

DRAFT
FOR DISCUSSION ONLY

NON-PARENTAL CHILD CUSTODY AND VISITATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

April 1-2, 2016 Drafting Committee Meeting

With Prefatory Note, Reporter's Notes, and Comments

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February 29, 2016

**DRAFTING COMMITTEE ON NON-PARENTAL RIGHTS TO CHILD CUSTODY
AND VISITATION ACT**

The Committee appointed by and representing the Uniform Law Commission in preparing this Act consists of the following individuals:

DEBRA H. LEHRMANN, The Supreme Court of Texas, Supreme Court Bldg., 201 W. 14th St., Room 104, Austin, TX 78701, *Chair*

BARBARA A. ATWOOD, University of Arizona, James E. Rogers School of Law, 1201 E. Speedway Blvd., P.O. Box 210176

DAVID D. BIKLEN, 799 Prospect Ave., B2, West Hartford, CT 06105

MARK J. CUTRONA, Legislative Hall, 411 Legislative Ave., Dover, DE 19901

JACK DAVIES, 1201 Yale Pl., Unit #2004, Minneapolis, MN 55403-1961

MARY P. DEVINE, 704 Big Woods Pl., Manakin-Sabot, VA 23103

GAIL HAGERTY, South Central Judicial District, P.O. Box 1013, 514 E. Thayer Ave., Bismark, ND 58502-1013

JAMIE PEDERSEN, Washington State Senate, 43rd Legislative District, 226 John A. Cherberg Bldg., P.O. Box 40643, Olympia, WA 98504-0643

ARTHUR H. PETERSON, P.O. Box 20444, Juneau, AK, 99802

CRAIG STOWERS, Alaska Supreme Court, 303 K St., Anchorage, AK 99501-2084

J. SAMUEL TENENBAUM, Northwestern Pritzker School of Law, 357 E. Chicago Ave., Chicago, IL 60611

ERIC WEEKS, Office of Legislative Research and General Counsel, 210 House Bldg., Utah State Capitol Complex, Salt Lake City, UT 84114-5210

CANDACE ZIERDT, Stetson University College of Law, 1401 61st St. S., Gulfport, FL 33707

JEFF J. ATKINSON, DePaul University, 3514 Riverside Dr., Wilmette, IL 60091, *Reporter*

EX OFFICIO

RICHARD T. CASSIDY, 100 Main St., P.O. Box 1124, Burlington, VT 05402, *President*

WILLIAM W. BARRETT, 600 N. Emerson Ave., P.O. Box 405, Greenwood, IN 46142, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

ALLEN G. PALMER, Halloran & Sage, LLP, 315 Post Rd. W., Suite 1A, Westport, CT 06880-4739, *ABA Advisor*

LOUISE E. TEITZ, Roger Williams University School of Law, 10 Metacome Ave., Bristol, RI 02809-5103, *ABA Section Advisor*

EDDIE J. VARON LEVY, 2276 Torrence Blvd., Torrence, CA 90501-2518, *ABA Section Advisor*

EXECUTIVE DIRECTOR

LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
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NON-PARENTAL CHILD CUSTODY AND VISITATION ACT

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**INTRODUCTORY NOTE TO THE DRAFTING COMMITTEE
FROM THE REPORTER**

This draft includes preliminary “Comments” that, in final form, will be published with the act.

In addition, this draft includes “Reporter’s Notes.” These notes are intended to help guide our discussions, but generally will not be part of the final act. I anticipate that all or most of the current “Reporter’s Notes” will be removed before the act goes to the Conference for its First Reading in Summer 2016.

This draft uses brackets in some sections. At this stage, the most of the bracketed materials are not intended to be part of the final act. The brackets are intended to show alternative language, and the committee will decide which language to use. Some final drafts of uniform acts do utilize brackets to provide legislators with options for handling particular issues, but usually it is best when drafting uniform acts to not use brackets or to keep their use to a minimum.

Jeff Atkinson
Reporter
Email: Jeff Atkinson747@gmail.com

1 **PREFATORY NOTE**

2 *[This is a partial draft of the Prefatory Note. The reporter will update commentary and data as*
3 *the project proceeds.]*

4
5 This act provides procedures and factors for courts to apply when asked to grant custody
6 or visitation to non-parents. The act seeks to balance, within constitutional restraints, the
7 interests of children, parents, and non-parents with whom the children have a close relationship.
8

9 Continuation of a relationship between a child and a non-parent can be an important –
10 and even vital – interest, both for the child and the non-parent. When deciding whether to grant
11 relief to a non-parent, courts must, of course, consider the rights of parents. The U.S. Supreme
12 Court has recognized a right of a fit parent to make decisions regarding the rearing of his or her
13 child. *Troxel v. Granville*, 530 U.S. 57, 68-69 (2000). In *Troxel*, the Court struck down
14 Washington State’s grandparent visitation statute, as applied, holding the trial court did not give
15 sufficient deference to the decision of a fit parent to decide the amount of contact the children
16 would have with grandparents. The Supreme Court also stated the trial court’s “order was not
17 founded on any special factors that might justify the State’s interference with [the mother’s]
18 fundamental right to make decisions concerning the rearing of her two daughters.” *Id.* at 68.
19

20 Justice Connor observed in her plurality option in *Troxel*: “The demographic changes of
21 the past century make it difficult to speak of an average American family. The composition of
22 families varies greatly from household to household.” *Id.* at 63.
23

24 The U.S. Census Bureau reports that the unmarried partner population “grew 41 percent
25 between 2000 and 2010, four times as fast as the overall household population.” U.S. Census
26 Bureau, “Households and Families: 2010” at p. 3 (C2010BR-14) (Apr. 2012), available at
27 <http://www.census.gov/prod/cen2010/briefs/c2010br-14.pdf>.
28

29 Opposite-sex unmarried partner households increased by 40 percent since 2000; same-sex
30 households increased by 80 percent. *Id.* at p. 6.
31

32 In 2012, the Census Bureau reported that there were 73,817,000 children in United States
33 under age 18. Of that number, the breakdown for the children’s living arrangements was:
34

- 35 · Living with both parents: 50,267,000
- 36 · Living with mother only: 17,991,000
- 37 · Living with father only: 2,924,000
- 38 · Living with neither parent: 2,634,000
- 39 · Of the children living with neither parent, 1,494,000 were living with grandparents.
40

41 U.S. Census Bureau, America’s Families and Living Arrangements: 2012, Table C2, Household
42 Relationship and Living Arrangements of Children Under 18 Years, by Age and Sex: 2012
43 available at <http://www.census.gov/hhes/families/data/cps2012.html>.
44

45 * * * * *

1 A nonprofit organization, Generations United, issued a report regarding foster care,
2 kinship care, and “grandfamilies.” The report contains the following information:

3
4 “Grandfamilies or kinship families are families in which children reside with and are
5 being raised by grandparents, other extended family members, and adults with whom
6 they have a close familylike relationship, such as godparents and close family friends.”

- 7
- 8 · Children raised in grandfamilies or kinship care: 2,485,000
- 9
- 10 · Children raised in foster care: 397,091
- 11
- 12 · Children in foster care who are raised in grandfamilies or kinship care: 108,822 (which is
- 13 27% of children in foster care)
- 14

15 Source: Generations United, “The State of Grandfamilies in America: 2014” –
16 <http://www.grandfamilies.org/Portals/0/14-State-of-Grandfamilies-Report-Final.pdf>

17
18 * * * * *

19
20 *[A summary of key features of the act will be inserted to the Prefatory Note.]*

1 **NON-PARENTAL CHILD CUSTODY AND VISITATION ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Non-Parental Child

3 Custody and Visitation Act.

4 **Reporter’s Note:** Our liaison to the ULC Style Committee, Debra Behr, advised me that
5 the Style Committee may prefer the word “Non-Parental” without a hyphen. She notes
6 that Washington State statutes do not use a hyphen for “Nonparental.” Wash. Code 26.10
7 (2016) (chapter entitled “Nonparental actions for child custody.” *See also* 23 Pa. Stat.
8 and Cons. Stat. Ann. § 5327 (West 2016) (making reference to presumptions in cases
9 involving a “nonparent”). My preference is to keep the hyphen. I think it makes the
10 word easier to read and understand. Illinois’ Family Law statute uses hyphens for some
11 of its Family Law terms – e.g., “non-marital property.” 750 Ill. Comp. Stat. 5/503(a)
12 (2016). Changes to titles of acts (apparently including on issues related to hyphen) need
13 to be approved by the Executive Committee.

14
15 While the subject matter of this act was under review by a ULC Study Committee, the
16 subject was referred to as “Third Party Custody and Visitation.” The term “Non-Parental
17 Rights” seems more precise. At the first two Drafting Committee meetings, some
18 participants favored utilizing a term other than “Non-Parental,” although there was not a
19 consensus on what that term would be.

20
21 **SECTION 2. DEFINITIONS.** In this act:

22 (1) “Child” means:

23 (A) an unemancipated individual who has not attained [18] years of age; or

24 (B) an adult son or daughter by birth or adoption, or under law of this state other
25 than this [act], who is the subject of a court order concerning custodial responsibility.

26 (2) “Custody” means physical custody, legal custody, or both. The term includes joint
27 custody or shared custody as defined by the law of this state other than this [act].

28 (3) “De facto parent” means:

29 (A) that, within the last two years, the petitioner has completely undertaken
30 permanent, unequivocal, committed parental responsibility in the child’s life. Such a finding
31 requires a determination by the court that:

32 (i) the petitioner has resided with the child for a significant period of time;

1 (ii) the petitioner has engaged in consistent caretaking of the child;
2 (iii) the petitioner has established a bonded and dependent relationship
3 with the child, the relationship was supported by another parent of the child, and the petitioner
4 and the other parent have accepted that relationship or behaved as though the petitioner is a
5 parent of the child;

6 (iv) the petitioner has accepted full and permanent parental responsibility
7 without expectation of financial compensation; and

8 (v) the continuing relationship between the petitioner and the child is in
9 the best interests of the child; or

10 (B) that before or after the child’s birth, the petitioner entered into an agreement
11 in a record or orally with each parent of the child to accept full and permanent parental
12 responsibility and to raise the child together, except that if a parent has completely failed to
13 exercise parental responsibility, the consent of the parent who failed to exercise parental
14 responsibility is not required.

15 **Reporter’s Note:** At the November 2015 Drafting Committee meeting, we decided to
16 move the definition of “de facto parent” to Section 5. After review of the act for style,
17 however, the definition will stay in this section since the term is used in multiple sections.
18 As agreed at the November 2015 Drafting Committee meeting, the definition of “de facto
19 parent” is now based on the Maine statutory definition. The definition reduces some of
20 the redundant words in the Maine statute – i.e., the phrases “fully and completely,”
21 “fostered or supported,” and “understood, acknowledged or accepted that or behaved as
22 though the individual is a parent of the child.” Ms. Behr also noted the issue of
23 redundant words. See Appendix B of ULC Drafting Rules which is entitled “Do Not Use
24 Redundant Couplets.” The definition in this act uses the term “parental responsibility”
25 (which we have been using and have separately defined in our act) rather than the Maine
26 act’s term of “parental role.”
27

28 (4) “Detriment to the child” means adverse effect to the child’s physical or psychological
29 well-being, including the effects resulting from interruption of a substantial beneficial
30 relationship with the child or removal of the child from a stable placement of a child with a non-

1 parent.

2 (5) “Domestic violence” means domestic violence as defined in [cite to definition of
3 “domestic violence” in law of this state other than this [act]].

4 (6) “Electronic” means relating to technology having electrical, digital, magnetic,
5 wireless, optical, electromagnetic, or similar capabilities.

6 (7) “Legal custody” means the power to make important decisions regarding a child.

7 **Reporter’s Note:** Deborah Behr comments: “Definition of “Legal custody” is quite
8 broad. Covers teachers, judges, etc.” Our earlier definition was more specific, although
9 the opening phrase is broad: “Legal custody’ means the power to make important
10 decisions regarding a child, including decisions regarding the child’s education, health
11 care, and extracurricular activities.”) Such a definition of "legal custody" is used in many
12 states.

13
14 (8) “Non-parent” mean an individual other than a parent, including a child’s
15 grandparents, great-grandparents, step-parents, and siblings.

16 **Reporter’s Note:** Ms. Behr raises the questions of whether we wish to include domestic
17 partners in the definition. That seems reasonable to me. (I note that now that same-sex
18 couples can marry, there are likely to be fewer people seeking domestic partnerships (or
19 civil unions). She also notes that the definition is broad – “[i]ncludes any person in the
20 world.” The definition is broad, in part, out of necessity to meet a variety of
21 circumstances that may arise, and, in any case, before “non-parents” can obtain custody
22 or visitation under this act, they must meet many criteria besides being a non-parent.
23

24 (9) “Parent” means a person recognized as a parent under law of this state other than this
25 [act].

26 **Report’s Note:** At the November 2015 Drafting Committee meeting, the committee
27 asked that two alternative definitions of the following term -- “parental responsibility” --
28 be placed in brackets. The committee will choose between them, and perhaps fine-tune
29 the selection at the April 2016 meeting. I lean toward the second option, which is more
30 precise, although I do not think we need the word “mental” as part of the definition.
31 From my view, “mental needs” is an awkward phrase and is probably encompassed by
32 “emotional, developmental, and educational needs.”
33

34 (10) “Parental responsibility” means

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Alternative A

[exercising care and control to provide for the health and welfare of the child.]

Alternative B

[providing for a child’s well being, including the child’s physical, mental, emotional, developmental, and educational needs].

End of Alternatives

(11) “Parenting time” means parenting time as defined in [cite to definition of “parenting time” in law of this state other than this [act]].

(12) “Physical custody” means day-to-day care and supervision of a child.

Reporter’s Note: Ms. Behr comments: “Definition of ‘physical custody’ seems broad. Looks like it covers daycare services.” Perhaps we could add “by a person acting in a parental role.” We also could add “pursuant to a court order.”

(13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) “Sexual assault” means sexual assault as defined in [cite to definition of “sexual assault” in law of this state other than this [act]].

(15) “Stalking” means stalking as defined in [cite to definition of “stalking” in law of this state other than this [act]].

Reporter’s Note: Two definitions of “visitation” are offered. The first is the brief Black’s Law Dictionary definition. The second provides a little more detail. Ms. Behr notes that the definition “seems broad [--] covers school nurses for physicals.” As with the definition of “physical custody,” we could add the phrase “pusuant to a court order.”

(16) “Visitation” means

Alternative A

[access to a child.]

1 **Alternative B**

2 [the right to spend time with a child, which, may include overnights.]

3 **End of Alternatives**

4 **Reporter’s Note:** Ms. Behr raises the issue of whether the act needs a definition of
5 “state.” I don’t think so. This is not a jurisdictional act in which we are dealing with
6 issues of recognition of out-of-state orders and need to clarify if Puerto Rico, the Virgin
7 Island, and U.S. territories should be considered states. When we use the term “state,” it
8 is in brackets and is part of a direction to insert citation to other law within the state. A
9 U.S. territory could insert its definition, if the territory adopts the act).

10
11 **Comment**

12 The definition of “child” is the same as that used in the Uniform Deployed Parents
13 Custody and Visitation Act, § 102(3) (2012). The age of majority in most states is 18, although
14 some states set the age of majority at graduation from high school, and a few states set the age
15 higher than 18. The (B) portion of the definition includes adult children who are the subject of a
16 court order concerning custodial responsibility, such as persons with a developmental disability.
17 The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) defines “Child” as “an
18 individual who has not attained 18 years of age.” UCCJEA, § 102(2).

19
20 In Family Law, the terms “custody” and “visitation” are flexible concepts. In most states,
21 there is not a fixed amount of time the child spends with a parent who has “custody” or
22 “visitation,” although some states utilize guidelines to specify the time the child spends with the
23 noncustodial parent. Nonetheless, a person with “custody” provides the child with a home or
24 primary home. The drafters anticipate that visitation granted to non-parents will be decided on
25 the facts of each case rather than by guidelines. The definition of “custody” includes joint
26 custody or shared custody as defined by other state law. Thus, under this act, courts have the
27 option of granting a non-parent joint custody or shared custody (as well as sole custody).

28
29 The definition of “de facto parent” is based on Maine Rev. Stat. tit. 19-A, § 1891 (2015),
30 which also is similar to the definition in Delaware -- 13 Del. Code § 8-201(c) (2015). The
31 Delaware definition includes the element that the person seeking status as a de facto parent “has
32 acted in a parental role for a length of time sufficient to have established a bonded and dependent
33 relationship with the child that is parental in nature.” Some states set specific time periods
34 before a person may obtain custody as a de facto custodian – e.g., six months or more if the child
35 is under three years old, and one year or more if the child is three years of age or older. See, e.g.,
36 Ky. Rev. Stat. 403.270 (2012); S.C. Code § 63-15-60 (2012). At least eleven states allow a non-
37 parent to seek visitation if the child has lived with a person for a certain period of time, such as
38 six or 12 months.

39
40 The Washington Supreme Court in the case of *In re Parentage of L.B.*, 122 P.3d 161, 163
41 (Wash. 2005) held that the state’s “common law recognizes the status of de facto parents and
42 grants them standing to petition for a determination of the rights and responsibilities that

1 accompany legal parentage in this state.” To establish standing as a de facto parent, the
2 Washington Supreme Court adopted the following criteria:

- 3 (1) the natural or legal parent consented to and fostered the parent-like relationship,
- 4 (2) the petitioner and the child lived together in the same household,
- 5 (3) the petitioner assumed obligations of parenthood without expectation of financial
6 compensation, and
- 7 (4) the petitioner has been in a parental role for a length of time sufficient to have
8 established with the child a bonded, dependent relationship, parental in nature.

9
10 *Id.* at 176 (citations omitted).

11
12 The American Law Institute Principles of the Law of Family Dissolution § 2.03(1)(c)
13 (2002) defines a de facto parent as “an individual other than a legal parent or a parent by estoppel
14 who, for a significant period of time not less than two years, (i) lived with the child and, (ii) for
15 reasons primarily other than financial compensation, and with the agreement of a legal parent to
16 form a parent-child relationship, or as a result of a complete failure or inability of any legal
17 parent to perform caretaking functions, (A) regularly performed a majority of the caretaking
18 functions for the child, or (B) regularly performed a share of caretaking functions at least as great
19 as that of the parent with whom the child primarily lived.”

20
21 Some of the phrasing in the definition of “de facto parent” also is drawn from the
22 American Law Institute’s Principles of the Law of Family Dissolution, § 2.03(1)(b) (2002). That
23 section provides, as one of the alternative definitions of “parent by estoppel”: “an individual
24 who, though not a legal parent, . . . (iii) lived with the child since the child’s birth, holding out
25 and accepting full and permanent responsibilities as parent, as part of a prior co-parenting
26 agreement with the child’s legal parent (or, if there are two legal parents, both parents) to raise a
27 child together each with full parental rights and responsibilities, when the court finds that
28 recognition of the individual as a parent is in the child’s best interests.”

29
30 This section provides two alternate bases by which a petitioner can be determined by the
31 court to be a de facto parent. There is overlap between the bases, as well as a difference between
32 the bases. The first basis [subsection (a)] requires that “the petitioner has completely undertaken
33 permanent, unequivocal, committed parental responsibility in the child’s life,” and requires that
34 the court make five findings. The second basis [subsection (b)] requires that there be “an
35 agreement . . . to accept full and permanent parental responsibility and to raise the child
36 together.” Both bases require agreement or consent of the parents for the petitioner to become a
37 de facto parent (except consent of a parent is not necessary under the second basis if a parent has
38 completely failed to exercise parental responsibility). The first basis focuses the quality and
39 duration of the petitioner’s relationship with the child. The second basis focuses on the existence
40 of an agreement, and the agreement could be enforced soon after the child’s birth even if the
41 child and petitioner have not had a long-term relationship.

42
43 The definition of “Detriment to the child” is based on Cal. Fam. Code § 3041(c) (2016) (a
44 section entitled “Custody award to nonparent; findings of court; hearing”). That section
45 provides: “As used in this section, ‘detriment to the child’ includes the harm of removal from a
46 stable placement of a child with a person who has assumed, on a day-to-day basis, the role of his

1 or her parent, fulfilling both the child’s physical needs and the child’s psychological needs for
2 care and affection, and who has assumed that role for a substantial period of time. A finding of
3 detriment does not require any finding of unfitness of the parents.”
4

5 The definitions of “electronic” and “record” are the definitions provided by the Uniform
6 Law Commission “Drafting Rules,” Rule 304 (2012).
7

8 The definition of “legal custody” is “the power to make important decisions regarding a
9 child.” Such decisions include the child’s education, health care, and extracurricular activities.
10 “Legal custody” might include the power to enroll a child in a religious school, but it normally
11 should not include selection of a child’s religion since most courts have held both parents have a
12 right to expose their child to his or her religious beliefs (or lack of religious beliefs). *See, e.g.,*
13 *Felton v. Felton*, 383 Mass. 232, 418 N.E.2d 606 (1981); *In re Marriage of Mentry*, 142 Cal.
14 App 260, 190 Cal. Rptr. 843 (1983); *Hansen v. Hansen*, 404 N.W.2d 460 (N.D. 1987).
15

16 The definition of “parent” is “a person recognized as a parent under law of this state other
17 than this [act].” The sources of the definition of “parent” may include the state’s parentage
18 statutes, divorce statutes, and case law. In most states, “parent” would include biological
19 parents, adoptive parents, and men who have acknowledged paternity (even though they are not
20 biologically related to the child). “Parent” also might include persons who agree to conceive a
21 child through assisted reproductive technology or by use of surrogates. Generally, a person
22 ceases to be a parent if his or her rights have been terminated. In addition, a man who donates
23 sperm or a woman who donates an egg usually are not considered to be parents.
24

25 The definition of “parental responsibility” is based, in part, on Del. Code Ann. tit. 13, §
26 1101(10) (2016), which provides: “‘Parental responsibilities’ means the care, support and control
27 of the child in a manner that provides for the child’s necessary physical needs, including
28 adequate food, clothing and shelter, and that also provides for the mental and emotional health
29 and development of such child.” Payment for the child’s food, clothing, shelter, and other
30 physical needs is not enough, by itself, to constitute exercise of parental responsibility.
31

32 The definition of “parenting time” is made with reference to law of the state other than
33 this act. The term is a comparatively modern term designed to supplement or replace the terms
34 “custody” and “visitation,” particularly in disputes between parents. The term is used to focus
35 on parenting of the child and allocation of time with the child rather than which parent has
36 “custody.” The Illinois definition of “parenting time” is: “the time during which a parent is
37 responsible for exercising caretaking functions and non-significant decision-making
38 responsibilities with respect to the child.” 750 Ill. Comp. Stat. 5/600 (e) (2016).
39

40 **Reporter’s Note:** Regarding the section on “Pleadings,” the Drafting Committee agreed
41 that pleadings should include information required by the Uniform Child Custody
42 Jurisdiction and Enforcement Act (UCCJEA). The committee also asked that the reporter
43 prepare an alternate “Pleadings” section, which would include an “ideal” list of specific
44 items to be included in pleadings, taking into consideration the suggestions of the
45 National Organization for Women Foundation. Below are two alternatives: Alternative
46 A, which is the original pleadings section with the addition of reference to the UCCJEA,

1 and Alternative B, which includes a more detailed list specific items to be included in the
2 pleadings.

3
4 **SECTION 3. PLEADINGS.**

5 **Alternative A**

6 [The individual requesting custody or visitation shall file a verified petition specifying the
7 facts on which the request is based. The facts must include the nature the relationship between
8 the petitioner and the child and the information required by [cite to Section 209 of this state’s
9 Uniform Child Custody Jurisdiction and Enforcement Act]].

10 **Alternative B**

11 [The individual requesting custody or visitation shall file a verified petition specifying the
12 facts on which the request is based. The facts must include:

13 (1) the nature the relationship between the petitioner and the child;

14 (2) if applicable, the nature of any agreement between the parties regarding care for the
15 child and contact with the child;

16 (3) attempts to obtain visitation or other contact with the child;

17 (4) the detriment to the child if the custody or visitation requested by the petitioner is not
18 granted; and

19 (5) the information required by [cite to Section 209 of this state’s Uniform Child Custody
20 Jurisdiction and Enforcement Act]].

21 **End of Alternatives**

22 **Comment**

23 In the U.S. Supreme Court’s plurality opinion in *Troxel v. Granville*, Justice O’Connor
24 stated: “As Justice KENNEDY recognizes, the burden of litigating a domestic relations
25 proceeding can itself be ‘so disruptive of the parent-child relationship that the constitutional right
26 of a custodial parent to make certain basic determinations for the child’s welfare becomes
27 implicated.” 530 U.S. at 75, *quoting* Kennedy, J. at 530 U.S. at 101. Requiring verified pleading

1 and specificity in pleadings is intended to reduce actions that are not meritorious and facilitate
2 disposition of non-meritorious cases by motions to dismiss or for summary judgment.

3
4 Section 209 of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)
5 is entitled “Information to be Submitted to the Court.” The section provides:

6
7 (a) [Subject to [local law providing for the confidentiality of procedures,
8 addresses, and other identifying information], in] [In] a child-custody proceeding, each
9 party, in its first pleading or in an attached affidavit, shall give information, if reasonably
10 ascertainable, under oath as to the child’s present address or whereabouts, the places
11 where the child has lived during the last five years, and the names and present addresses
12 of the persons with whom the child has lived during that period. The pleading or affidavit
13 must state whether the party:

14
15 (1) has participated, as a party or witness or in any other capacity, in any
16 other proceeding concerning the custody of or visitation with the child and, if so, identify
17 the court, the case number, and the date of the child-custody determination, if any;

18
19 (2) knows of any proceeding that could affect the current proceeding,
20 including proceedings for enforcement and proceedings relating to domestic violence,
21 protective orders, termination of parental rights, and adoptions and, if so, identify the
22 court, the case number, and the nature of the proceeding; and

23
24 (3) knows the names and addresses of any person not a party to the
25 proceeding who has physical custody of the child or claims rights of legal custody or
26 physical custody of, or visitation with, the child and, if so, the names and addresses of
27 those persons.

28
29 (b) If the information required by subsection (a) is not furnished, the court, upon
30 motion of a party or its own motion, may stay the proceeding until the information is
31 furnished.

32
33 (c) If the declaration as to any of the items described in subsection (a)(1) through
34 (3) is in the affirmative, the declarant shall give additional information under oath as
35 required by the court. The court may examine the parties under oath as to details of the
36 information furnished and other matters pertinent to the court’s jurisdiction and the
37 disposition of the case.

38
39 (d) Each party has a continuing duty to inform the court of any proceeding in this
40 or any other State that could affect the current proceeding.

41
42 [(e) If a party alleges in an affidavit or a pleading under oath that the health,
43 safety, or liberty of a party or child would be jeopardized by disclosure of identifying
44 information, the information must be sealed and may not be disclosed to the other party
45 or the public unless the court orders the disclosure to be made after a hearing in which the
46 court takes into consideration the health, safety, or liberty of the party or child and

1 determines that the disclosure is in the interest of justice.]

2
3 **Reporter’s Note:** Two alternatives are presented for the Drafting Committee to consider
4 regarding the following section on “Jurisdiction.” Alternative A is based on the language
5 used in the Uniform Child Abduction Prevention Act, Section 5(a) (2006) after a style-
6 edit by Ms. Behr’s to delete the phrase “at issue” and to make the sentence active rather
7 than passive. The language of Section 5(a) of the Uniform Child Abduction Prevention
8 Act is: “A petition under this [act] may be filed only in a court that has jurisdiction to
9 make a child-custody determination with respect to the child at issue under [insert
10 citation to Uniform Child Custody Jurisdiction and Enforcement Act or the Uniform
11 Child Custody Jurisdiction Act].” The substance of Alternative B is the same and is
12 perhaps a little more reader-friendly (particularly for non-lawyers).

13
14 **SECTION 4. JURISDICTION.**

15 **Alternative A**

16 [The individual requesting custody or visitation shall file a petition only in a court that
17 has jurisdiction to make a child-custody determination with respect to the child under [cite to this
18 state’s Uniform Child Custody Jurisdiction and Enforcement Act]].

19 **Alternative B**

20 [The individual requesting custody or visitation shall file a petition only in a court that
21 has jurisdiction under [cite to this state’s Uniform Child Custody Jurisdiction and Enforcement
22 Act]].

23 **End of Alternatives**

24 **Comment**

25 The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (1997) has
26 been adopted in 49 states. As of February 2016, Massachusetts is the only state that has not
27 adopted the UCCJEA, although Massachusetts did adopt the Uniform Child Custody Jurisdiction
28 Act (UCCJA). The Uniform Law Commission has promulgated a 2013 version of the UCCJEA
29 (to cover international issues as well as domestic issues). As of February 2016, the 2013
30 UCCJEA has not been adopted in any states.

31
32 If at the time a petition is filed under this act, an action is already pending regarding the
33 same child, the petition should be filed as part of the pending action (assuming the pending
34 action is filed in compliance with the UCCJEA).
35

1 Jurisdiction over Native American children is governed by the Indian Child Welfare Act,
2 25 U.S.C. §§ 1901 et seq. (2015).

3
4 **Reporter’s Note:** Perhaps the preceding sentence (or concept) should be in the text of
5 the act. Ms. Behr asks if we “need a scope section for whether Indian children covered
6 by the Indian Child Welfare Act are included under the Act?”
7 Inclusion of such a scope section seems like a useful reminder to litigants and courts
8 (although, in a technical sense, the scope section is not necessary since the Indian Child
9 Welfare Act preempts any inconsistent state law). The Uniform Child Custody
10 Jurisdiction and Enforcement Act (UCCJEA) has a scope provision. Section 104(a) of
11 the UCCJEA – entitled “Application To Indian Tribes” – provides: “A child-custody
12 proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25
13 U.S.C. 1901 et seq., is not subject to this [act] to the extent that it is governed by the
14 Indian Child Welfare Act.” On the other hand, the Uniform Deployed Parents Custody
15 and Visitation Act and the Uniform Child Abduction Prevention Act do not have such a
16 provision.

17
18 **SECTION 5. INITIAL PETITION BY DE FACTO PARENT.**

19 (a) An individual who has served as a de facto parent may file an initial petition for
20 custody of or visitation with the child.

21 (b) The court shall adjudicate a petitioner to be a de facto parent if the court finds by clear
22 and convincing evidence that the petitioner is a de facto parent.

23 (c) A petitioner adjudicated to be a de facto parent has the same right to custody,
24 visitation, or parenting time as a parent.

25 **Reporter’s Note:** Ms. Behr comments that although some sections refer to “Initial
26 Petition[s],” there is no mention of “Subsequent Petitions.” (The differentiation the
27 Drafting Committee made was between “Initial Petition[s]” and actions to modify
28 existing orders.” Ms. Behr suggested we might use the word “commence” for initial
29 actions. I think that verb has some ambiguity since both an initial action and a
30 modification action can be “commenced.” For this draft, I tried to deal with Ms. Behr’s
31 concern by keeping the phrase “Initial Petition” and adding the phrase “Petition to
32 Modify.”
33

34 **Comment**

35 “De facto parent” is defined in the definition section of this act [Section 2(3)]. As noted
36 in the Comment to that section, a trend in the law is to grant rights by statute or case law to de
37 facto parents to seek custody or visitation. States which provide that de facto parents (or persons
38 who stood in loco parentis to the child) have standing to seek custody or visitation include: AZ,

1 CT, DE, HA, IN, KY, MN, MT, PA, WA. A related concept is an individual may seek visitation
2 (or custody) if the child has been residing with the individual for a certain period of time – e.g.,
3 CA, MI, NV, WI.

4
5 The right of de facto parents to seek custody or visitation applies to couples of the same
6 sex or different sex, even though only one of the parties is related to the child by genetics,
7 adoption, or other bases for parenthood recognized by the state.

8
9 This section [coupled with the definition of “de facto parent” in Section 2(3)(b)] provides
10 that a de facto parent who has entered into an agreement with the parent “to accept full and
11 permanent parental responsibility and to raise the child together” “has the same right to custody,
12 visitation, or parenting time as a parent.” Agreements between parents regarding custody of
13 children have been held to be of “constitutional magnitude” and entitled to presumptive
14 enforcement. *In re Marriage of Coulter and Trinidad*, 2012 IL 113474, 364 Ill. Dec. 59, 976
15 N.E.2d 337, 342 (enforcing an agreement between parents regarding future relocation of the
16 children). *See also Frazier v. Goudschaal*, 296 Kan. 730, 295 P.3d 542 (2013) (enforcing a
17 coparenting agreement between members of a same-sex couple); *Fawzy v. Fawzy*, 199 N.J. 456,
18 973 A.2d 347, 350 (2009) (enforcing parents’ agreement to arbitrate a custody dispute).

19
20 In this section (as well as in Section 6 and 7) the standards for being able to obtain
21 custody or visitation are the same.

22
23 **SECTION 6. INITIAL PETITION BY NON-PARENT OF CHILD IN CUSTODY**
24 **OF PARENT OR DE FACTO PARENT.**

25 (a) If a child is in the custody of a parent or de facto parent, a non-parent requesting
26 custody or visitation may file an initial petition with the court for custody of or visitation with
27 the child if the non-parent demonstrates:

- 28 (1) a substantial relationship exists between the child and the non-parent, and
29 (2) the denial of custody or visitation to the non-parent would be a detriment to
30 the child.

31 (b) In a proceeding under subsection (a), a rebuttable presumption exists that the parent’s
32 or de facto parent’s decision about custody and visitation is in the best interests of the child. To
33 rebut the presumption, the petitioner must establish by clear and convincing evidence that:

- 34 (1) denial of custody or visitation to the petitioner is a detriment to the child, and

1 (2) custody or visitation to petitioner is the best interests of the child.

2 Proof of parental unfitness is not required to rebut the presumption described in subsection (b).

3 **Comment**

4 This section governs requests for custody or visitation by a non-parent when the child is
5 in the custody of a parent or de facto parent. Section 2(8) defines “non-parent” as “an individual
6 other than a parent, including a child’s grandparents, great-grandparents, step-parents, and
7 siblings.” The most common persons seeking custody or visitation will be one of the specifically
8 listed categories of individuals, but the definition allows others to seek custody or visitation if the
9 requirements of the act are met.

10
11 The statutes of many states specify the circumstances in which visitation may be sought –
12 circumstances which often involve some disruption of the family – e.g., divorce, separation,
13 death of a parent, or a child born outside of marriage. The categories of persons who may seek
14 visitation and the broad description of circumstances in which visitation may be sought do not,
15 by themselves, provide a reliable indicator of whether non-parental visitation (or custody) should
16 be allowed. It is preferable to focus on the factors used to decide visitation or custody,
17 particularly the closeness of the relationship between the child and the non-parent.

18
19 The presumption and burden of proof in this section recognize the superior right of
20 parents to custody of their children in custody disputes with non-parents, and also provides that
21 the superior right or presumption can be overcome. The standard is similar to Pa. Stat. Ann. tit.
22 23, § 5327(b) (2015).

23
24 As stated in Black’s Law Dictionary, “The Burden of proof includes both the burden of
25 persuasion and the burden of production.” Black’s Law Dictionary (7th ed. 1999).

26
27 The presumption and burden of proof is designed to meet the requirements of *Troxel v.*
28 *Granville*, 530 U.S. 57 (2000), in which the Supreme Court struck down Washington State’s
29 third party visitation statute as applied. Justice O’Connor, in a plurality decision, said the
30 Washington statute “contains no requirement that a court accord the parent’s decision any
31 presumption of validity or any weight whatsoever.” *Id.* at 67, 120 S.Ct. at 2061. “The Superior
32 Court’s order was not founded on any special factors that might justify the State’s interference
33 with Granville’s fundamental right to make decisions concerning the rearing of her two
34 daughters.” *Id.* at 68, 120 S.Ct. at 2061.

35
36 In the years since *Troxel* was decided, state courts have generally held that a
37 grandparent’s claim that the grandparent has a positive relationship with the grandchild is not
38 sufficient to justify an order of visitation over the objection of a parent. *See, e.g., Neal v. Lee*,
39 2000 Ok 90, 14 P.3d 547 (2000); *State Dept. of Social and Rehabilitative Services v. Paillet*, 16
40 P.3d 962 (2001); *Flynn v. Henkel*, 227 Ill.2d 176, 880 N.E.2d 166 (2007). On the other hand, if
41 the grandparent has a substantial relationship with the grandchild – such as raising the child for a
42 few years – that can be the basis for granting visitation to the grandparent over the parents’
43 objection. *See, e.g., Rideout v. Riendeau*, 761 A.2d 291 (Me. 2000) (the grandparents had helped

1 raise their grandchildren for the first seven years of the oldest grandchild’s life and for lesser
2 periods for the younger grandchildren); *E.S. v. P.D.*, 8 N.Y.3d 150, 863 N.E.2d 100 (2007)
3 (grandparents cared for children while the mother was dying of cancer).
4

5 This act does not set a maximum number of persons who may obtain rights of custody or
6 visitation. In most cases, the number of actively involved parental figures probably will not be
7 large. As courts sort through complex family structures, the number of persons acting in a
8 parental role is a factor that should be considered -- but without applying a fixed rule about how
9 many parental figures with rights to time with the child is too many. The focus needs to remain
10 on the best interests of the child.
11

12 **SECTION 7. INITIAL PETITION BY NON-PARENT OF CHILD NOT IN**
13 **CUSTODY OF PARENT OR DE FACTO PARENT.**

14 (a) If the child is not in the custody of a parent or de facto parent, a non-parent requesting
15 custody or visitation may file an initial petition with the court for custody of or visitation with
16 the child if the non-parent demonstrates a substantial relationship exists between the child and
17 the non-parent.

18 (b) In an initial proceeding for custody of or visitation with a child between two or more
19 petitioners who are non-parents, a presumption does not exist that custody or visitation should be
20 given to the petitioner.

21 (c) To obtain custody or visitation, the non-parent must establish by clear and convincing
22 evidence that custody or visitation for the non-parent is in the best interests of the child.

23 **Comment**

24 This section governs custody and visitation disputes when the child is not in the custody
25 of a parent or de facto parent. The non-parent needs to demonstrate a substantial relationship
26 exists between the child and the non-parent and establish by clear and convincing evidence that
27 custody or visitation for the non-parent is in the best interests of the child. If the petitioner does
28 not prove his or her case by clear and convincing evidence, other laws – such as guardianship
29 laws – are available to decide custody and visitation issues. In cases in which the dispute does
30 not involve a parent, the Supreme Court’s holding in *Troxel* regarding giving deference to a
31 parent’s decision does not apply.
32

33 Subsection (b) is similar to 23 Pa. Stat. and Cons. Stat. Ann. § 5327(c) (West 2016),
34 which provides: “In any action regarding the custody of the child between a nonparent and

1 another nonparent, there shall be no presumption that custody should be awarded to a particular
2 party.”

3
4 **Reporter’s Note:** Before review for style, this draft had a subsection (d), which
5 provided: “If a non-parent’s petition for custody or visitation is filed under law of this
6 state other than this act, the other law applies.” Ms. Behr commented: “Not needed.
7 Covered by other law.”

8
9 We discussed having a section which would give standing to a non-parent based on the
10 non-parent having exercised parental responsibility pursuant to a court order.
11 Presumably, a non-parent would have standing under whatever law that granted them
12 parental responsibility (as well as potential standing under this act if the person if the
13 criteria of this act were met).

14
15 We have discussed, but not firmly decided, whether to explicitly deal with situations in
16 which “both parents are deceased, incapacitated, [or unfit], or there has been a complete
17 failure of the parents to exercise parental responsibility [and a substantial relationship
18 exists between the child and the non-parent].” These situations could be covered by
19 Sections 5 – 7.

20
21 **SECTION 8. HISTORY OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR**

22 **STALKING.** There is a rebuttable presumption that it is not in the best interests of a child to
23 grant legal custody, physical custody, or visitation to a non-parent who has a history of
24 perpetrating domestic violence, sexual assault, or stalking against the other parent, the child, the
25 child’s siblings, or a child’s custodial guardian.

26 **Reporter’s Note:** The above language was proposed by the ABA Commission on
27 Domestic Violence and Sexual Violence. The ABA Commission also proposes language
28 that would create a rebuttable presumption against custody or visitation for parents who
29 have engaged in domestic violence, sexual assault, or stalking. In addition, the
30 Commission proposes language to create a rebuttable presumption against granting legal
31 or physical custody to “A non-parent whom has kinship or other significant ties to a
32 parent or person who has committed domestic violence, sexual assault, or stalking against
33 the other parent, the child, the child’s siblings, or a child’s custodial guardian.”

34
35 From my view, standards for parental custody or visitation are beyond the scope of this
36 act.

37
38 Regarding a non-parent’s kinship or other significant ties to a person who has committed
39 domestic violence, etc., I agree that should be a relevant factor in the non-parent’s request
40 for custody or visitation (and it is listed as a factor in Section 9). If a proposed custodian
41 is living with an abuser or would expose the child to an abuser, that would be a strong

1 negative factor against the proposed custodian. If, however, the proposed custodial (or
2 visitor) has a relative or friend who has abused somebody, but the proposed custodian or
3 visitor agrees not have the child in the company of that person (or not to have the child in
4 the company of that person without others around), I view the non-parent’s significant
5 ties to the abuser to be a less relevant factor. The proposed language creating a rebuttable
6 presumption against custody or visitation for a person who has “kinship or other
7 significant ties” to someone who has engaged in abuse, is unduly broad.
8

9 Ms. Behr proposes that the list of persons against whom domestic violence has been
10 perpetrated include “domestic partners.” That seems like a reasonable suggestion.
11 Alternatively, she asks if the phrase “family members” would work (as a substitute for
12 the more detailed list of persons). [The potential problem with the phrase “family
13 members” is that the phrase is somewhat vague. Does it, for example, include third
14 cousins or inlaws?]
15

16 **SECTION 9. FACTORS CONSIDERED.**

17 **Alternative A**

18 [When determining whether to grant custody or visitation under this [act], the court shall
19 consider the best interests of a child. In determining the best interests of a child, the court shall
20 consider:

21 (1) the quality of the relationship between the child and the parent;

22 (2) the quality of the relationship between the child and petitioner, including whether the
23 petitioner has served as a de facto parent of the child;

24 (3) the frequency and continuity of contact between the child and the petitioner,
25 including the period of any disruption in the contact and the reasons for the disruption;

26 (4) the views of the child, having regard to the child’s age and maturity;

27 (5) the willingness and ability of the parent and petitioner to facilitate, a positive
28 relationship among the child, parties to the proceeding, and family members of the child, except
29 that the court may not consider this willingness and ability if the parent or custodian of the child
30 shows that the petitioning party has engaged in domestic violence, sexual assault, or stalking
31 against the parent, child, child’s siblings, or custodial guardian, and that a continuing relationship

1 with the petitioner party will affect negatively the health or safety of the parent, child, child’s
2 siblings, custodial parent, or custodial guardian;

3 (6) the child’s adjustment to the child’s current and proposed home, school, and
4 community;

5 (7) the mental and physical health of the child and parties to the proceeding, including
6 alcohol abuse and drug abuse by the child or parties to the proceeding;

7 (8) a history of or threat of child abuse, child neglect, domestic violence, sexual assault,
8 or stalking towards a parent, the child, child’s siblings, or custodial guardian (A) by the
9 petitioner or (B) by an individual with whom the petitioner has kinship or a significant
10 relationship;

11 (9) the reasons for the parties’ positions in the proceeding regarding custody and
12 visitation;

13 (10) an agreement among the parties regarding custody or visitation; and

14 (11) any other relevant factor affecting the best interests of the child.]

15 **Reporter’s Note:** At the November 2015 Drafting Committee meeting, the committee
16 discussed several possible additions to the list of factors. The additions generally could
17 be viewed as sub-categories of the existing factors, particularly the first three factors. We
18 agreed to list the possible additional factors in the next draft and then decide whether to
19 include them, balancing the desire comprehensiveness and precision with a desire not to
20 make the list too unwieldy. The proposed additional factors are:

- 21
22 (A) specific parent-like activities undertaken by the non-parent;
23 (B) nature and extent of parental involvement by the non-parent;
24 (C) any significant absence of the parent from the child’s life;
25 (D) death of a parent.
26

27 Ms. Behr comments that the ULC has a preference for use of the singular in technical
28 drafting. Thus, the Style Committee may prefer the term “best interest” rather than “best
29 interests.” She also notes that statutes and court cases have used both terms. From my
30 review of statutes and case law, the plural -- “best interests” -- is much more widely used
31 than “best interest,” and for that reason, I favor use of “best interests.”
32

1 **Alternative B**

2 [When determining whether to grant custody or visitation under this [act], the court shall
3 consider the factors specified in [cite to law of this state other than this [act] for deciding custody
4 or visitation disputes between parents]].

5 **End of Alternatives**

6 *Legislative Note: The act offers two alternatives for a list of factors a court shall consider when
7 determining whether to grant custody or visitation to non-parents. Alternative A lists 11 factors,
8 which are similar to the lists of factors in the 36 states that have factors in statutes pertaining
9 non-parental visitation and custody. Alternative B provides a cross-reference to the state’s
10 existing factors that are considered in disputes between parents regarding custody, visitation, or
11 parenting time. Before using Alternative B, drafters should ascertain if the list of factors in
12 parental disputes is applicable to disputes involving non-parents. Some factors may be specific
13 to parents, such as the wishes of the parents regarding custody or the willingness of the parents
14 to encourage a close and continuing relationship between the child and the other parent.*

15
16 **Reporter’s Note:** I suggest the Drafting Committee adopt Alternative A (listing 11
17 factors for the court to consider). There are at least two reasons for this approach. First,
18 when states enacted third party visitation statutes, 36 states listed specific factors for
19 consideration – thus reflecting a preference by legislatures for use of specific factors
20 rather than just a cross-reference to another portion of the state’s Family Law statutes.
21 Second, when a state lists factors to be considered in disputes between parents, the factors
22 often are phrased in terms of the parents’ conduct or relationship with the child – rather
23 than a more generic factor that would be equally applicable to disputes between two
24 parents versus a parent and a non-parent (or two or more non-parents).

25
26 As the drafting process proceeds, official “comments” will be included regarding the
27 “Factors Considered.” The comments will note the number of states that have listed
28 factors in the state’s non-parental visitation (and custody) statutes. The comments also
29 may address specific factors.

30
31 **SECTION 10. PETITION TO MODIFY CUSTODY OR VISITATION.** A petition
32 to modify a custody or visitation order entered under this [act] shall be decided under [cite to the
33 law of this state other than this act for modification of a custody, visitation, or parenting time
34 order applicable to a dispute between parents).

35 **Comment**

36 This section makes reference to a state’s existing law regarding modification of custody,

1 visitation, or parenting time orders applicable to disputes between parents. In most states, that
2 standard is a showing of substantial change of circumstances coupled with a showing that
3 modification is in the best interests of the child (although a few states have different standards,
4 such as requiring a showing of endangerment if modification is sought within two years of a
5 prior order). See Jeff Atkinson, *Modern Child Custody Practice - Second Edition*, §§ 10.1 –
6 10.13 (LexisNexis 2015). Under this approach, a custody or visitation order in favor of a non-
7 parent generally would stay the same unless the substantial change of circumstances and best
8 interests of the child were shown.

9
10 **Reporter’s Note:** Ms. Behr raises the issue of whether a “judgment” as well as an
11 “order” needs to be covered by this section. I think the word “order” covers judgments.”

12
13 **SECTION 11. TEMPORARY ORDER.**

14 (a) On motion of a party or the court’s own motion, the court may enter a temporary
15 order while the proceeding is pending.

16 (b) An order entered under this section has no presumptive effect and is not determinative
17 when the court considers petitions for other orders under this [act].

18 **Comment**

19 This section makes explicit that the court has the power to enter temporary, as well as
20 permanent, orders. Subsection (b) is similar to Va. Code Ann. § 20-103(E) (West 2015), which
21 provides: “An order entered pursuant to this section shall have no presumptive effect and shall
22 not be determinative when adjudicating the underlying cause.”

23
24 The details of what must be shown to obtain a temporary order is left to local practice –
25 e.g., use of affidavits, need for hearing, elements of proof.

26
27 The factors listed in Section 9 apply to both temporary and permanent orders.

28
29 **Reporter’s Note:** Ms. Behr asks the question: “What are the temporary orders about?
30 Do they have any specific standards – like TRO?” I believe the Drafting Committee
31 intended to leave the issue of standards for temporary orders to local practice. I have
32 added a “comment” to that effect.

33
34 **SECTION 12. EFFECT OF ADOPTION OF CHILD BY A RELATIVE.** The
35 adoption of a child by a relative, including a stepparent, does not preclude granting custody or
36 visitation to a petitioner who is a non-parent.

1 **Comment**

2 As of 2013, the statutes of 24 states explicitly allow visitation for non-parents if the child
3 has been adopted by a relative, including a stepparent. Jeff Atkinson, *Shifts in the Law*
4 *Regarding Rights of Third Parties to Seek Visitation and Custody of Children*, 47 Fam. L. Q. 1,
5 20-23 (Spring 2013).

6
7 **SECTION 13. APPOINTMENTS AND COURT SERVICES.** To the extent available
8 in other cases involving custody and visitation of children, the court may do one or more of the
9 following:

10 (1) appoint a child’s attorney, guardian ad litem, child’s representative, or similar
11 personnel;

12 (2) order mediation, but a party who has been the victim of domestic violence by another
13 party to the proceeding, shall not be required to participate in mediation;

14 **Reporter’s Note:** The Drafting Committee discussed bracketing a portion of subsection
15 (2) or including additional language in the subsection – perhaps to allow for mediation in
16 jurisdictions that have appropriate protections for victims of domestic violence – e.g.,
17 shuttle mediation in which the parties do not have direct contact with each other.

18
19 (3) order evaluations or home studies of the child, parent, de facto parent, or petitioners
20 who are non-parents; and

21 (4) allocate payment among the parties to the proceeding of fees for the services listed in
22 this section.

23 **Comment**

24 A variety of personnel and court services may assist the court in making decisions
25 regarding non-parental custody and visitation. This act does not mandate the creation of new
26 services in jurisdictions where no similar services exist, but the act does make such services
27 available if the services already are utilized in other custody and visitation cases.

28
29 **SECTION 14. CHILD SUPPORT; VISITATION COSTS.**

30 (a) The obligation of an individual adjudicated to be a de facto parent under this act is
31 governed by [cite to law of this state other than this [act] governing a child support obligation of

1 parents].

2 (b) An individual other than a de facto parent granted visitation under this [act] may be
3 ordered to pay the cost of facilitating visitation with the child, including the cost of
4 transportation.

5 **Comment**

6 Individuals adjudicated to be de facto parents under this act have the same obligation to
7 pay child support as parents. Individuals who are not de facto parents who receive visitation
8 under this act may, in the court’s discretion, be required to pay the cost of facilitating visitation,
9 including the cost of transportation, but those individuals may not be required to pay child
10 support.

11
12 **SECTION 15. ATTORNEY FEES AND COSTS.** The court may allocate and order
13 payment of attorney fees, including interim fees, and costs among the parties to the proceeding
14 under this [act].

15 **Comment**

16 Litigating issues of non-parental custody and visitation can be financially burdensome,
17 including to the parent. This section gives the court discretion to order payment of attorney fees
18 and costs. An award of such fees may deter non-meritorious cases.

19
20 **[SECTION 16. FINDINGS OF FACT AND CONCLUSIONS OF LAW.** When
21 making a decision under this [act], the court [on request of a party to the proceeding] shall make
22 findings of fact and conclusions of law on the record in support of its decision.]

23 *Legislative Note: This section is placed in brackets because in some states, a requirement (or*
24 *lack of requirement) of making findings of fact is governed by court rule rather than statute.*

25
26 **Reporter’s Note:** Does the Drafting Committee wish to require findings of fact and
27 conclusions of law in all cases – or just those cases in which a party requests them?

28
29 **Comment**

30 Requiring findings of fact has several benefits. The fact-finding process structures the
31 court’s review so that the court is less likely to overlook important facts or apply bias in reaching
32 its decision. Careful fact-finding by the trial court also facilitates appellate review and may
33 assist the parties in accepting the decision. At least twenty states and the District of Columbia

1 require the trial court to make findings of fact in custody cases. See Jeff Atkinson, *Modern Child*
2 *Custody Practice - Second Edition*, § 12-45 (LexisNexis 2015).

3
4 **[SECTION 17. PRIORITY ON COURT CALENDAR.** A proceeding arising under
5 this [act] must be given priority on the court calendar and handled expeditiously.]

6 **Comment**

7 The Section 107 of the Uniform Child-Custody Jurisdiction and Enforcement Act (1997)
8 provides that if a question of jurisdiction “is raised in a child-custody proceeding, the question,
9 upon request of a party, must be given priority on the calendar and handled expeditiously.”
10

11 **Reporter’s Note:** Members of the Drafting Committee were ambivalent about including
12 this section in the act. Several members noted that it is common for states to give
13 “priority” to many types of proceedings, and, as a result, such provisions have little
14 effect. John Sebert, former Executive Director of the ULC commented: “Folks
15 representing the judicial system, such as the National Center for State Courts, often
16 object to this type of provision, and I expect they would do so here. Having a priority
17 provision in an act that governs determining jurisdiction is one thing; putting it in this act
18 is very different.”
19

20 **SECTION 18. APPLICATION TO ABUSED, NEGLECTED, OR DEPENDENT**

21 **CHILDREN.** This [act] does not apply if the child is the subject of a proceeding under [cite to
22 law of this state other than this [act] regarding custody and visitation of abused, neglected, or
23 dependent children].

24 **Comment**

25
26 This act does not provide for granting non-parental custody or visitation for children who
27 are the subject proceedings for abused, neglected, or dependent children. Such laws and related
28 regulations have their own provisions regarding where a child will be placed and who may have
29 contact with the child. The abuse, neglect and dependency laws usually are in a different portion
30 of the statutes than laws pertaining to divorce, parentage, and non-parental rights. The drafters
31 of this act do not wish for this act to conflict with or interfere with the abuse, neglect, or
32 dependency laws. When a child is no longer the subject of such proceedings, relief may be
33 sought under this act. The provision in this section is similar to Or. Stat. § 109.119(9) (West
34 2015). *See also* Minn. Stat. Ann. § 257C.08(4) (West 2015) (excluding foster parents from
35 coverage under the state’s non-parental visitation law).
36

1 **SECTION 19. OTHER RIGHTS AND REMEDIES.** The rights and remedies of this
 2 [act] are not exclusive and do not preclude other rights and remedies under law of this state other
 3 than this [act].

4 **Comment**

5 The law regarding families is more dynamic than many areas of law. The drafters of this
 6 act do not wish to preclude the development of additional rights and remedies in this area.
 7 Principles of law in some states . . . [insert citations to Family Law cases in which the court
 8 denied equitable or common law relief because a statute granted rights to certain categories of
 9 individuals, but not other categories of individuals].

10
 11 **Reporter’s Note:** Ms. Behr comments: “Please explain the special need for this
 12 provision in light of Rule 502. Full Style Committee is likely to have a concern with the
 13 provision.”

14
 15 Uniform Law Commission, Drafting Rules, Section 502 (2012) provides:

16
 17 **RULE 502. PROVISION DUPLICATING GENERAL PROVISION**
 18 **OF LAW.**

19
 20 (a) Do not include a provision concerning civil, criminal, administrative,
 21 or appellate procedure unless the act is intended to establish a procedure different
 22 from general procedures.

23
 24 (b) Do not include a provision stating that the act is supplemented by
 25 common-law principles unless, without such an affirmative statement, the act is
 26 likely to be construed as occupying the field, displacing common-law principles.

27
 28 **[ULC] Comment**

29
 30 The incorporation of procedural provisions may impair the enactability of a
 31 uniform or model act. Repetition of general procedural provisions especially
 32 creates problems in states in which such procedures are established by court rule
 33 rather than by legislation.

34
 35 State statutes are usually presumed to be supplemented by the common law. The
 36 rare exception is an act, such as a workers’ compensation act, that is intended to
 37 preempt the field and displace common-law remedies. Unless there is a
 38 legitimate concern that a uniform or model act, although not intended to occupy
 39 the field, will nevertheless be so construed, it is unnecessary and confusing to
 40 include a provision that repeats this settled principle of common law.

1 **SECTION 20. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

2 applying and construing this uniform act, consideration must be given to the need to promote
3 uniformity of the law with respect to its subject matter among states that enact it.

4 **Reporter’s Note:** Ms. Behr asks: “Do you need standard provision in [ULC] Rule 602
5 regarding electronic signatures? Courts are moving to electronic filing or petitions.” I
6 am not an expert on the law of electronic signatures, but I doubt that the ULC boilerplate
7 signature section (quoted below) is necessary in this act. It appears that the electronic
8 signature section is necessary in acts that specifically deal with recognitions of certain
9 classes of documents, such as commercial paper and the signatures on those documents.
10 Rule 602 provides for using the electronic signature section if the act contains a provision
11 "requiring a notice or other record or a signature." Our act does not have such a
12 provision. There is a trend toward electronic filings for legal actions (in general), but I
13 believe that is an issue for local rules and statutes, not for our uniform act. The ULC
14 electronic signature section provides as follows: “RELATION TO ELECTRONIC
15 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act]
16 modifies, limits, or supersedes the Electronic Signatures in Global and National
17 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede
18 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of
19 any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).”
20

21 **SECTION 21. TRANSITIONAL PROVISION.** A petition or other request for relief

22 regarding a non-parent’s request for custody and visitation which was commenced before the
23 effective date of this act is governed by the statutes in effect at the time the petition or other
24 request was made.

25 **Reporter’s Note:** The Transitional Provision is ULC boiler-plate, which has been used
26 in many uniform acts. I note that there is another way to handle transitions that might be
27 simpler for courts to apply and that may advance the application of the new act to more
28 cases: “This [act] applies to all pending actions and proceedings commenced prior to its
29 effective date with respect to issues on which a judgment has not been entered.” See,
30 e.g., 750 Ill. Comp. Stat. 5/801(b)(2016).
31

32 **SECTION 22. REPEALS; CONFORMING AMENDMENTS.**

33 (a)

34 (b)

35 (c)

1 **SECTION 23. EFFECTIVE DATE.** This [act] takes effect