

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
Third Reader

Senate Bill 215

(Senator Kelley)

Finance

Health and Government Operations

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Maryland Department of Health - Birth Registration - Gestational Carriers

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This bill requires, if applicable, that a copy of the order of the court establishing parentage be attached to a birth certificate. In any case that involves a “gestational carrier” in which parentage is determined by a court of competent jurisdiction, the forms provided by the Secretary of Health must record specified information. On receipt of the forms and order of the court establishing parentage, the Division of Vital Records (DVR) in the Maryland Department of Health must immediately (1) seal the forms provided by the court, and (2) register the certificate of birth in accordance with the order of the court.

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Fiscal Summary

**State Effect:** None. The bill generally codifies existing practice.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** “Gestational carrier” means a women other than an intended parent or gamete donor who agrees to become pregnant for an intended parent with the intention of gestating and delivering the child of the intended parent.

In any case that *does not involve a gestational carrier* in which parentage of a child is determined by a court of competent jurisdiction, the name of the parent who did not give birth to the child and surname of the child must be entered on the certificate of birth in accordance with the finding and order of the court.

In any case that *involves a gestational carrier* in which parentage is determined by a court of competent jurisdiction, the forms provided by the Secretary must record (1) an indication that the delivery of birth was by a gestational carrier; (2) the identity of the gestational carrier; (3) all relevant medical information regarding the gestational carrier and the delivery; and (4) information regarding the intended parents. An order of the court establishing parentage must be attached to the forms provided by the Secretary.

**Current Law:** Within five calendar days after a birth occurs in an institution, en route to the institution, or outside an institution with an attending clinician, the administrative head of the institution or the attending clinician (or their designee) must (1) prepare a birth certificate on a form provided by the Secretary; (2) secure required signatures on the certificate; and (3) file the certificate. The attending physician, physician assistant, nurse practitioner, nurse midwife, or attending clinician must provide the date of birth and medical information required.

When an individual who is not married gives birth to a child in an institution or outside an institution with an attending clinician, the administrative head of the institution or the attending clinician (or their designee) must (1) provide an opportunity for the child's parents to complete a standardized affidavit of parentage; (2) provide the mother written information prepared by the Child Support Administration concerning the benefits of having the parentage of the child established, including the availability of child support enforcement services; and (3) forward the completed affidavit to DVR. DVR must make the affidavits available to the parents, guardian of the child, or a child support enforcement agency upon request. The name of the child's other parent may not be entered on the certificate without an affidavit of parentage signed by the mother and the person to be named on the certificate as the other parent. If the parent who did not give birth to the child is not named on the certificate of birth, no other information about that parent may be entered on the certificate.

If the child's mother was married at the time of either the conception or birth or between conception and birth, the name of the mother's spouse must be entered on the certificate as the child's other parent.

**Additional Comments:** While there is no statute governing gestational carriers in the State or related records, DVR advises that, under current practice, the individual who gives birth to a child is automatically listed on the child's birth certificate. Once relevant forms and information regarding the baby's intended parentage are collected from the (1) institution where the baby was born; (2) individual who gave birth to the baby; and (3) baby's intended parents, DVR seals the original birth certificate and issues a new birth certificate listing the intended parents.

## **Additional Information**

**Prior Introductions:** SB 1062 of 2020 passed in the Senate but received no further action from the House Judiciary and House Health and Government Operations committees. Its cross file, HB 1635, was referred to the House Judiciary and House Health and Government Operations committees, but no further action was taken.

**Designated Cross File:** HB 549 (Delegate Pena-Melnyk) - Health and Government Operations.

**Information Source(s):** Maryland Association of County Health Officers; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Human Services; Department of Legislative Services

**Fiscal Note History:** First Reader - January 25, 2021  
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