



**ERICSA 62ND ANNUAL
TRAINING CONFERENCE & EXPOSITION**

MAY 18-22, 2025

NORFOLK

VIRGINIA

Determination of Parentage Across State Lines

Speakers:

- Theodora “Teddy” Andreopoulos, Support Magistrate, Bronx County Family Court
- Diane Potts, Center for Child Support Policy, Co-Founder and Director

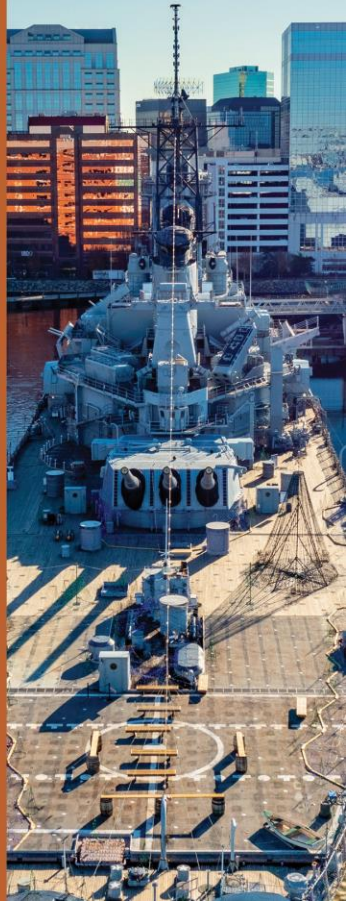
Moderator:

- Laura Stone, Director Child Support Division, Deputy Prosecuting Attorney, Porter County Prosecutor's Office



Purpose of the Presentation

Recently, states have begun using the term “parentage” instead of “paternity.” But what has actually changed? This workshop will discuss the differences in handling this topic when more than one jurisdiction is involved, differing state laws regarding establishing and recognizing parentage between different and same sex parents, what legally constitutes marriage (including foreign or international “marriages”), the nuances of determinations of parentage through a divorce judgment, the difference between a Voluntary Acknowledgment of Paternity/Parentage and a Birth Certificate, and much more. This session will have information that is useful to attorneys and caseworkers alike.



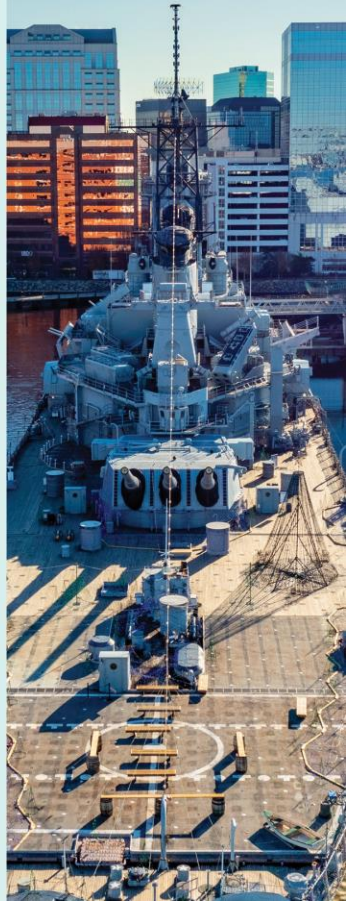
Agenda

- Learn the intergovernmental rules set by the Uniform Interstate Family Support Act (UIFSA) for parentage establishment
- Hear what the Uniform Parentage Act of 2017 says about personal jurisdiction over a nonresident for parentage establishment
- Discover what the Hague Treaty says about international parentage establishment
- Examine how one state—New York—handles same-sex parentage establishment as well as petitions for support based upon an intergovernmental parentage establishment



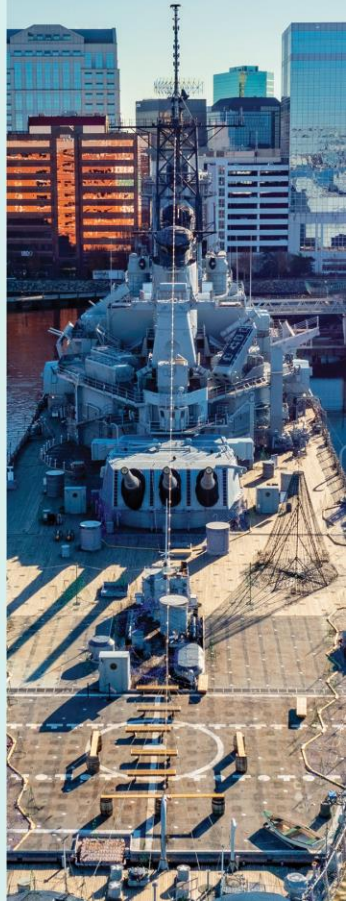
UIFSA's Interstate Parentage Establishment Options

- “Parentage” in UIFSA, not “Paternity”
- If noncustodial parent lives in another state, IV-D agency has two options to establish parentage or support order:
 - One-state remedies through long-arm jurisdiction
 - Two-state interstate IV-D case



One-State Establishment Option

- Benefits are that YOUR state's tribunal will apply its:
 - State guideline to determine amount of support
 - State law to determine parentage if necessary
 - State law to determine other issues
- YOUR state will continue to have Continuing, Exclusive Jurisdiction to modify the order as long as parent or child resides in your state
- For same-sex parentage establishment, your laws apply!
- **But your state must have** long-arm jurisdiction over the nonresident parent

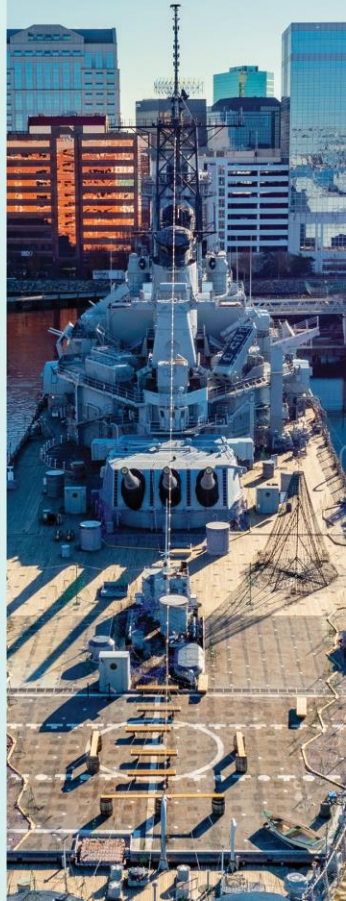


Long-Arm Jurisdiction

SECTION 201. BASES FOR JURISDICTION OVER NONRESIDENT

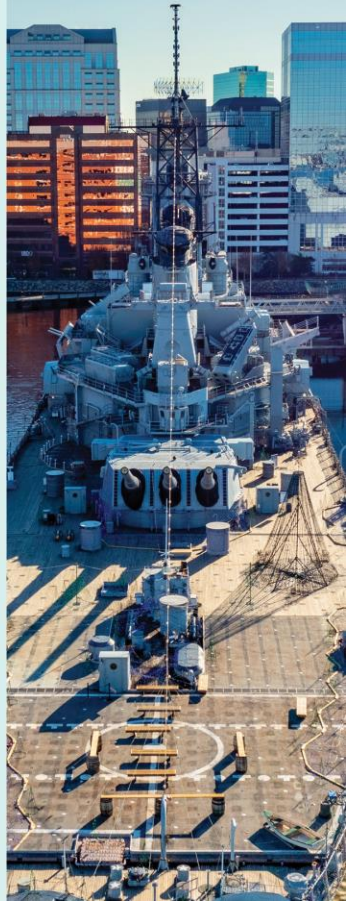
(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual [or the individual's guardian or conservator] if:

- (1) the individual is personally served with [citation, summons, notice] within this state;
- (2) the individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) the individual resided with the child in this state;



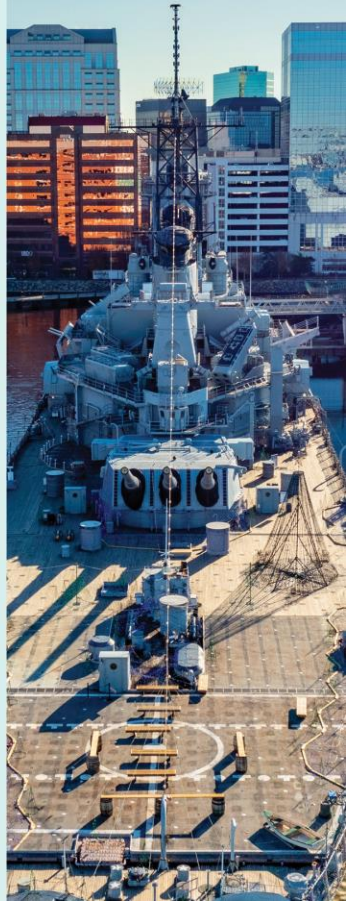
Long-Arm Jurisdiction (continued)

- (4) the individual resided in this state and provided prenatal expenses or support for the child;
- (5) the child resides in this state as a result of the acts or directives of the individual;
- (6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (7) Optional: the individual asserted parentage of a child in the putative father registry maintained in this state by the appropriate agency; or
- (8)] there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.



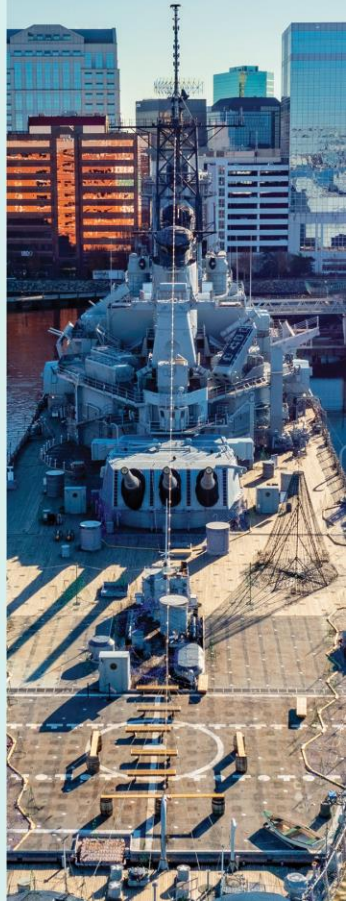
One-State Establishment Option

- Because of the benefits—YOUR laws, guidelines and amounts, procedures, CEJ—it is important to consider the one-state option
- Due to COVID-19, many jurisdictions have gone to videoconferencing for child support cases
- Physical presence of nonresident parent is not required for establishment
- This presents an excellent opportunity to see if the nonresident parent will submit to the jurisdiction of YOUR state by:
 - Consenting in the record (orally or in writing);
 - Entering a general appearance; or
 - Filing a responsive document having the effect of waiving any contest to personal jurisdiction



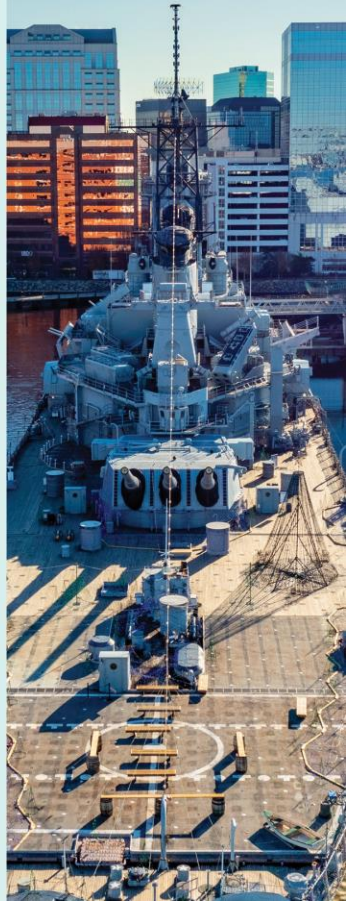
Assistance from the Jurisdiction of the Nonresident Parent

- If state exercises long-arm jurisdiction, tribunal in noncustodial parent's state may:
 - Communicate with tribunal issuing order
 - Obtain discovery from noncustodial parent on income and assets
 - Receive evidence
- Evidence may include:
 - Affidavit
 - Electronic documents
- YOUR tribunal must permit nonresident parent to testify by telephone, audiovisual, or other means at designated tribunal or other location



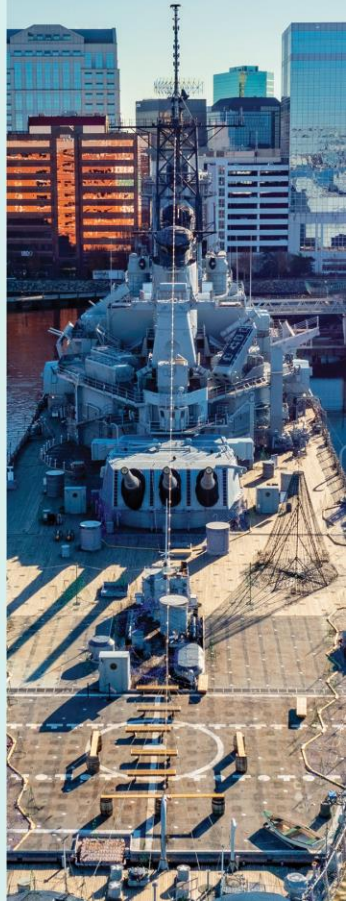
Two-State Case

- State must initiate two-state case if:
 - No personal jurisdiction or
 - One-state remedies are not appropriate or successful
- In two-state establishment case, state providing services to one parent sends case to state with personal jurisdiction over other parent, usually where other parent resides
- Benefit – once parentage is established in the responding jurisdiction, non-parentage cannot be plead as a defense in any other jurisdiction under UIFSA (section 315)



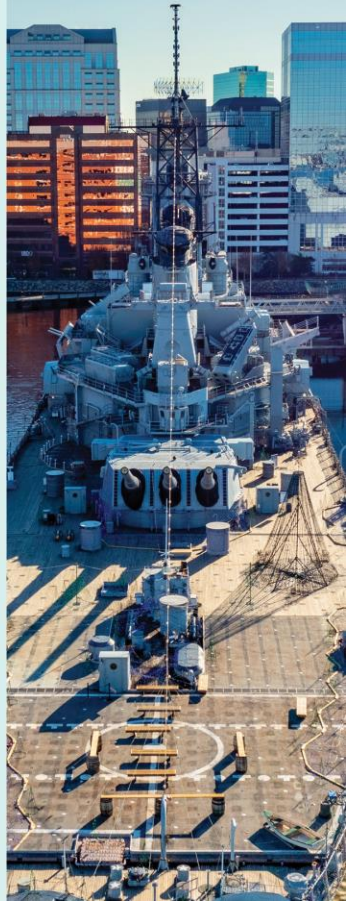
Two-State Case

- For a same-sex parentage establishment case, considerations include:
 - Does the responding state's law recognize same sex parentage establishment?
 - Does the child support agency in the responding state provide same-sex parentage establishment services?
 - Does the parent applying for services want parentage establishment in the other parent's state?
 - Anything else to consider?



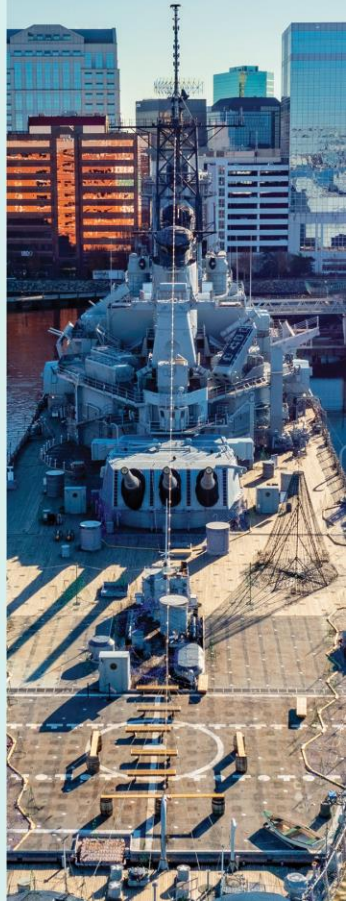
Uniform Parentage Act of 2017

- Designed to protect children born to same sex parents
- More states are adopting the UPA in full or in part
- UPA allows same sex parentage acknowledgements of parentage
 - Rise as establishment option
 - Not expensive like second parent adoptions
 - Safe because full faith and credit are afforded by other states



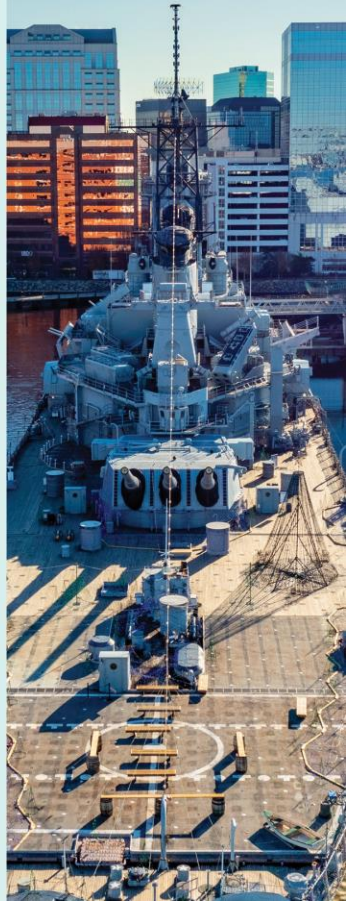
Uniform Parentage Act of 2017

- UPA recognizes “intended parents”
 - Parentage establishment based on actions to impregnate one partner whether at medical facility or not
- UPA adopts UIFSA’s personal jurisdiction provisions
- But lack of jurisdiction over one possible parent (biological, i.e., sperm donor) does not prevent establishment of another possible parent (intended)
- For more information: <https://ericsa.org/wp-content/uploads/2022/10/Revised-Draft-Information-Sheet-on-Highlights-of-the-UPA.pdf>



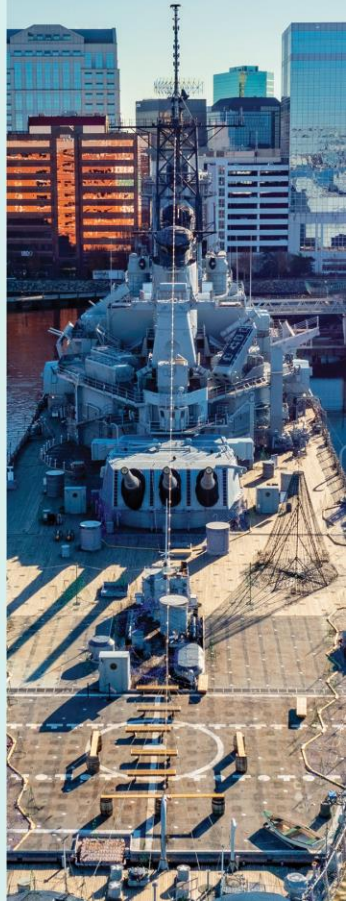
Hague Treaty: International Cases

- Compromise on personal jurisdiction
- Most countries recognize “creditor-based” jurisdiction for establishment of child support
- The U.S. requires “minimum contacts” with the forum
- The U.S. took a “reservation” concerning jurisdiction based upon “creditor’s habitual residence,” parties agreement to jurisdiction, or jurisdiction based upon parental responsibility or nationality of a party
- Article 20(5) provides that: “A Contracting State shall, if recognition of a decision is not possible as a result of a reservation...and if the debtor is habitually resident in that State, **take all appropriate measures to establish a decision for the benefit of the creditor.**” (emphasis added)



Time to Look at a Specific Jurisdiction

- New York was selected
- Like many states, New York has a complex body of law for parentage establishment
- Examining one state's laws will demonstrate what needs to be considered and researched when deciding to send a two-case to another jurisdiction, especially for same sex parentage establishment
- Let's Go!



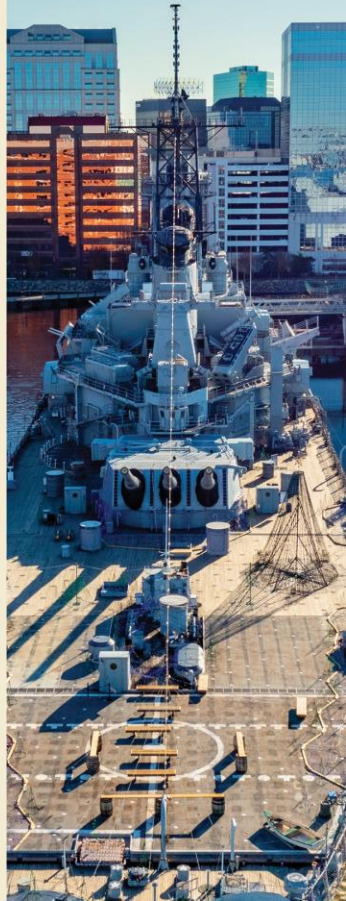
A photograph of the Statue of Liberty on the left, standing on its pedestal in the water. In the background, the New York City skyline is visible across the water, featuring numerous skyscrapers under a cloudy sky. The entire image is framed by a white, hand-drawn style border.

New York

Parentage Across State Lines

-Determining Parentage: Petitions for Parentage

-Parentage Established: Petitions for Support

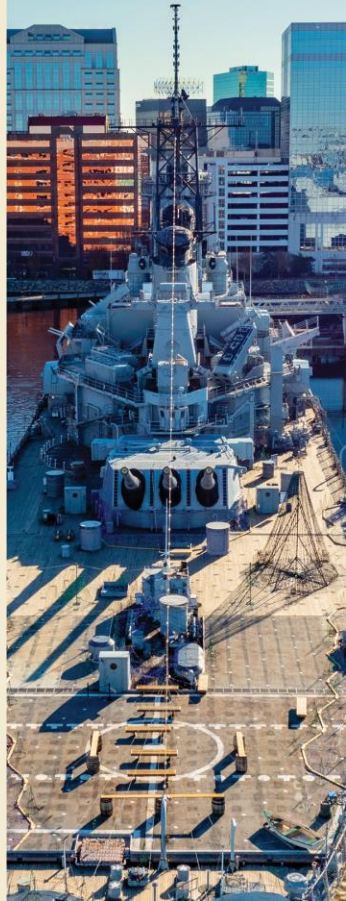


Determining Parentage through Petitions for Parentage

For intergovernmental cases, the responding jurisdiction's law applies for the determination of parentage. Family Court Act (FCA) §580-303.

Determining parentage:

- through Genetic Market Testing of both parties and the child;
- through consent of the parties; or
- through a paternity trial

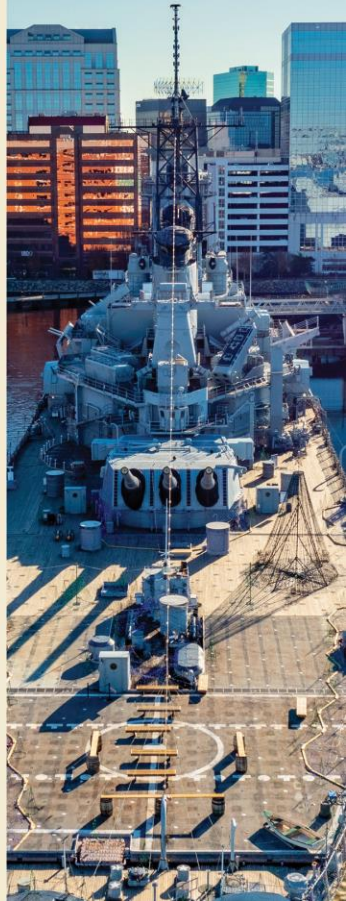


Determining Parentage through Petitions for Parentage

Reviewing the birth certificate for the child in the petition:

If there is another father listed on the child's birth certificate, was that person adjudicated to be the legal father?

- Whether there was a judicial determination establishing that person as the father of the child;
- Whether the mother and father were married; or
- Whether the mother and father signed an Acknowledgment of Parentage or similar document in the state where the child was born.

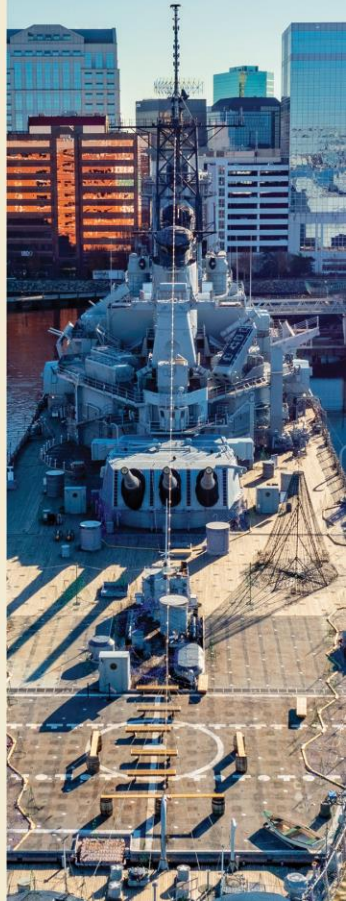


Determining Parentage through Petitions for Parentage

For intergovernmental proceedings, UIFSA (Uniform Interstate Family Support Act) grants the responding state the authority to issue an order of parentage in according with the responding state's laws. FCA § 580-303

In both local proceedings and intergovernmental proceedings, the Family Court in New York has the same jurisdiction to hear petitions for parentage:

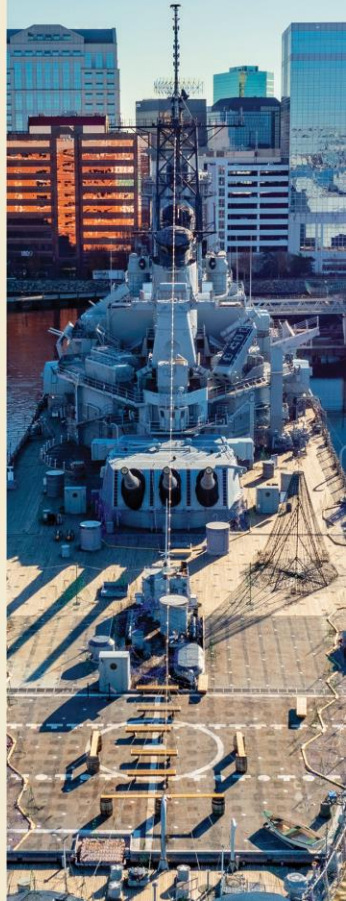
“The Family Court has clear and unquestionable subject matter jurisdiction—both constitutionally and statutorily—to adjudicate the mother's petition to determine parentage and resulting child support.” See NY Const, art VI, § 13 [b] [4], [5]; *Matter of H.M. v E.T.*, 14 N.Y.3d 521 at 527, 930 N.E. 2d 206 at 209 (Ct. of App. 2010)



Determining Parentage through Petitions for Parentage

In *Luna v. Dodson*, 97 N.Y.2d 178 ; 763 N.E.2d 1146 (Ct. of App. 2001) the New York Court of Appeals found that the dismissal of a petition for parentage in a Connecticut Court due to procedural issues and not on the merits did not preclude a petition for parentage filed in New York from proceeding: the Court of Appeals held that the principle of *res judicata* did not apply.

“Connecticut law recognizes that a child has substantial personal and financial interests in the identification of his or her parent. Indeed, the Connecticut Supreme Court has referred to the state's interest in a paternity proceeding concerning a child on public assistance as manifest and enduring. Similar to New York, Connecticut statutes facilitate these interests by mandating blood testing in paternity proceedings and acknowledging the capacity of tests to establish paternity by creating a presumption of paternity based on the results.” *Id.* at 185.



Determining Parentage through Petitions for Parentage

Marital presumption of legitimacy:

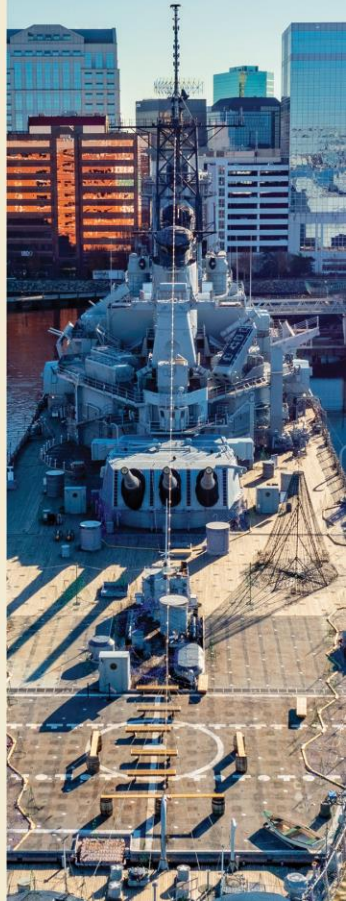
Has the biological mother ever been married? If so to whom?

If there was a marriage-were there divorce proceedings and was a judgment of divorce issued?

If so, it is necessary to review the full copy of the divorce judgment:

In New York, there may be a reference to a Referee's Report and/or Stipulation or Settlement.

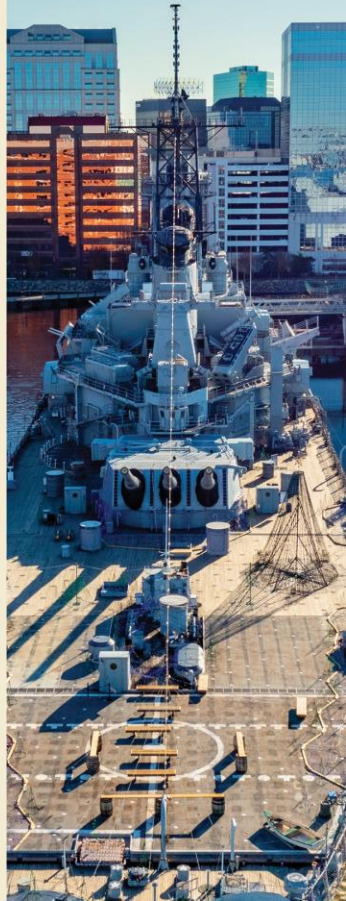
None of the impediments to jurisdiction is present. The parties here have never been married, and therefore have no pending or possible divorce proceeding. There is no preexisting child support order. *Matter of Puyi T. v. Justin L.*, 63 Misc. 3d 885, 890, 98 N.Y.S.3d 399, 402 (Fam. Ct. 2019)



Determining Parentage through Petitions for Parentage

Marital presumption of legitimacy for a marriage between the mother and another person: addressed through divorce proceedings?

- **Divorce Judgment silent regarding any children of the marriage:** Petition for parentage may proceed but ex-spouse may need to be joined as a necessary party;
- **Divorce Judgment states that the child is a child of the marriage:** Divorce Judgment will need to be amended to address the issue of parentage of the child in the petition;
- **Divorce states that the child is not a child of the marriage:** petition for parentage may proceed.

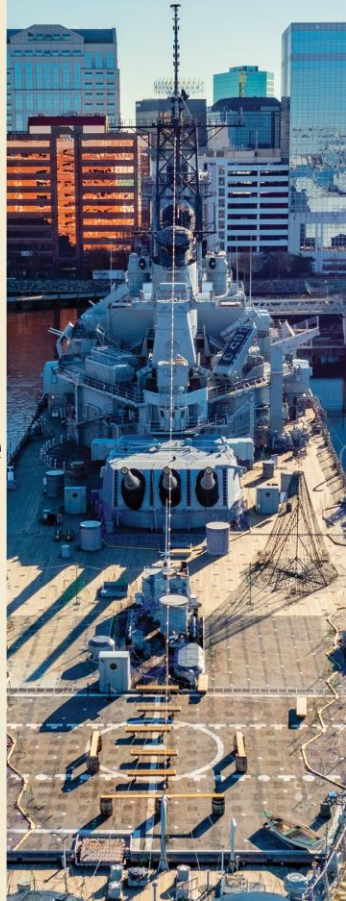


Determining Parentage through Petitions for Parentage

In the Matter of H.M. v. E.T., 14 N.Y.3d 521, 930 N.E. 2d 206 (Ct. of App. 2010) the New York Court of Appeals held that the Family Court's subject matter jurisdiction includes petitions for parentage between same-sex couples:

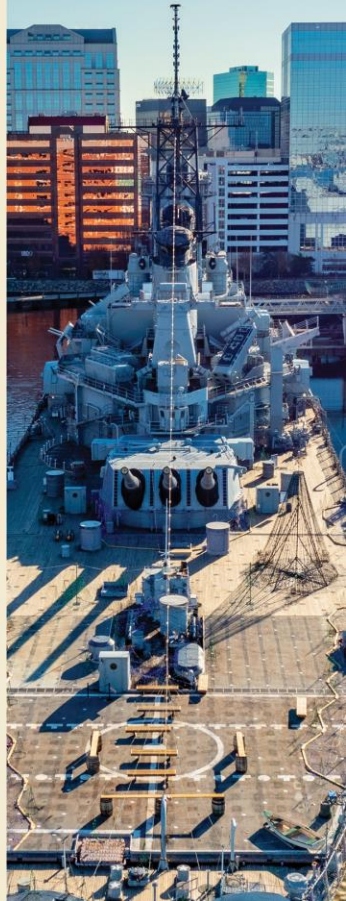
“Because a Family Court unquestionably has the subject matter jurisdiction to ascertain the support obligations of a female parent, it also has the inherent authority to ascertain in certain cases whether a female respondent is, in fact, a child's parent.” *Id.* at 527.

“The Family Court has subject matter jurisdiction to adjudicate a woman liable for support of a child she intentionally caused to be brought into the world.” *Id.* at 527.



Order for Genetic Marker Testing

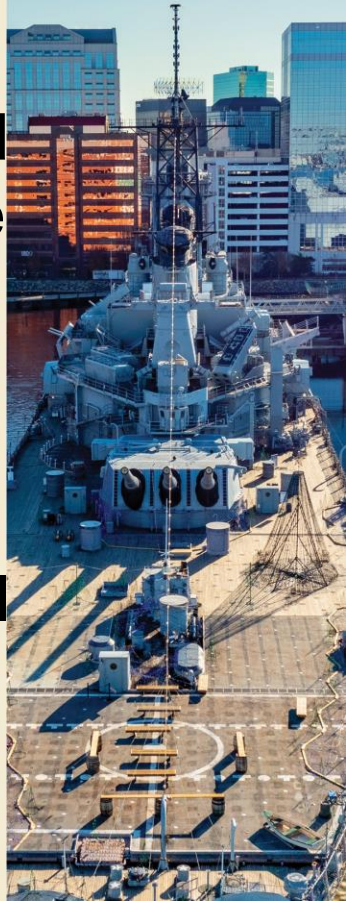
- Parties advised of their right to genetic marker testing.
- On the motion of either party or the Court's own motion, an Order for Genetic Marker Testing may be issued.
- However, FCA § 532 states that no such test shall be ordered upon a written finding that it is not in the best interests of the child based on *res judicata*, equitable estoppel or the presumption of legitimacy of a child not to a married woman.



Equitable Estoppel

- When a parent figure has established a relationship with the child that is so strong that the child has relied on that relationship and would be harmed if an Order for Genetic Marker Testing was issued.

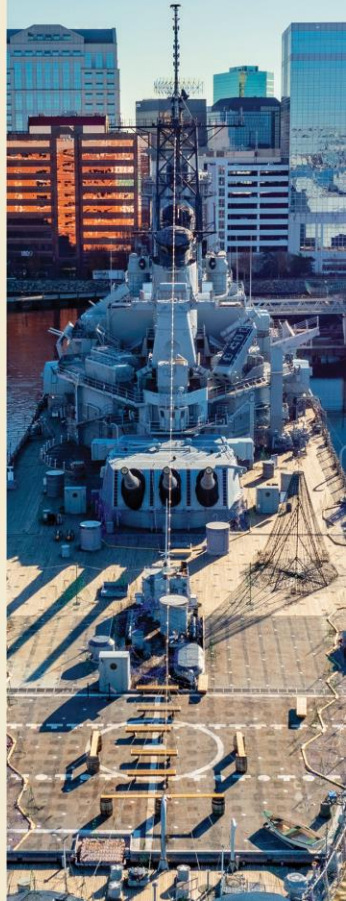
- *Matter of Amber N. v. Andrews S.*, 200 A.D.3d 466 (1st Dept 2021) (Leave to appeal dismissed by *Matter of Amber N. v. Andrew S.*, 38 N.Y.3d 940 (2022)) the father was estopped from denying paternity. The parties had been married but their marriage was annulled. However, the father's name was listed as the father on the child's birth certificate and the father held himself out to be the child's father. Even though the child and the father had a limited relationship after the father had assaulted the child, the father was not entitled to genetic marker testing in order to remove his doubts that he was the father. The Appellate Department referenced the child's strong bond with his paternal grandfather and great-grandfather in denying the father's application for genetic marker testing.



Equitable Estoppel

- *Matter of Shondel J. v. Mark D.*, 7 N.Y.3rd 320 (Ct. of App. 2006)

Respondent had executed an affidavit in the child's birth country, Guyana, stating that he was the child's father and accepted all rights and responsibilities, including child support. The child had his last name and established a relationship. When the child was approximately four years old, the Petitioner-mother commenced a proceeding seeking orders of filiation and child support. The Respondent at first did not contest paternity but later requested genetic testing. Court held that he was estopped from denying paternity because the child had relied on his representations that he was the child's father. Respondent's subsequent renouncing of paternity and his termination of relationship with child did not preclude the application of equitable estoppel. The Court of Appeals held that the New York Family Court's principal purpose in paternity and support proceedings is to serve the best interests of the child.

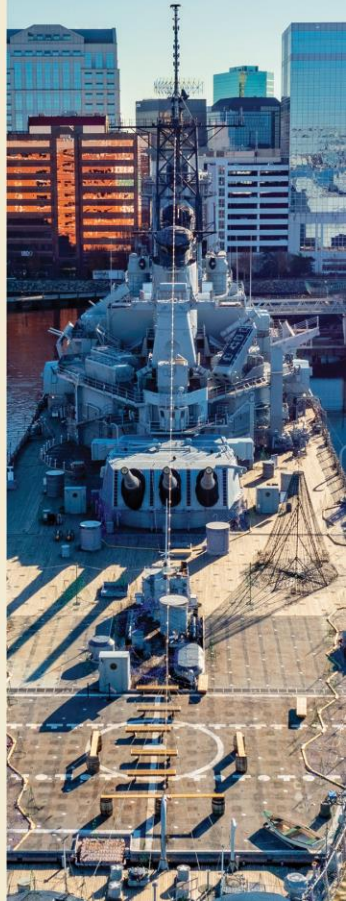


Determining Parentage through Petitions filed under the Child-Parent Security Act

The Child-Parent Security Act passed in 2020. The new statute established a judicial procedure for establishing parentage in cases involving assisted reproduction except those in which a person acting as a surrogate contributed the egg used in conception.

The purpose of this law is to legally establish a child's relationship to their parents where the child is conceived through assisted reproduction, except for children both to a person acting as surrogate who contributed the egg used in conception. Family Court Act (FCA) §580-101

The Child-Parent Security Act does not apply to the birth of a child conceived through sexual intercourse.

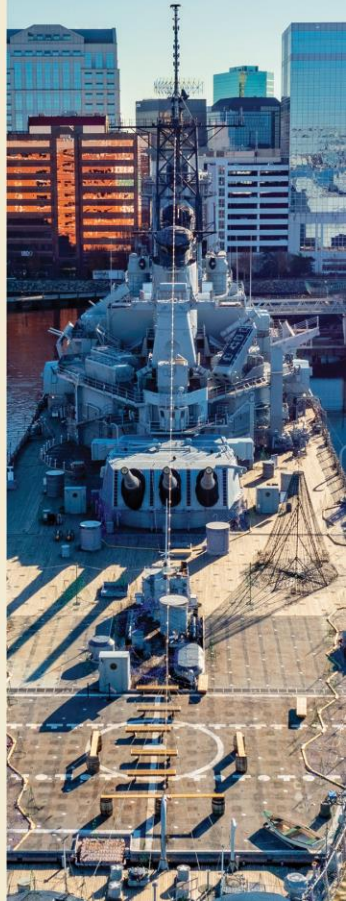


Determining Parentage through Petitions filed under the Child-Parent Security Act

The Child-Parent Security Act passed in 2020. The new statute established a judicial procedure for establishing parentage in cases involving assisted reproduction except those in which a person acting as a surrogate contributed the egg used in conception.

A parentage judgment may be made prior to, but does not take effect until, the child's birth. FCA §201(b).

Petitions to establish parentage for a child born through assisted reproduction and surrogacy agreements.

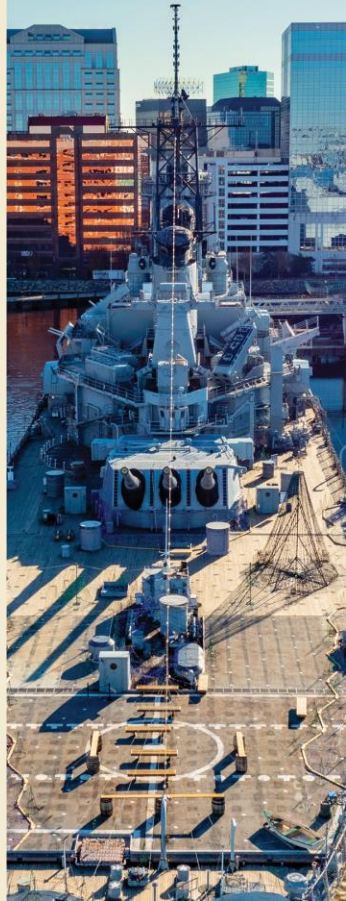


Determining Parentage through Petitions filed under the Child-Parent Security Act

In the *Matter of A.B. v. M.S.*, the biological mother (A.B.) and her partner (M.S.) signed an “Intrauterine Insemination Consent Form” before the conception of the child.

After the child was conceived but before the child was born, the parties separated. Subsequently, M.S. filed a petition to establish parentage of the child who was due to be born on a future date, pursuant to FCA §581-202. A.B., through her attorney, objected to the petition and was advised of her right to a hearing. The Support Magistrate clearly informed A.B. that if she chose not to request a hearing, that he intended to enter an order and judgment of parentage based on M.S.’s petition and the attached “Intrauterine Insemination Consent Form” executed by both parties. A.B. consulted with her attorney and subsequently waived her right to a hearing.

Matter of A.B. v. M.S., 77 Misc. 3d.1138, 181 N.Y.S.3d 423 (Fam. Ct. Ulster Cty. 2022)

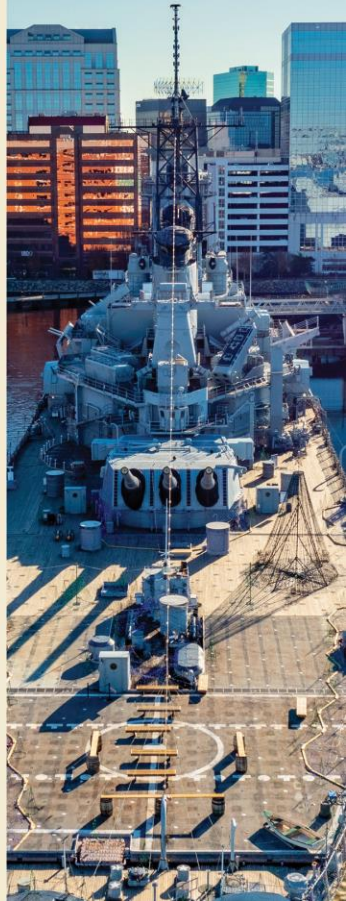


Determining Parentage through Petitions filed under the Child-Parent Security Act

The Support Magistrate entered an “Order and Judgment of Parentage” holding that upon the child’s birth, A.B. and M.S. would be the legal parents of the child who was expected to be born and upon the child’s birth they would assume responsibility for the child’s maintenance and support.

The Family Court in Ulster County denied A.B.’s objection and stated that this case was exactly the same type of situation the statute was designed to address: a same-sex couple made a decision to have a child together, although only one of the parents would be biologically related to the child. The same-sex, non-gestating parent now has the same protections as those that would be afforded to a non-gestating party who would be biologically related to the child, provided that the intent to act as co-parents was clearly manifested at the time of conception.

The Family Court held that the requisite intent and consent was found in the “Intrauterine Insemination Consent Form” and A.B. waived her right to prove otherwise. The Family Court affirmed the Support Magistrate’s determination of parentage.

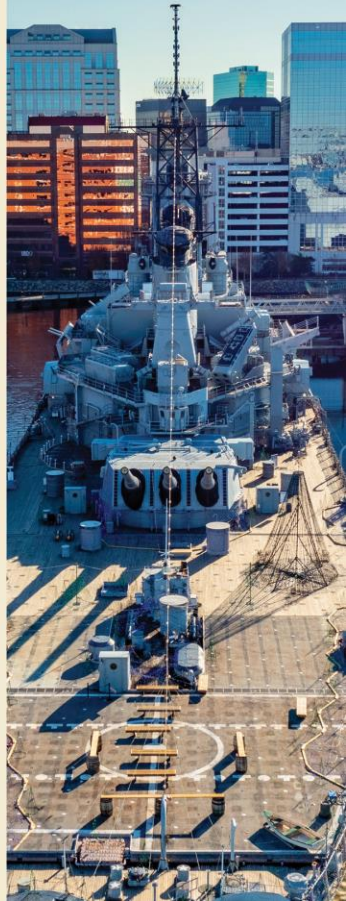


Determining Parentage through Petitions filed under the Child-Parent Security Act

A proceeding for the judgment of parentage of a child conceived pursuant to a surrogacy agreement, may be commenced after the execution of the agreement and before the conception of the child.

Petition must be verified and must include the following information:

- (1) A statement that the person acting as surrogate or at least one of the intended parents has been a resident of the state for at least six months at the time the surrogacy agreement was executed; and
- (2) A certification from the attorney representing the intended parent or parents and the attorney representing the person acting as surrogate that the requirements of a valid surrogacy agreement have been met; and
- (3) A statement from all parties to the surrogacy agreement that they knowingly and voluntarily entered into the surrogacy agreement and that the parties are jointly requesting the judgment of parentage.

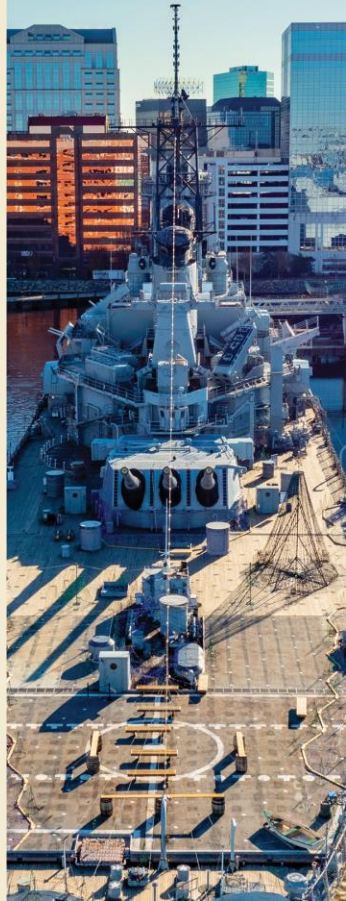


Determining Parentage through Petitions filed under the Child-Parent Security Act

Matter of Anonymous, 222 N.Y.S.3d 917, 2024 N.Y. Misc. LEXIS 19019 (2024)

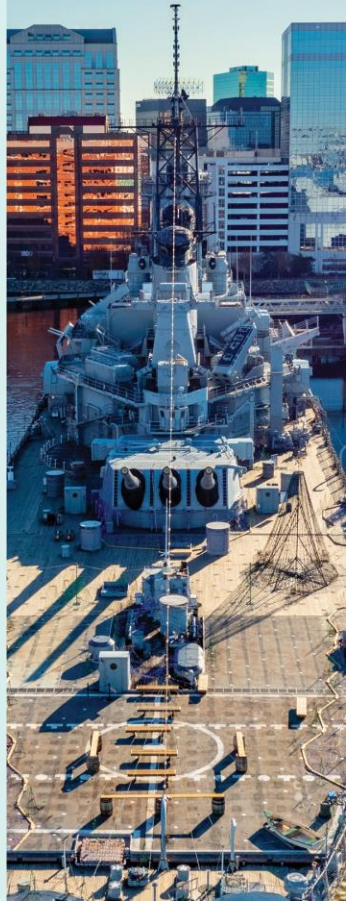
The surrogacy agreement substantially complied with the Parent Security Act, even though it predated the Act, because the surrogate met all the necessary requirements. It is in the child's best interests to have the intended parents declared as legal parents, providing security and conforming the legal status with the reality of the situation.

FCA § 581-701 instructs that the legislation underpinning parentage matters is remedial and is to be construed liberally to secure the beneficial interests and purposes thereof for the best interests of the child. As to surrogacy agreements, strict compliance with Part 4 of Article 5-C is not required, and the Court may enforce surrogacy agreements that substantially comply with the requirements



Parentage Established

- Marital presumption of legitimacy: marriage certificate: parties are still married and child is determined to be a child of the marriage
- Divorce Judgment: parties were married and are divorced and child is listed as a child of the marriage
- Acknowledgment of Parentage
- Order of Filiation
- Order of Adoption

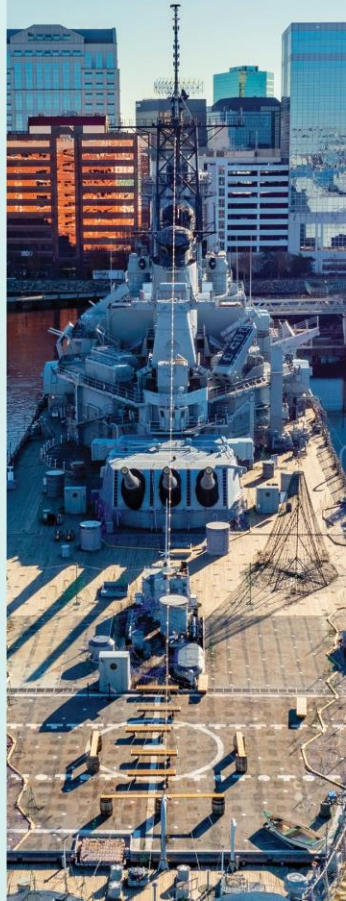


Parentage Established

Marital Presumption in New York:

In NY, FCA §417 states that a child born during or before a marriage is determined to be a child of the marriage.

“A child born of parents who at any time prior or subsequent to the birth of said child shall have entered into a ceremonial marriage shall be deemed the legitimate child of both parents for all purposes of this article regardless of the validity of such marriage.”

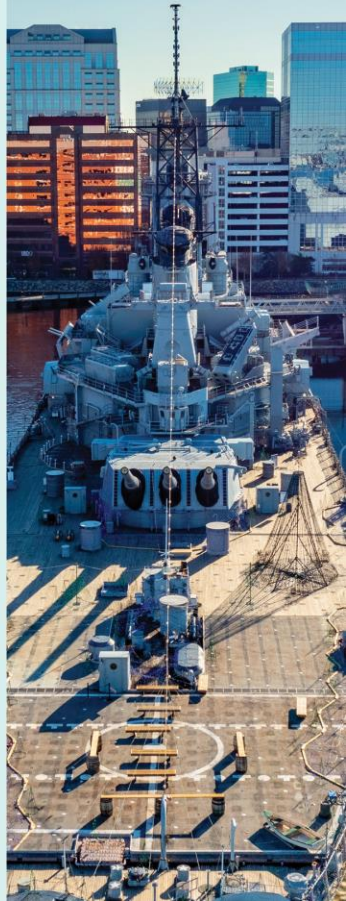


What constitutes a valid marriage for child support?

Domestic Relations Law (DRL) §13 sets for the following requirements for determining a legal marriage:

1. Parties should have obtained a marriage license;
2. If there was no marriage license, marriage will not be void where the marriage was “solemnized” between persons of full age: 18 years or older. If a party is 17 years of age needs approval by a Judge of Family Court or Justice of the Supreme Court (DRL §13-b, DRL §15-a)
3. No one under the age of 17 may be married in New York state. (DRL §15-a)
4. A marriage is “solemnized” when it is performed by any of the following individuals pursuant to DRL § 11
5. Clergyman or minister of any religion.
6. A leader of The Society for Ethical Culture (or “any other Ethical Culture Society affiliated with the American Ethical Union”)
7. Current or former governors, mayors, county executives or police justices
8. Judges, justices, clerks of the appellate divisions of the supreme court in each judicial department, and certain retired city clerks.
9. Peacemaker Judge from any duly designated Indian tribal court.

A written contract of marriage signed by both parties and at least two witnesses, signed by all within the state of New York. DRL §12(4). The contract must state the residence of the parties and witnesses, the date and place of marriage, and must be acknowledged before a judge of a court of record of this state by the parties and witnesses in a manner sufficient to record a deed. (i.e. notarized in substantial compliance with Real Property Law §309-a)

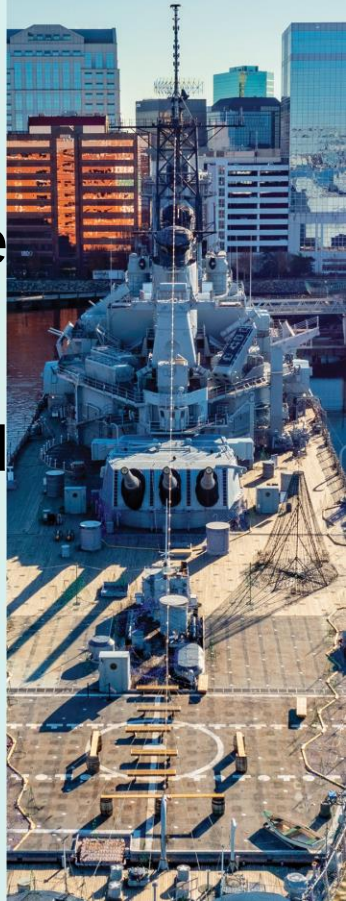


Parentage Established

Marital Presumption of Legitimacy

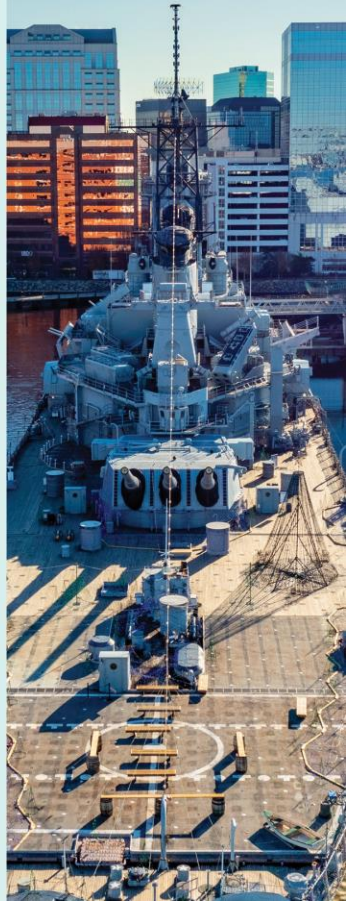
In the matter of Commissioner of Social Services v. B. C.
147 A.D.3d 1; 43 N.Y.S.3d 342 (1st Dept 2016)

The family court did not abuse its discretion in finding that the father and the mother entered into a ceremonial marriage, thereby giving rise to the presumption that the child was a legitimate child of the marriage and entitled to support, FCA §417, because testimony by several witnesses and photographic evidence demonstrated that the father and the mother were married in an Islamic religious ceremony; the father failed to rebut the presumption of legitimacy by clear and convincing evidence.



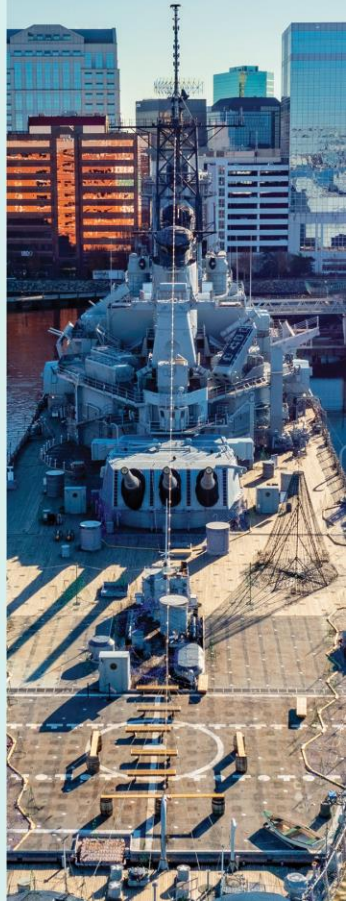
Parentage Established

- An Acknowledgment of Parentage (AOP) shall establish the parentage of and liability for the support of a child pursuant to the FCA. Such acknowledgment must be reduced to writing and filed pursuant to the applicable section of the Public Health Law in the district in which the birth occurred and in which the birth certificate has been filed. No other judicial proceedings are required to ratify an unchallenged AOP.
- FCA § 516-a
- In New York, the name of the father on the child's birth certificate is an indication that an Acknowledgement of Parentage was executed by the parties for the child.



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- In New York, the name of the father on the child's birth certificate is an indication that an Acknowledgement of Parentage was executed by the parties for the child.
- ERICSA's website includes a brief overview of statutory guidance on whether a certified copy of a birth certificate may be deemed to be prima facie evidence of parentage (current as of March 10, 2023)
[Vital Statistics as Prima Facie Evidence final draft](#)



Questions?

Thank you!



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