to treat a same-sex couple differently than a heterosexual couple as to the law to secondary liability for child support would lead to disparate outcomes and end up treating the child of a same-sex relationship differently than the child of a heterosexual relationship under the same circumstances.") (citations omitted).

76 Joslin & NeJaime, *supra* note 67. For several recent articles by the authors discussing other related themes, see Courtney G. Joslin & Douglas NeJaime, *Domestic Violence and Functional Parent Doctrines*, 30 Va. J. Soc. Pol'y & L. 67 (2023); Courtney G. Joslin & Douglas NeJaime, *How Parenthood Functions*, 123 Colum. L. Rev. 319 (2023).

77 The Joslin and NeJaime article is an outstanding example of empirical data-driven research that can assist policy discussions beyond just anecdotal

Joslin and NeJaime note that if a state enacts UPA 2017 or comparable legislation, the abusive former partner will not pass the seven requirements to serve as a de facto parent. The nanny would not qualify because the de facto parent should not have been paid for caretaking services. The study shows that two-thirds of the time functional parents are relatives, and two-thirds of those are grandparents who may also qualify under grandparent legislation. Furthermore, Joslin and NeJaime pointed out that a biological parent who was a primary caretaker would be favored at adjudication over the claim of a functional parent. [78]

Florida

The relevant parentage legislation in Florida has two statutory provisions: Florida Statute § 742.10 regarding children born out of wedlock and Florida Statute § 742.12 regarding scientific testing. Under Florida law, the statute refers to defining a father based upon marriage before birth, as well as marriage after the child is born and an acknowledgment of paternity is signed by both parties. The statute refers to paternity established by court order, without specifying it as describing parentage based on someone holding out oneself as a parent, or any other basis to become a parent based on one's actions. A Florida court has discretion to order or deny genetic testing; however, test results will not preclude a finding that custody and parental rights apply to a non-biological "father."

The presumption of legitimacy is based on the child's interest in legitimacy and the public policy of protecting the welfare of the child.[79] Florida courts do not yet recognize dual fathership and,

---

experience. Joslin & NeJaime, *supra* note 67. Care must always be exercised when interpreting case data. These are reported decisions, which is a small percentage of cases which may settle in mediation, or which are not appealed after trial in a state family court. See Stephen B. Burbank, *Keeping Our Ambition Under Control: The Limits of Data and Inference in Searching for the Causes and Consequences of Vanishing Trials in Federal Court*, 1 J. Empirical Legal Stud. 571, 557 (2004) ("We should also be very cautious about translating findings from or (even internally reliable) inferences or conclusions about one jurisdiction to another (other than as a hypothesis to be tested), as also about comparing data from one jurisdiction with those from another (if, that is, the comparison is made in aid of causal inference).").

78 Joslin & NeJaime, *supra* note 67.

79 J.T.J. v. N.H., 84 So. 3d 1176 (Fla. Dist. Ct. App. 2012).

therefore, only one man may be designated the child's legal father with the rights and responsibilities of that role at any given time. If a minor child is born to an intact marriage, paternity is established as a matter of law. The fact that DNA test results may establish another individual as the child's biological father is legally insignificant.[80] Policy and consistency suggest that there should be a clear and compelling reason based primarily on the child's best interests to overcome the presumption of legitimacy even after the legal father is proven not to be the biological father.[81]

For example, in *R.H.B. v. J.B.W.*, [82] the court held that a child of a married woman has an equal protection right that allows the mother to proceed with a parentage case against a man other than her husband. Nevertheless, this adult right is significantly restricted by the child's countervailing constitutional and legal rights to legitimacy. In another case, the court determined it was error to order DNA testing to establish that another person was the biological father of the child born of an intact marriage where the guardian opined that the child's best interests would not be served by terminating the child's relationship with legal father.[83]

The concerns raised by Strauss are being embraced by other states resisting elevating the status of functional parents who will have standing to seek full parentage rights under the de facto parentage doctrine.[84] There is no indication (yet) that Florida is considering expanding its law to same-sex partners who hold out as a parent, or third parties who argue for some version of de facto type functional parent status, though the law is still evolving through trials and appellate decisions.[85] This line of cases follow from the

---

80 *See* C.G. v. J.R. & J.R., 130 So. 3d 776 (Fla. Dist. Ct. App. 2014).

81 Van Weelde v. Van Weelde, 110 So. 3d 918 (Fla. Dist. Ct. App. 2013).

82 826 So. 2d 346 (Fla. Dist. Ct. App. 2002).

83 Callahan v. D.O.R. *ex rel.* Roberts, 800 So. 2d 679 (Fla. Dist. Ct. App. 2001).

84 Strauss, *supra* note 66, at 912.

85 *See, e.g.*, Quiceno v. Bedier, No. 3D23-203, 2023 WL 5419584 *2, *3 (Fla. Dist. Ct. App. Aug. 23, 2023) (reversing the trial court's judgment, that awarded the husband (who acknowledged he is not the biological child of one of the minor children but only raised the child since birth) equal timesharing and shared parental responsibility of the child with the mother/wife, and holding that, "Florida appellate courts have concluded the best interest of the child is insufficient to justify granting timesharing rights to any third party, even a stepparent or psychological parent" and that because the husband neither adopted the child, or otherwise seek to establish paternity the trial court "lacked the discretion to award shared parental responsibility and equal timesharing to a third party"); Stabler v. Spicer,

Florida Supreme Court's holding in *D.M.T. v. T.M.H.*,[86] a decade ago, where the court made clear that even when the non-biological/non-legal parent has assumed parental responsibilities and active care for a child, it is still insufficient to give rise to an inchoate right to be a parent since it is the biological connection between the parent and child that gives rise to this right.[87] Regardless of marital status, Florida law still does permit the non-biological parent in a

---

No. 1D21-1826, 2022 WL 16628940 (Fla. Dist. Ct. App. Nov. 22, 2022) (holding that a nonparent, who was in a same-sex relationship with the birth mother during which they agreed to have a child, whereby the nonparent's brother impregnated the birth mother, lacked a legally enforceable visitation right with and child, despite the existence of a mediation agreement between the parties that granted visitation rights to the nonparent, where the nonparent was not married to the birth mother and did not adopt either child of the birth mother); Wakeman v. Dixon, 921 So. 2d 669, 671 (Fla. Dist. Ct. App. 2006) (ruling that a same-sex partner who was not the biological mother—but had been a de facto parent who supported and participated in a child's upbringing pursuant to a written coparenting agreement—had no legally enforceable visitation rights with the child); Springer v. Springer, 277 So. 3d 727 (Fla. Dist. Ct. App. 2019) (holding that a former same-sex partner lacked standing to request recognition of parentage and time-sharing of a child born while the former partner was in a relationship with the child's mother, although the former partner paid for the sperm used to impregnate the mother, and although the parties signed a co-parenting agreement that referred to the child to be born as "our child" and expressed intention for the parties to jointly and equally share parental responsibility; the import to the court was that the former partner had no biological connection to the child); Russell v. Pasik, 178 So. 3d 55, 59 (Fla. Dist. Ct. App. 2015) ("[T]he law is clear: those who claim parentage on some basis other than biology or legal status do not have the same rights, including the right to visitation, as the biological or legal parents."); De Los Milagros Castellat v. Pereira, 225 So. 3d 368, 372 (Fla. Dist. Ct. App. 2017) (Logue, J., concurring) (noting that "the Florida Supreme Court expressly approved *Wakeman*'s holding that the lesbian partner who was the birth mother had parental rights protected by the constitution that prevailed over the claims of a partner who was neither the biological nor legal mother, even though the couple clearly intended to raise the children together"); Enriquez v. Velazquez, 350 So. 3d 147 (Fla. Dist. Ct. App. 2022) (finding that a father, who provided sperm for an at-home artificial insemination process used to conceive a child with the mother, was not a "donor" under a statute providing for relinquishment of parental rights in connection with the provision of biological material during the course of assisted reproductive technology, and thus the father was not precluded from filing a petition to establish paternity and timesharing; the statute did not include at-home artificial insemination as one of the procreative procedures coming within the statutory definition of assisted reproductive technology.).

86 129 So. 3d 320 (Fla. 2013).

87 *Id.* at 338.

same-sex relationship to adopt a child, and that would guarantee the rights of a parent.[88] There are social and statutory changes in Florida that may eventually change (incrementally) some of these policies.[89]

Ohio

Ohio law has not recommended consideration of the UPA 2017 nor has Ohio applied the presumption of parentage to same-sex spouses or unmarried couples. Ohio is vague on its standards for resolving two claims of presumption that conflict. Its current statute provides that "If two or more conflicting presumptions arise under this section, the court shall determine, based upon logic and policy considerations, which presumption controls."[90] The Supreme Court of Ohio did consider the parental claims of a same-sex partner in the case *In re: Bonfield*.[91] In this case, the parties, Teri Bonfield and Shelly Zachritz jointly filed the petition, with the "specific issue" of asking the court to find that "Shelly is a parent for purposes of R.C. 3109.04(A)(2)."[92]

Teri and Shelly lived as partners from 1987; Teri adopted two children in 1993 and 1995; and Teri gave birth to three children in 1996 and 1998. Teri and Shelly agreed that Shelly acted as the

---

88 Fla. Stat. § 63.172(1)(c).

89 Fla. Stat. § 744.301(1) was amended effective July 1, 2023, to include the following:

> The mother of a child born out of wedlock and a father who has established paternity under s. 742.011 or s. 742.10 are the natural guardians of the child and are entitled and subject to the rights and responsibilities of parents. If a father has not established paternity under s. 742.011 or s. 742.10(1), the mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless the court enters an order stating otherwise.

Florida Statute § 742.011 was amended (effective July 1, 2023) to indicate the proceedings are for determination of paternity, but also for the determination of rights and responsibilities, which added the following statement: "After the birth of the child, a parent may request a determination of parental responsibility and child support and for the creation of a parenting plan and time-sharing schedule pursuant to chapter 61."

90 Ohio Rev. Code § 3111.03.

91 780 N.E.2d 241 (Ohio 2002). The procedural history for this case became complicated when the Supreme Court agreed to reconsideration after it issued its earlier decision.

92 *Id*. at 245.

children's primary caretaker and had come to be seen by the children as their parent in the same way as Teri. The couple applied to the court so Shelly could be considered for second parent adoption, without requiring her partner Teri, to relinquish parental rights. The case was on appeal to review the lower court finding that denied Shelly standing on the basis as she did not qualify as a parent in the context as a parent-child relationship under Ohio law.

The appellants then argued, unsuccessfully, that *in loco parentis* status should apply to the definition of parent, or that Shelly should be considered a psychological or second parent. Ultimately, the court denied all the arguments but in a unique twist pivoted to its juvenile court laws and held that:

> [T]he juvenile court has jurisdiction to determine the custody of any child not a ward of another court, even though the court has not first found the child to be delinquent, neglected, or dependent. *In re Torok (1954)* 161 Ohio St, 585, 53 O.O. 433 120 N.E.307, paragraphs one and two of the syllabus. This exclusive responsibility "to determine the custody of any child not a ward of another court of this state" cannot be avoided merely because the petitioner is not a "parent" under R.C. 3109.04.[93]

While the *Bonfield* decision was cited as a form of functional parenthood, it is limited, for now, to the right to agree to serve as co-custodians.

In 2012, the Ohio Supreme Court in *Rowell v. Smith*,[94] found that juvenile courts handling custodial claims by parties considered nonparents at law (following *In Re Bonfield*), may issue temporary visitation orders in cases involving a parent and non-parent if it is in the child's best interest, reversing the appellate court's decision invalidating a temporary visitation order. The court held that, "Smith's interpretation of the law is illogical. Under her interpretation, the General Assembly granted authority for juvenile courts to determine the custody of a child but cannot determine whether a party to the custody action can visit with the child while the action is pending."[95] Thus, the family court had no jurisdiction under Ohio

---

93 *Id*. at 247.

94

95 *Id*. at 150-51. The Ohio statute that provides for companionship time for non-parents is Ohio Revised Code § 3109.051. There is a basis for awarding companionship time, but it is typically used when a grandparent (or similar figure) has had a significant role in raising a child and may now be estranged from the parents.

law to consider de facto parentage, but the juvenile court can act even in the absence of a claim of abuse or neglect.

Virginia

The parentage law in Virginia is primarily found in the Parentage Act.[96] Virginia law does refer to acknowledgment of paternity by a man but does not allow for the possibility of holding out or de facto parentage. The Virginia Parentage Act states that in the absence of the required acknowledgement, or if the probability of paternity is less than 98%, a paternal relationship may be established as otherwise provided in Virginia legislation.[97]

Virginia's governing appellate case, *Hawkins v. Grese*,[98] expressly holds that de facto parentage will not be recognized. Unless parentage is secured as a married partner, an order of parentage, second parent or stepparent adoption, a custody claimant cannot establish parentage by holding out or asking for acceptance of de facto claims comparable to other states and the UPA. The non-biological person is like any other third party who may not seek custody without proving (1) parental unfitness, (2) a previous order of divestiture, (3) voluntary relinquishment, and (4) abandonment, i.e. extraordinary circumstances to justify taking a child from a parent.[99] The challenge for establishing de facto parentage is that Virgina law adheres to strictly biological definitions of a parent absent the narrow exceptions above.[100]

---

96 Va. Code §§ 20-49.1 to 20-49.10 (2024).

97 Va. Code §§ 20-49.1.

98 809 S.E.2d 441 (Va. Ct. App. 2018).

99 In a different context, a father argued that "any award of the pre-embryo to the wife was a de facto unconstitutional governmental intrusion on his constitutional right to procreational autonomy because the state did not have a compelling interest at stake. *See id.* at 445 (explaining that the Fourteenth Amendment protects individuals from government interference with parental rights absent a compelling state interest). However, in a case involving a contract with the wife and a fertility clinic, the husband agreed that in the event of divorce, "the ownership and/or other rights to the embryo(s)" would be "directed by a court decree and/or settlement agreement." Jessee v. Jessee, 866 S.E.2d 46, 50-51 (Va. Ct. App. 2021).

100 *See* Va. Code § 64.2-103 (Evidence of Paternity).

New Jersey

New Jersey legislation on parentage is found in a section of the New Jersey statutes entitled Presumptions.[101] New Jersey did not specifically adopt UPA 2002 or UPA 2017, however caselaw reflects the evolving acceptance of functional parents. In the case of *V.C. v. M.J.B.*,[102] the New Jersey Supreme Court analyzed the possibility of finding that a same-sex partner should be treated as a psychological parent for custody rights. V.C. claimed she should be considered a psychological parent or a de facto parent so that she could be awarded shared legal custody as well as visitation. The court found that legislative intent indicated someone could be deemed a parent despite no biological connection or adoption. As is true in so many of third-party cases that devolve into child custody litigation, the biological mother, M.J.B., argued V.C. needed to prove M.J.B. was unfit before V.C. could be considered to have standing as a parent. After reviewing the criteria, the court found that V.C. was qualified as a psychological parent; but due to the delay prior to the litigation, V.C. had not been sufficiently involved in the lives of the children to justify shared legal custody. The court, however, finally held that:

> to be sure, prior cases in New Jersey have arisen in the context of a third party taking over the role of an unwilling, absent or incapacitated parent. The question presented here is different; V.C. did not step into M.J.B.'s shoes, but labored alongside her in their family. However, because we view this issue as falling broadly within the contours we have previously described, and because V.C. invokes the "exceptional circumstances" doctrine based on her claim to be a psychological parent to the twins, she has standing to maintain this action separate and apart from the statute.[103]

After analyzing laws from other states, the New Jersey court recognized that de facto parenting could be recognized if the legal parent consents to and fosters the relationship between the third party and the child; the third party lived with the child; the third party performed parental functions for the child to a significant

101 N.J. Stat. Ann. § 9:17-43.

102 748 A.2d 539 (N.J. 2000). In this case, both sides offered expert testimony. Although "they disagreed as to whether the children would suffer any long-term effects if their relationship with V.C. were severed, both agreed that the children enjoyed a bonded relationship with V.C. and that they would benefit from continued contact with her." *Id*. at 541.

103 *Id*. at 550-51.

degree; and "most important, a parent-child bond must be forged as the framework for determining psychological parenthood in cases where the third party has lived for a substantial period with the legal parent and her child."[104] New Jersey has not, however, formally amended its statutes; therefore, the presumptions in its parentage law still refer to heterosexual married couples.

Pennsylvania

Pennsylvania's parentage law is scattered over different sections of Pennsylvania's Consolidated Statutes regarding Children and Minors and the Pennsylvania Supreme Court Rules. The determination of paternity provision identifies the circumstances where paternity for a child born out of wedlock is established, including when the parents later marry.[105] Subsection 2 mirrors UPA 2017: If, it is determined "by clear and convincing evidence that the father openly holds out the child to be his, and either receives the child into his home or provides support for the child, then he can be considered a parent."[106] Further, this determination of parentage is mirrored in Title 20, the Decedent Estates Fiduciary Code.[107]

In Pennsylvania the equitable doctrine of estoppel is a significant barrier to ordering the use of blood tests to confirm parentage. The presumption of paternity for a married man was, until recently, irrebuttable. The policy was intended to protect the sanctity of marriage and minimize disruption to the child. For example, in *S.M.C. v. C.A.W.*,[108] estoppel was applied to the "holding out" provision despite the undisputed lack of biological connection between the child and live-in boyfriend where the trial court found holding out and applied best interests of the child.

Other case law also estops a husband from denying paternity, even if duped by his wife claiming the child was his when she knew that child was not the husband's. In *J.L. v. A.L. and K.L.*,[109] the mother acknowledged that the child was conceived while she was separated from her husband and had an affair with J.L. She and J.L held out the child as J.L.'s until she claimed that she and

---

104 *Id*. at 552.
105 23 Pa. Cons. Stat. § 5102(b)(1).
106 *Id.* § 5102(b)(2).
107 20 Pa. Cons. Stat § 2107(c)(2).
108 221 A.3d 1214 (Pa. Super. Ct. 2019).
109 205 A.3d 347 (Pa. Super. Ct. 2019).

her husband had an intact marriage to avoid the custody claims by J.L. Despite the historical presumption in favor of a husband, the court allowed blood testing to determine the biological parent. The court found that the presumption in favor of the marriage was based upon a public policy to preserve marriage, but that the mother and her husband's claim of marriage was a façade to prevent J.L.'s involvement in the child's life.[110]

Pennsylvania has long recognized standing to file a custody action for someone who is found to be *in loco parentis.* The grandparent standing provisions were amended in 2018 to extend to grandparents who are not *in loco parentis*, as long as the relationship began with the consent of the parents, the grandparent is willing to assume responsibility, and one of the following conditions are met: the child is determined dependent; the child is at risk due to parental abuse, neglect, drug or alcohol abuse, or incapacity; or for at least twelve consecutive months the child has lived with the grandparent.[111] These amendments, in recognition of the drug and alcohol addiction crisis that left children adrift due to addicted parents, further extended standing by allowing any individual to establish by clear and convincing evidence that the person is willing to assume responsibility, the person has a sincere interest in the welfare of the child, and neither parent has any form of care or control of the child.[112] The newest provision for grandparents and third parties who are willing to accept responsibility when the parents are unable to care expands beyond those who claim to be *in loco parentis* to the child.

In loco parentis status has also been invoked by stepparents and same-sex couples. Notably, Pennsylvania ruled in the case of *Interest of A.M.* that married same-sex couples enjoy the same doctrine of spousal presumption.[113] The application for *in loco parentis* status, however, is not automatic for unmarried partners; therefore, same-sex couples are encouraged to marry so they can have the benefit of the marital presumption. This limitation resulted in the Pennsylvania Supreme Court decision *C.G. v J.H.* [114] The non

---

110 *Id.* at 356.

111 *See* Peters v. Costello, 891 A.2d 705 (Pa. 2005); *see also* 23 Pa. Cons. Stat. § 5324(3).

112 23 Pa. Cons. Stat. § 5324(4).

113 223 A.2d 691 (Pa. Super. Ct. 2019).

114 139 A.3d 891 (Pa. Super. Ct. 2018).

biological party, C.G., argued she had participated in the decision to have the baby; however, the parties broke up soon after the child was born. C.G. moved from Pennsylvania and waited four years to file for custody rights. The court found there was no basis to find that C.G. had *in loco parentis* status, and she failed to prove the shared intent of the parties to create a parental relationship.

In a Superior Court case that followed, *R.L. v. M.A.*,[115] the same-sex unmarried parties separated not long after the child was born; however, the non-biological mother enjoyed an informal alternating weekend and eventually a shared physical custody schedule. The biological mother argued that the presumption in favor of the parent had not been overcome by the non-biological mother. The trial court and the appellate court concluded that since the non-biological mother sought equal custody, not primary custody, she did not have to meet that the higher burden of clear and convincing evidence to establish her right to equal custody. In *dicta*, the Superior Court noted that the non-biological mother did not ask to be considered a parent. If the court found her a parent, she would not have to meet the burden of proof. This suggests that with more case-by-case decisions in the offing, predictability in the law for children may be more difficult to assess.[116] The question remains, considering recent precedents, if Pennsylvania adopts UPA legislation, will it be amended to conform with decisions of the appellate courts, including the caselaw on child support responsibilities?[117]

---

115 209 A.3d 391 (Pa. Super. Ct. 2019).

116 On May 31, 2024, the Pennsylvania Supreme Court reversed the Superior Court and rejected imposing a support obligation on a non-biological/non-adoptive parent despite a handful of cases, Caldwell v. Jaurigue, 315 A.3d 1258 (Pa. 2024). The Superior Court had handed down a non-precedential decision in which the dispute arose after the mother died. The mother never married the biological father, and her boyfriend, who lived with the mother for over five years from the time the child was sixteen months old until the mother died, sought custody rights after the child was placed with the father. The boyfriend claimed standing under *in loco parentis* as he had enjoyed custody time with the permission of father, sought an award of custody and the boyfriend found himself liable for support. *See* Caldwell v. Jaurigue, 287 A.3d (Pa. Super. Ct. 2022).

117 Jeffrey A. Parness & Matthew Timko, *De Facto Parent and Nonparent Child Support Orders*, 67 Am. U.L. Rev. 769, 772 (2017) ("We conclude by urging further examinations of de facto parent and nonparent child support issues, particularly by the American Law Institute (ALI) via its 2016 draft of its Restatement of the Law: Children and the Law ("2016 ALI Restatement draft"), and by the

Michigan

Michigan has not passed the UPA 2002, nor is it likely to pass the UPA 2017 in the foreseeable future. Michigan's Paternity Act and the Acknowledgement of Paternity Act address fatherhood based upon a child born out of wedlock with the latter Act establishing fatherhood through a consent process.[118] Notably, under the Revocation of Paternity Act, a legal but non-biological father (i.e. a husband) may be precluded from revoking his status based on his conduct such as the length of time he was on notice he might not be the father, the facts indicating that he might not be the biological father and his knowledge of them, and the nature of the relationship between the child and the alleged father.[119]

None of Michigan's statutes have been amended after the Supreme Court decisions concerning same-sex marriage. Joslin and NeJaime find that Michigan is an "equitable parent" state, citing *Van v. Zahorik*.[120] Equitable parentage is available to both the husband in a divorce action to preclude the court from using blood tests to reverse his status as a parent and to the wife seeking to require the husband to accept continuing responsibility as a parent. While the court considered the equitable parent doctrine outside of marriage, the *Van v. Zahorik* decision specifically refused to apply it to an unmarried couple.

In the summer of 2023, however, the Michigan Supreme Court held that under the limited circumstances where the non-biological partner can prove by a preponderance of the evidence

---

National Conference of Commissioners on Uniform State Laws (NCCUSL) via its recently adopted "2017 Uniform Parentage Act" ("2017 UPA") and "Nonparental Child Custody and Visitation Act" ("NPCCVA"). These august bodies have done much to educate and to spur legal reforms on de facto parent and nonparent childcare; yet, these institutions, and others, have said little about how childcare reforms should impact child support duties.").

118 The Paternity Act, Mich. Comp. Laws § 722.711, was adopted in 1956; The Acknowledgment of Paternity Act, Mich. Comp. Laws § 722.1001 passed in 1996. In 2012 the Revocation of Paternity Act, Mich. Comp. Laws § 722.1431 became law.

119 *See* Rogers v. Wcisel, 877 N.W.2d 169, 177 (Mich. Ct. App. 2015) ("The undisputed fact that a man is not a child's biological father, as proven by clear and convincing evidence through blood, tissue, or DNA, does not establish a mistake of fact. Biological evidence is rather a second and separate factor to be considered in the revocation of an acknowledgment of parentage after the trial court finds the moving party's affidavit sufficient under MCL 722.1437(2).") (footnotes omitted).

120 597 N.W.2d 15 (Mich. 1999).

that the couple would have married but for the unconstitutional laws that prohibited them from doing so, that partner has standing to seek to be recognized as an equitable parent.[121] In a recent appellate decision involving a wrongful-death action the Michigan Court of Appeals summarized these developments, as follows:

> Our decision specifically considers and reflects the changing practices and social norms of what and who constitute a close family relationship. We are mindful of the myriad of cases presented to this Court wherein grandchildren are being raised by their grandparents. And those class of cases are increasing at a seemingly exponential rate. Recently, our Supreme Court enlarged the class of people who may constitute a parent. In Pueblo v Hass, __Mich__, __; __ NW2d __ (2023) (Docket No. 164046); slip op at 1, our Supreme Court held that a former partner who was unconstitutionally denied the right to marry in a same sex relationship may sue for custody of a child with whom the "former parent shares no biological relationship." Accordingly, we reiterate our previous observation that "devising one hard and fast rule for limiting bystander recovery in mental suffering cases would be difficult and complex if not impossible."[122]

The opinion in *Pueblo v. Hass* is very clear that the decision is narrow and the court expressly rejected an expansion of equitable parent to partners who "deliberately eschewed marriage" because it would "undermine the public policy in favor of marriage."[123] If, however, the case fits the status requirements, the three part test for getting equitable parent status remains: (1) the would-be equitable parent and the child acknowledge the parental relationship or the biological or adoptive parent has cultivated the development of a relationship over a period of time; (2) the would-be equitable parent desires to have the rights afforded a parent; and (3) the would-be equitable parent is willing to pay child support.[124] The challenge that emerges from this case law is the same as faced by other states: whether to enact a statutory scheme like the UPA 2017 that at least grounds each family system into the same body

---

121 Pueblo v. Hass, 999 N.W.2d 433 (Mich. 2023).

122 Tenhoppen v. Glemboski, No. 361181, 2023 Mich. App. LEXIS 5866 **10-11 (Aug. 17, 2023).

123 *Id*. at slip opinion at 21, n.12.

124 In a distinct factual circumstance, *LeFever v. Matthews*, 971 N.W.2d 672 (Mich. Ct. App. 2021), the court held that the woman who carried the child is a parent, even though she did not share genetic material with the child. The partner who had donated the egg was a biological parent.

of law with the possibility of limiting randomness and the emotional and financial costs of years of litigation.

Texas

Texas adopted the 2002 version of the UPA with provisions that include a path to paternity through the holding out doctrine.[125] Texas has a variation of the UPA's section 204(a)(1)(C) creating a presumption for fathers who marry the mother after birth and (1) the father asserts paternity and (2) one of the following three circumstances apply: (a) the assertion is filed with the Bureau of Vital Statistics, or (b) the father's name is voluntarily added to the child's birth certificate, or (c) the father promises "on a record" to support the child as his own.[126] A presumed father is also a man who, during the first two years of a child's life, continuously lives with the child and holds out the child to others as his.[127]

In Texas, where there is a presumed father, litigation to address parentage can begin any time before the child is four years old. The window for litigation to disallow parentage is extended and can begin anytime if the court finds either (1) the mother and presumed father did not live together or engage in sexual intercourse at the time of conception, or (2) the presumed father was precluded from challenging his status because of a mistaken belief that he was the father due to misrepresentation. If a child has no presumed, acknowledged, or adjudicated father, litigation can begin any time, even after the child becomes an adult.

Since UPA 2002 does not refer to same-sex couples, Texas has not updated its Family Code to recognize *Obergefell*, nor is there a statutory application of the functional parent doctrine to same-sex couples. However, at least one Texas court, in *Treto v. Treto,*[128] has held that the statutory parentage presumptions in Chapter 160 apply to females in same-sex relationships, and another has held that a same-sex spouse who is not biologically related to a child has standing to assert rights to a child born of the marriage.[129]

125 Tex. Fam. Code § 160 (2023).

126 Tex. Fam. Code § 160.204(a)(4).

127 Tex. Fam. Code § 160.204(5).

128 622 S.W.3d 397 (Tex. App. 2020).

129 *In re* Interest of D.A.A.-B., 657 S.W.3d 549 (Tex. App. 27. 2022). A different Texas appellate court previously found that a same-sex partner did not have standing as a parent to assert right to born during the marriage. *In re* Interest of A.E., No. 09-16-00019-CV, 2017 WL 1535101 (Tex. App. Apr. 27, 2017).

In addition to section 160.204, a nonparent may seek conservatorship of a child if the nonparent has standing to bring the suit and can overcome the "fit parent" presumption. Most commonly, a nonparent can achieve standing by having "actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition."[130] In the case *In re C.J.C.,*[131] a fiancé sought and won standing under Texas law but failed to be appointed conservator of the child of the deceased mother.[132] In *In Re C.J.C.,* the Texas Supreme Court required the fit parent standard be applied when the fiancé of a deceased mother attempted to be appointed a conservator and sought court-ordered custody. The fiancé had legal standing under Texas' statute that allows someone with actual care, custody, and control of a child for at least six months to file or intervene in a suit.

While recognizing standing, the fiancé was still unable to obtain a court-ordered role due to his failure to show that the surviving father was not fit to make the decision about who should be around his child and when. Justice Lehrmann, who served on the UPA committee, opined in her concurring opinion in *In Re C.J.C.S* that the fit-parent presumption may be overcome by a person who has served in a parenting role historically in the child's life while there is not a specific standard for proving such a case and it was not done in *C.J.C.* [133] In the *Interest of R.W.N.R.*,[134] a Texas appellate court recently summarized the analysis of extending parentage rights, as follows:

> Since the Texas Supreme Court's decision in In re C.J.C., courts have been unable to articulate the degree or quantum of evidence required to overcome the fit-parent presumption. Troxel and subsequent Texas cases do instruct, however, that the fit-parent presumption is not overcome if the nonparent shows that the parent has failed to adequately care for the child. See Troxel, 530 U.S. at 68 (defining "fitness" as providing adequate care); In re C.D.C., 2021 Tex. App. LEXIS 805, 2021 WL 346428, at *6 ("[T]he existence of the fit-parent presumption necessarily requires that some evidence that a parent is not fit must be offered

However, that case was decided pre-*Pavan*'s implicit directive to read statutes "in a gender neutral [sic] fashion to comply with the Fourteenth Amendment and the constitutional guarantee of equal protection." *Treto*, 622 S.W.3d at 403, n.2.

130 Tex. Fam. Code § 102.003(a)(9).

131 603 S.W.3d 804 (Tex. 2020).

132 *Id.* at 820.

133 *Id*. at 820 (Lehrmann, J., concurring).

134 No. 08-23-00087-CV, 2023 Tex. App. LEXIS 8105.

to rebut it."); Interest of A.V., 2022 Tex. App. LEXIS 4890, 2022 WL 2763355, at *5 ("To prove Mother unfit here, Grandparents had the burden to prove that Mother cannot adequately care for A.V.").[135]

Delaware

Delaware is an example of a UPA 2002 state which changed its laws after case law prompted legislation to update parentage principles to cover current family dynamics. In *Titus v. Rayne,*[136] a non-biological parent had previously held himself out as a parent. In a case of first impression under the Delaware Uniform Parentage Act at the time, the Delaware Family Court reinstated the doctrine of equitable estoppel under the Delaware UPA after finding that the strict code of the Delaware UPA conforming solely to genetic parentage by DNA testing was not the only arbiter of parentage; and that a party's prior legal confessions of parentage operated to limit the genetic override of the Delaware UPA. Thereafter, the Delaware legislature amended its statute to adopt equitable estoppel as a basis for parent identification.[137]

In *In Re Hart,*[138] the Delaware Family Court established a five-part test for determination that a non-biological parent could be the legal parent of a child under the *de facto* parent doctrine.[139] Then, in *L.M.S. v. C.M.G.,*[140] the Delaware Family Court expanded the *de facto* parent doctrine to apply to same-sex couples, and not parents formerly recognized solely within the sphere of the

---

135 *Id*. at **12-15 (citations omitted).

136 No. CN91-6133, 1992 WL 437586 (Del. Fam. Ct. Nov. 19, 1992).

137 74 Del. Laws c.136, § 1; 13 Del. Code §§ 8-606, 8-608.

138 806 A.2d 1179 (Del. Fam. Ct. 2001).

139 *Id*. at 1187 (A "*de facto*" parent/stepparent: Has the support and consent of the parent who has fostered the formation and establishment of a parent-like relationship with the child; Has assumed the obligations of parenthood by taking significant responsibility for the child's care, education and development -- including the child's support, without the expectation of financial compensation; Has acted in a parental role for a length of time sufficient to have established a bonded and dependent relationship that is parental in nature; Has helped to shape the child's daily routine by addressing developmental needs, disciplining the child, providing for the child's education and medical care and serving as a moral guide; Has on a day to day basis, through interaction, companionship, interplay, and mutuality, fulfilled the child's needs for a psychological adult who helped fulfill the child's needs to be loved, valued, appreciated and received as an essential person by the adult who cares for him.").

140 No. CN04-08601, 2006 WL 5668820 (Del. Fam. Ct. June 27, 2006).

Delaware UPA. When *L.M.S. v C.M.G.* was decided, Delaware did not recognize the marriage of same-sex couples. That case recognized the *de facto* parentage of another woman who was involved in the adoption and raising of her partner's adopted daughter even though at the time both parents could not legally adopt a child. As before, the Delaware legislation followed suit and amended the Delaware UPA to conform to case law.[141] Even though the Delaware legislature has not adopted the 2017 Act, its case law and amending legislation is advancing the rights of more parties including the possibility of three parents for a child, despite criticism of the Delaware legislation.[142]

III. Impact of De Facto Parentage Under The UPA 2017

UPA 2017 allows a person who has been participating in a child's life as a parent, with the consent of at least one parent, and holds him or herself out accepting full responsibility as a parent, to be adjudicated a de facto parent of a child. The provisions of the UPA 2017 provide distinct alternatives to state legislatures in determining parentage involving a de facto parent becoming the second or the third parent. If states adopted the version of the UPA that permits only two parents, then the stepparent may seek parentage if the child only has one living parent prior to the petition. The law certainly recognizes that even a deceased parent is a legal parent for other purposes. Potentially, the two-parent limitation may still apply when one legal parent is deceased.

If a state passes the version that allows for more than two parents, the person asserting de facto parentage in a situation of a child with two living and legally acknowledged parents, the de facto parent will have to establish first that they have standing and

---

141 *See* 77 Del. Law. c. 97, §§ 1-3; 13 Del. Code § 8-201.

142 *See* William Duncan, *The Legal Fiction of De Facto Parenthood*, 36 J. Legis. 263, 264 (2010) ("The Delaware legislation might seem insignificant because its radical experiment is currently confined to that single state. In what it portends for children and families and for state power, however, its implications could not be more momentous. One state's creation of a legal fiction for parenthood is a small step in U.S. law but it is a fateful one and given the probable costs, one that ought to be reversed and certainly not followed by any other state.").

second that the child would be harmed if they were not recognized as a parent. As Professor Jeffrey Parness has written:

> An October 2016 draft of what became the 2017 Uniform Parentage Act added a new form of parentage. It says: (a) An individual is presumed to be the parent of a child if: . . . (6) the individual:
>
> (i) resided with the child for a significant period of time;
> (ii) engaged in consistent caretaking of the child;
> (iii) accepted full and permanent responsibilities as a parent of the child without expectation of financial compensation; and
> (iv) Established a bonded and dependent relationship with the child, and the other parent understood, acknowledged, or accepted the formation of that relationship or behaved as though the individual is a parent of the child.[143]

The UPA would only allow a person who claims to be a de facto parent to petition to be a parent. This was intended, as a policy matter, to prevent a situation where someone such as a stepparent could be compelled by a legal parent to become a parent with personal and financial obligations. Additionally, de facto parentage is limited to individuals who hold themselves out and behaved as if they were the child's parent. This provision is intended to mean that someone, like a grandparent, who fits every other criterion but never claims to be an actual parent (although they may be the only active parenting figure in the child's life), could not petition the court to be named a parent regardless of having a relationship that is in every other way a parenting relationship with the child.

While thirty-four states have arguably recognized some form of "equitable" parentage, only seven states have adopted UPA 2017.[144] The UPA recognition of more than two parents including a de facto parent may be viewed as an insignificant departure from many of the states' recognition of the actual role of third parties in a child's life where they have been acting as a parent, either with one or both legal parents or when the legal parents are not serving in a parenting or caretaking role in their child's life. Nevertheless, Professor Struss suggests, and state courts have found, that fundamental constitutional rights are implicated in a way that constrains courts from interfering with parental rights absent proof of harm such as abuse or neglect.

---

143 *See* Parness, *supra* note 20, at 160.
144 *See* Strauss, *supra* note 66, at 915.

Some scholars and policy makers argue that the passage of the UPA could significantly increase litigation with suits being filed by stepparents and others. In states that pass the 2017 version of the UPA that allows a child to have more than two legal parents, these cases have the potential of naming a third parent who shares parenting with a parent who did not choose to put the de facto parent in a position of being able to be adjudicated as a third parent.[145] One of the parents might have encouraged the role in the child's life and the holding out, while the other parent may not have been aware and might have objected to the holding out. Nevertheless, the objecting parent might find themselves sharing parenting with their former spouse or partner and *that* person's former spouse or partner. These cases could also involve situations where one or both parents have allowed others to care for and serve in the role of parents of a child. In these situations, the de facto parent would have to prove that not recognizing them as a de facto parent would be detrimental to the child usually based on factors for the best interests of the child. Under the UPA, the burden of proof for the de facto parent is clear and convincing evidence.[146]

Same-sex couples often have children when each child is the biological or adopted child of one parent. With assisted reproductions, these children, and children of heterosexual couples with donated gametes, might have other biological parents. The functional parent may be involved in the child's entire life and there may be no other legal parent, but in many states, that person would not have standing to pursue legal parentage unless the person adopts. The de facto parenting provisions of UPA 2017 would be a tool to allow same-sex partners to preserve their role in a child's life when they are not a biological or adoptive parent of the child, including where the parties separate or the biological parent is deceased.

---

145 *See* Courtney G. Joslin & Douglas NeJaime, *Multi-Parent Families, Real and Imagined*, 90 Fordham L. Rev. 2561 (2021).

146 *See* In the Interest of M.T., No. 05-20-00450-CV, No. 05-20-00451-CV, 2020 WL 5887086 *2 (Tex. App. Oct. 5, 2020) ("Because the fundamental liberty interest of parents in the care, custody, and control of their children is of constitutional dimensions, involuntary parental terminations must be strictly scrutinized. Troxel v. Granville, 530 U.S. 57, 65-66; In re K.M.L., 443 S.W.3d 101, 112 (Tex. 2014). In such cases, due process requires the petitioner to justify termination by clear and convincing evidence. FAM. § 161.001(b); In re E.N.C., 384 S.W.3d 796, 802 (Tex. 2012).").

The UPA 2017 allows states to address the situation where two parents separate and then re-partner with others and the new partners are involved in parenting the child. One parent may re-partner multiple times and those new partners might become functional parents. One parent might facilitate their partner becoming a de facto parent while the other parent objects to that role, which could lead to litigation. Thus, among various next questions is whether the de facto parent's custodial time comes from the parent who facilitated the de facto parent role or from both other parents' time, for example?[147] After all, there are 365 days in a year for the government in the form of courts to divide in these situations. This is a complex mixture of legal policy and empirically based research as to the benefits and risks of such a policy for children over a lifespan, if state legislatures and courts intend to recognize the legal status of de facto parents by passing the UPA 2017 into law.

Conclusion

Arguments based on functional parent doctrines will continue to emerge in states that have not adopted UPA 2017. More states may pass UPA 2017 legislation, and most are expected to allow de facto parentage status. The path to acceptance of functional or de facto parents by the courts in states that hesitate to embrace UPA 2017, will continue to vary. Overall, the prospect of uniformity is dim as individual litigants, trial judges, and appellate courts resist or accommodate changing family configurations. And underlying much of this debate these days, are complex political and social considerations

147 This possibility is not new as it was anticipated by the Uniform Commissioners when adopting Chapter Two of the ALI's Principles of the Law of Family Dissolution. *See* American Law Institute, Principles of the law of Family Dissolution, Analysis and Recommendations ch. 2 (2002); *see also* Dana E. Prescott, *The AAML and a New Paradigm for Thinking about Child Custody Litigation: The Next Half Century*, 24 J. Am. Acad. Matrim. Law. 107, 129 (2011) ("Moreover, if the commentators really mean for the approximation rule to conform to historical truth(s) then judges should, as a matter of accuracy, allocate non-parenting time to third parties. For example, if P(A) was parenting 63 percent of the time than 37 percent of non-parenting time is allocated to P(B). Of course, the dilemma is that P(B) actually parents 37 percent of the time while P(A) allocates 40 percent of her 63 percent to grandparents (GPs) or daycare, then 25.2 percent of actual parenting time should be allocated to P(A) and 37.8 percent to GPs.").

about the rights and needs of children which have morphed into attacks between groups in the public square and across state legislatures.

The "functional parentage doctrine" has long been recognized based on holding oneself out as the parent of a child. Historically the doctrine led men to find themselves obligated to pay child support.[148] This concept was codified and outlined in the first Uniform Parentage Act in 1973. Holding out is a type of imprecise determination of functional parentage because proof often depends on the facts presented by the petitioner. The doctrine developed in child support cases, and the petitioner (including the government paying welfare benefits) argued that the respondent be named a support obligor if he openly held out the child as his natural child. UPA 1973, UPA 2002, and UPA 2017 each changed the requirements to find "holding out" had occurred. When support statutes did not address the parental bond or attachment that arose, attorneys filed custody cases, with and without experts, seeking recognition as support obligors, de facto parents, and functional parents.[149] Arguably,

---

148 A variation is the debate about the BIC and functional parenting capacity in terms of the framework for determining rights and responsibilities to children. *See* Dana E. Prescott, *The AAML and a New Paradigm for Thinking About Child Custody Litigation: The Next Half Century*, 24 J. Am. Acad. Matrim. Law. 107, 145 (2011) ("The birth of a child is an event with infinite outcomes. The child may have resiliencies, disabilities, or unique capacities of body, mind, or spirit. The parents possess strengths and weaknesses that may bend, break, or evolve during the parenting relationship. What is true is that function and context at the time of family dislocation are the measure, not fractions. A child's life is a fluid, dynamic process of growth and attachment, not a linear equation but a series of complex adaptions to persons and environments.").

149 Care must be exercised when extrapolating social science literature and research to policy related to children, and sibling didactics, being raised in multiple homes with multiple caregivers. *See* Richard A. Warshak, *Social Science and Parenting Plans for Young Children: A Consensus Report*, 20(1) Psychol., Pub. Pol'y, & L. 46, 46 (2014) ("Social science provides a growing and sophisticated fund of knowledge about the needs of young children, the circumstances that best promote their optimal development, and the individual differences among children regarding their adaptability to different circumstances, stress, and change. Consequently, research focused on children whose parents never married, or whose parents separated or divorced, should inform guidelines to advance the welfare and define the best interests of those children; indeed, policymakers and practitioners in family law look to that research for such information. But the road from laboratories to legislatures and family law courtrooms is hazardous—fraught with potential for misunderstandings, skewed interpretations, logical errors, even outright misrepresentations. The hazards can be traced, in large

the holding out doctrine in many support statutes was not based on the best interests of the child who had bonded to the obligor. Nonetheless it should be expected that more holding out parents will also seek caretaking, custody, and visitation rights.

Holding out and functional parent developments continue to vary widely and may create problems if a child born to one of the partners moves to another state. Since less than half of the states have adopted UPA 2017 or UPA 2002, the case law in many states does not conform to the requirement of residing in the same household for the child's first two years of life, among other elements under the UPA. States may or may not provide the opportunity to rebut the presumption of parentage within the first two years. The functional parent doctrine based on de facto parentage and other equitable principles to recognize a non-genetic parent may be brought by the person seeking parentage. The review of the states that do not rely on UPA 2017 demonstrates the wide range of results when de facto or other types of equitable parentage are raised. These are the range of takeaway observations about functional parentage beyond the "holding out" cases:

- In the two 2002 UPA states, Texas appears to be loosening the heterosexual parent model on a case-by-case basis, while the Delaware judiciary has decided to extend interpretation of parentage to same-sex couples followed by legislative amendments.[150]
- States with no twenty-first century UPA legislation may resist changes to extend functional parentage as seen in Florida, Ohio, and Virginia. The argument has been considered and rejected in Florida and Ohio.[151] Litigants will knock at the door; however, to date change is not happening based on caselaw or new legislation.
- Michigan cases recently outlined a narrow exception and a three-part test to establish equitable parent status, as well as granting a partner who acted as gestational carrier for the partner's fertilized egg to term recognition as a parent.

---

measure, to differences between science and advocacy. Scientific approaches to a literature review aim for a balanced, accurate account of established knowledge and of unresolved issues that require further investigation.").

150 *See supra* discussion in text at notes 128-129, 140-141.

151 *See supra* discussion in text at notes 86-87, 91-93.

- While Virginia and Texas recognize non-biological, non-adoptive parental relationships in probate court, it is not clear this will lead to establishing parentage in custody court.[152]
- Both Pennsylvania and New Jersey courts, without passage of UPA 2017, have recognized functional parenting rights when litigants seek parentage or custodial status. Pennsylvania has updated its standing options for third parties to allow functional parent custody rights in at least three categories, without granting legal parentage.[153]
- While the de facto and other forms of functional parent doctrines have led to states awarding physical custody or only caretaker rights, this is not the recognition of all privileges of being treated as a legal parent. De facto parentage in UPA 2017 with states like California and Delaware will recognize three parents.[154] The litigants who seek recognition as parents who do not have a genetic, adoption or contractual claim may find themselves a source of support for the child when they argue their custodial rights are important to the child's sense of belonging. Whether change is by statute or litigation, functional parents will seek their parental status. Among the states adopting a form of UPA 2017 variations will continue and each parent must be wary if the child or the family move to a different jurisdiction. The prospect of uniformity is dim, but not dark.

---

152 *See supra* discussion in text at notes 98-100, 125-135.

153 *See supra* discussion in text at notes 105-117, 101-104.

154 *See supra* discussion in text at notes 47, 58-60, 142. There are limitations of this application decided in California. *See supra* note 47.