

## MEMORANDUM

TO: Courtney Joslin  
Jamie Pedersen

COPY: Barbara Atwood  
Lindsay Beaver

FROM: Jeff Atkinson

DATE: January 21, 2017

Re: Parentage Act – Comments regarding de facto parents and numerosity

I'll offer some comments and questions regarding de facto parents and numerosity (Section 201, 205 and article 6). My comments are based on the October 2016 Meeting Draft – Alternative B. (It is my understanding that a new draft has been prepared since the October meeting, but I have not seen it.) Feel free to post or circulate my comments.

1. Do you intend that an individual's status as a de facto parent can be asserted by someone other than the alleged de facto parent? I assume the answer is "Yes." I suggest including explicit comment to that effect. [Section 602(c) speaks of "an individual who asserts parentage under Section 205," but Section 602(b) gives standing to several categories of individuals who may maintain an action to adjudicate parentage, including the biological parent, child, and support enforcement agencies.]
2. As I have commented before, I think the definition of de facto parent in Section 205 is overloaded with redundant phrasing (as are some of the statutes and standards on which Section 205 is based.) – E.g., "fully and completely undertook," "unequivocal, committed, and responsible," "full and permanent responsibilities." I'll offer a paired-down definition at the end of this memo.
3. The Maine statute requires clear and convincing evidenced to adjudicate a person to be a de facto parent. Maine Statutes, tit. 19-A, section 1891(3) (2016). Do you want to do the same? I think that burden of clear and convincing evidence is appropriate since declaring someone to be a de facto parent can be viewed as an encroachment on the traditional rights of biological or adoptive parents.
4. Regarding Section 205(a)(4), I think the elements of a bonded and dependent relationship and the fostering of the relationship by another parent are separate concepts that are better handled as separate elements in the definition.

5. As I think the committee has discussed before, in Section 205(a), “bests interests of the child” is not part of the definition of being a de facto, although best interests could be considered in deciding whether to grant de facto parent status and what rights to give.
6. Section 602(c) provides moderately detailed pleading requirements regarding de facto parents. I think those requirements might fit better – and be easier for attorneys and judges to apply – if there were located in Section 205.
7. The ALI Principles – Section 2.03(1)(c) [and the Non-Parent Act] -- do not require support or acceptance of the parent-like relationship of a de facto parent if the parent has completely failed to exercise parental responsibility. Do you wish to do the same for the parentage Act?
8. I support including de facto parents as persons with right as parents – for the benefit of both children and de facto parents in preserving a very important relationship. I also will note that in some cases, it may be difficult to distinguish between a de facto parent and very involved stepparent (or very involved cohabitant). Both de facto parents and very involved stepparents may engage in a great deal of caretaking and have a bonded and dependent relationship with the child. Presumably, the outcome in such cases will turn on the degree to which the relationship is “permanent” and “unequivocal” . . . . There is some analogy to marriage vows. The vows may say “til death do us part,” but the vow is not kept when the breakdown in the relationship is irreconcilable.
9. Regarding Section 612(4), I support allowing a court to find that more than two individuals can be parents if the court finds it would be detrimental to the child not to do so.

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10. Here is my proposed, simplified draft of the definition of “de facto parent.”

(a) A de facto parent is an individual who undertook an unequivocal parental role in the child’s life during the child’s minority. Such a finding requires a determination by the court [by clear and convincing evidence] that:

- (1) the individual resided with the child for a significant period of time;
- (2) the individual engaged in consistent caretaking of the child;
- (3) the individual accepted permanent responsibilities as a parent of the child without expectation of financial compensation;
- (4) the individual established a bonded and dependent relationship with the child; and

(5) the individual's relationship with the child was fostered or accepted by another parent of the child [, except that if the parent has (completely) failed to exercise parental responsibility, the fostering or acceptance of the relationship by the parent is not required].