

D R A F T
FOR DISCUSSION ONLY

REVISED UNIFORM PARENTAGE ACT
ALTERNATIVE B

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

October 28-29, 2016 Drafting Committee Meeting

REDLINE DRAFT – ALTERNATE B

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October 26, 2016

REVISED UNIFORM PARENTAGE ACT

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1 REVISED UNIFORM PARENTAGE ACT

2
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4 National Conference of Commissioners on Uniform State Laws (NCCUSL)
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7
8 **Brief description of act:**

9 The Uniform Parentage Act (UPA) was originally promulgated in 1973 (1973 UPA). The 1973
10 UPA removed the legal status of illegitimacy and provided a series of presumptions used to
11 determine a child’s legal parentage. A core principle of the 1973 UPA was to ensure that “all
12 children and all parents have equal rights with respect to each other,” regardless of the marital
13 status of their parents. 1973 UPA, Section 2, Comment.

14
15 The UPA was ~~amended~~ revised in 2002 (UPA 2002). The 2002 UPA augmented and streamlined
16 the original 1973 UPA. The 2002 UPA added provisions permitting a non-judicial
17 acknowledgment of paternity procedure that is the equivalent of an adjudication of parentage in a
18 court and added a paternity registry. The 2002 UPA also included provisions governing genetic
19 testing and rules for determining the parentage of children whose conception was not the result
20 of sexual intercourse. Finally, the 2002 UPA included a bracketed Article 8 that authorizes
21 surrogacy agreements.

22
23 The 2017 UPA ~~updates~~ revises the Act to address three primary issues. First, the 2017 UPA
24 seeks to ensure the equal treatment of children born to same-sex couples. The 2002 UPA is
25 written in gendered terms, and its provisions presume that couples consist of one man and one
26 woman. For example, Section 703 of the 2002 UPA provides that “[a] man who provides sperm
27 for, or consents to, assisted reproduction by a woman as provided in Section 704 with the intent
28 to be the parent of her child, is a parent of the resulting child.”

29
30 In its 2015 decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the United States Supreme
31 Court held that laws barring marriage between two people of the same sex are unconstitutional.
32 After *Obergefell*, some parentage laws that treat same-sex couples differently than different-sex
33 couples may be unconstitutional. For example, in July 2015, a federal district court in Utah held
34 that refusing to apply Utah’s assisted reproduction parentage provisions equally to same-sex
35 couples likely was unconstitutional. Under the Utah Uniform Parentage Act, which is modeled
36 on the 2002 UPA, a husband who consents to his wife’s insemination is the legal father of the
37 resulting child. Utah Code Ann. §§ 78B-15-703, 78B-15-704; 78B-15-201(2)(e). The court
38 concluded that the plaintiffs were “highly likely to succeed in their claim” that extending the
39 “benefits of the assisted reproduction statutes to male spouses in opposite-sex couples but not for
40 female spouses in same-sex couples” was unconstitutional. *Roe v. Patton*, 2015 WL 4476734, *3
41 (D. Utah. 2015). The 2017 UPA updates the Act to address this potential constitutional infirmity
42 by amending the provisions so that they address and apply equally to same-sex couples.

43
44 Second, the 2017 UPA updates the surrogacy provisions to reflect developments in that area.
45 States have been particularly slow to enact Article 8 of the 2002 UPA. Eleven (11) states adopted

1 versions of the 2002 UPA.¹ Of these eleven (11) states, only two (2) – Texas and Utah – enacted
2 the surrogacy provisions based on Article 8 of the 2002 UPA. At least five (5) of the eleven (11)
3 states that enacted the 2002 UPA enacted surrogacy provisions that are *not* premised on the 2002
4 UPA. These states include: Delaware (permitting) (enacted 2013); Illinois (permitting) (enacted
5 2004); Maine (permitting) (enacted 2015); North Dakota (banning) (enacted 2005); and
6 Washington (banning compensated) (enacted 1989).

7
8 The fact that very few states enacted Article 8 is likely the result of a confluence of factors. One
9 likely factor is the controversial nature of surrogacy itself. But the fact that four of the states that
10 enacted the 2002 UPA have provisions permitting surrogacy that are not modeled on Article 8 of
11 the 2002 UPA suggests that the small number of enactments is also affected by the substance of
12 Article 8. Accordingly, the 2017 UPA updates the surrogacy provisions to make them more
13 consistent with current surrogacy practice.

14
15 Finally, the 2017 UPA includes a new article – Article 9 – that addresses the right of children
16 born through assisted reproductive technology to access medical and identifying information
17 regarding any gamete providers. Based on data from 2014, the CDC reports that “approximately
18 1.6% of all infants born in the United States every year are conceived using ART.”² Data suggest
19 that this percentage continues to increase. Gaia Bernstein, *Unintended Consequences:
20 Prohibitions on Gamete Donor Anonymity and the Fragile Practice of Surrogacy*, 10 Ind. Health
21 L. Rev. 291, 298 (2013) (noting that “from 2004 to 2008 the number of IVF cycles used for
22 gestational surrogacy grew by 60%, the number of births by gestational surrogates grew by 53%
23 and the number of babies born to gestational surrogates grew by 89%”). Accordingly, it is
24 increasingly important for states to address the right of children to access information about their
25 gamete donor. Article 9 does not require disclosure of the identity of gamete providers, but it
26 does require gamete banks and fertility clinics to ask donors if they want to have their identifying
27 information disclosed when the resulting child turns 18.

28
29 ~~Only limited amendments were made to Articles 1-5. Accordingly, Articles 1-5 are presented in~~
30 ~~amendment form, and changes to Articles 1-5 are reflected in strike and underscore. More~~
31 ~~substantial changes were made to Articles 6-10. As a result, reading Articles 6-10 in amendment~~
32 ~~form proved difficult. Accordingly, the Drafting Committee decided that these articles should be~~
33 ~~presented in revision form. The Drafting Committee did, however, create a comparison~~
34 ~~document that shows the changes to Articles 6-10. On June 2, 2016, the Scope and Program~~
35 ~~Committee approved the submission of the Act in a hybrid amendment/revision format and~~
36 ~~approved the ability of the Drafting Committee to make nonsubstantive, structural changes to the~~
37 ~~Act. On June 10, 2016, the Executive Committee approved these requests.~~

38 39 **Questions about UPA?**

40 For further information contact the following persons:

¹ The eleven states are: Alabama, Delaware, Illinois, Maine, New Mexico, North Dakota, Oklahoma, Texas, Utah, Washington, Wyoming. See Uniform Law Commission, *Legislative Fact Sheet – Parentage Act*.

² Centers for Disease Control, ART Success Rates, <http://www.cdc.gov/art/reports/> (last updated February 24, 2016).

1 Jamie Pedersen, Chair of the UPA drafting committee
2 Courtney G. Joslin, Reporter for the UPA drafting committee

3
4

5 **Notes about ULC Acts:**

6 For information on the specific drafting rules used by ULC, the *Conference Procedural and*
7 *Drafting Manual* is available online at www.uniformlaws.org.

8

9 Because these are uniform acts, it is important to keep the numbering sequence intact while
10 drafting.

11 In general, the use of bracketed language in ULC acts indicates that a choice must be made
12 between alternate bracketed language, or that specific language must be inserted into the empty
13 brackets. For example: “An athlete agent who violates Section 14 is guilty of a [misdemeanor]
14 [felony] and, upon conviction, is punishable by [].

15

16 A word, number, or phrase, or even an entire section, may be placed in brackets to indicate that
17 the bracketed language is suggested but may be changed to conform to state usage or
18 requirements, or to indicate that the entire section is optional. For example: “An applicant for
19 registration shall submit an application for registration to the [Secretary of State] in a form
20 prescribed by the [Secretary of State]. [An application filed under this section is a public
21 record.] The application must be in the name of an individual, and, except as otherwise provided
22 in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury.”

23

24 The sponsor may need to be consulted when dealing with bracketed language.

1 **REVISED UNIFORM PARENTAGE ACT**

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

4 *A word about a drafting convention of the Conference that appears throughout this Act. Brackets*
5 *in the statutory text are inserted to warn legislative draftsmen in the several states that the*
6 *suggested language is likely to be subject to local variation. For example, a state may not refer*
7 *to UPA (2017) as an “[act],” but may label it as a “chapter,” “title,” etc. Often times the*
8 *brackets flag terminology that is known to vary greatly, e.g., [petition], or is clearly subject to*
9 *local option, e.g., [30 days].*

10
11 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Revised Uniform
12 Parentage Act.

13 **SECTION 102. DEFINITIONS.** In this [act]

14 (1) “Acknowledged father” means a man who has established a father-child relationship
15 under [Article] 3.

16 (2) “Adjudicated parent” means an individual who has been adjudicated by a court of
17 competent jurisdiction to be the parent of a child.

18 (3) “Alleged father” means a man who alleges himself to be, or is alleged to be, the
19 genetic father or a possible genetic father of a child, but whose paternity has not been
20 determined. The term does not include:

21 (A) a presumed father;

22 (B) a man whose parental rights have been terminated or declared not to exist; or

23 (C) a male donor.

24 (4) “Assisted reproduction” means a method of causing pregnancy other than sexual
25 intercourse. The term includes:

26 (A) intrauterine insemination;

27 (B) donation of eggs;

Commented [CJ1]: Would it be clearer if we replaced
“alleged father” with “alleged genetic father”?

1 (C) donation of embryos;

2 (D) in-vitro fertilization and transfer of embryos; and

3 (E) intracytoplasmic sperm injection.

4 (5) “Child” means an individual of any age whose parentage may be determined under
5 this [act].

6 ~~(6) “Commence” means to file the initial pleading seeking an adjudication of parentage in
7 [the appropriate court] of this state.~~

8 ~~(6) “De facto parent” means an individual adjudicated to be a parent under Section 205 of
9 this [act].~~

10 (7) “Determination of parentage” means the establishment of the parent-child relationship
11 by the signing of a valid acknowledgment of paternity under [Article] 3 or adjudication by the
12 court.

13 (8) “Donor” means an individual who produces gametes used for assisted reproduction,
14 whether or not for consideration, unless the individual and the woman giving birth enter into a
15 record providing to the contrary. The term does not include:

16 (A) a woman who gives birth to a child by means of assisted reproduction [,
17 except as otherwise provided in [Article] 8]; or

18 (B) a parent under [Article] 7 [or an intended parent under [Article] 8]; ~~or~~

19 ~~(C) an individual who provides gametes for use in assisted reproduction where the
20 individual and the woman giving birth both consent to the use of assisted reproduction with the
21 intent that the individual will be the parent of the resulting child.~~

22 (9) “Ethnic or racial group” means, for purposes of genetic testing, a recognized group
23 that an individual identifies as all or part of the individual’s ancestry or that is so identified by

Commented [JDP2]: Guida (RI) suggests adding the following to the end of the definition: “and to the extent that there is more than one (1) child resulting from any single pregnancy that is the subject of this act, the duties and responsibilities of the parent, intended parent, and surrogate set forth in this act shall extend to each such child resulting from such single pregnancy.”

CJ: I don’t think that is necessary. The usual rules of statutory construction require the singular to include the plural.

Formatted: Not Highlight

Commented [CJ3]: I changed “writing” to “record” per comment of Mary Louise Fellows.

Commented [CJ4]: Observer Polikoff suggests that this subsection should be revised so that the provider is a donor unless the donor and the woman giving birth enter into a writing to the contrary. Some states, including Kansas, have provisions like this. See, e.g., Kan. Stat. Ann. § 23-2208(f) (“The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor’s wife is treated in law as if he were not the birth father . . . unless agreed to in writing by the donor and the woman.” I inserted language to this effect for consideration.

1 other information.

2 (10) “Genetic testing” means an analysis of genetic markers to exclude or identify a man
3 as the genetic father or a woman as the genetic mother of a child. The term includes an analysis
4 of one or a combination of the following:

5 (A) deoxyribonucleic acid; and

6 (B) blood-group antigens, red-cell antigens, human-leukocyte antigens, serum
7 enzymes, serum proteins, or red-cell enzymes.

8 [(11) “Genetic surrogate” means an adult woman who is not an intended parent and who
9 agrees to become pregnant through assisted reproduction using her own gamete, pursuant to a
10 genetic surrogacy agreement as set forth in [Article] 8.]

11 [(12) “Gestational surrogate” means an adult woman who is not an intended parent and
12 who agrees to become pregnant through assisted reproduction using gametes that are not her
13 own, pursuant to a gestational surrogacy agreement as set forth in [Article] 8.]

14 (13) “Identifying information” includes the following information of the donor:

15 (A) the first and last name of the individual; and

16 (B) the age of the individual at the time of donation.

17 (14) “Individual” means a natural person of any age.

18 (15) “Individual with a claim to parentage” means any individual who has a claim to be

19 adjudicated a parent under this [act], but who has not yet been adjudicated to be a parent and

20 who is not a parent as a matter of law under the [act]. ~~The term “individual with a claim to~~

21 ~~parentage”~~ includes presumed parents, ~~and~~ individuals identified as genetic parents under

22 Section 505, ~~and individuals alleged to be de facto parents.~~

23 (16) “Intended parent” means an individual, married or unmarried, who manifests the

Commented [CJ5]: Cutrona (DE) asks wonders whether this term should be gender neutral.

Commented [CJ6]: Behr (AK).

Commented [CJ7]: Behr (AK) suggests replacing “Individual with a claim to parentage” with “The term”

Commented [CJ8]: CJ: This definition may need to be revisited after a decision is made about numerosity. If a child can have more than two legal parents, then this definition may need to include people who are parents as a matter of law under Articles 7 and 8.

1 intent to be legally bound as the parent of a child resulting from assisted reproduction.

2 (17) “Man” means a male individual of any age.

3 (18) “Parent” means an individual who has established a parent-child relationship under
4 Section 201.

5 (19) “Parent-child relationship” means the legal relationship between a child and a parent
6 of the child. The term includes the mother-child relationship and the father-child relationship.

7 (20) “Paternity index” means the likelihood of genetic paternity calculated by computing
8 the ratio between:

9 (A) the likelihood that the tested man is the genetic father, based on the genetic
10 markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man
11 is the genetic father of the child; and

12 (B) the likelihood that the tested man is not the genetic father, based on the
13 genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the
14 tested man is not the genetic father of the child and that the genetic father is of the same ethnic or
15 racial group as the tested man.

16 (21) “Presumed parent” means an individual who, by operation of law under Section 204,
17 is recognized as the parent of a child until that status is rebutted or confirmed in a judicial
18 proceeding.

19 (22) “Probability of paternity” means the measure, for the ethnic or racial group to which
20 the alleged father belongs, of the probability that the man in question is the father of the child,
21 compared with a random, unrelated man of the same ethnic or racial group, expressed as a
22 percentage incorporating the paternity index and a prior probability.

23 (23) “Record” means information that is inscribed on a tangible medium or that is stored

1 in an electronic or other medium and is retrievable in perceivable form.

2 (24) “Signatory” means an individual who authenticates a record and is bound by its
3 terms.

4 (25) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
5 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
6 the United States.

7 (26) “Support-enforcement agency” means a public official or agency authorized to seek:

- 8 (A) enforcement of support orders or laws relating to the duty of support;
- 9 (B) establishment or modification of child support;
- 10 (C) determination of parentage; or
- 11 (D) location of child-support obligors and their income and assets.

12 [(27) “Surrogacy agreement” means an agreement under [Article] 8 by which a woman
13 agrees to become pregnant through assisted reproduction with the intention that she will

14 relinquish the resulting child to the intended parent or parents. ~~Unless otherwise specified, the~~
15 ~~term “surrogacy agreement”~~ The term refers to such an agreement regardless of the surrogate’s
16 genetic connection to the resulting child or lack thereof.]

Commented [CJ9]: Behr (AK) suggests amending this sentence to read: “The term refers to the agreement regardless of the surrogate’s genetic connection to the resulting child or lack thereof.”

Commented [CJ10]: A commissioner asked whether we need definitions of genetic surrogacy agreements and gestational surrogacy agreements.

17 (28) “Woman” means a female individual of any age.

18 **Reporter’s Comment**

19
20 1. GENDER NEUTRALITY

21
22 Some of the changes to Section 102 implement the goal of ensuring that the act applies
23 equally to children born to same-sex couples.

24
25 2. ASSISTED REPRODUCTION

26
27 The draft also includes a number of new definitions regarding assisted reproduction.

28
29 3. DEFINITION OF DONOR

1
2 One of the only substantive changes is with respect to the definition of donor. The draft
3 eliminates what had been subsection (8)(A), in the definition of donor. Subsection (A) was
4 eliminated because spouses are already excluded from the definition of donor under new
5 Subsection (8)(B) (former Subsection (8)(C)), so long as they consented to the assisted
6 reproduction with the intention to be a parent. If a spouse has not consented to the assisted
7 reproduction with the intention to be a parent, then such an individual is and should be
8 considered a donor, unless the conditions of Section 705 are met. If subsection (A) is retained, it
9 must be made gender neutral. If retained, it should provide: “(A) a person who provides a gamete
10 or gametes to be used for assisted reproduction by his or her spouse”.

11
12 **SECTION 103. SCOPE OF [ACT]; CHOICE OF LAW.**

13 (a) This [act] applies to determination of parentage in this state.

14 (b) The court shall apply the law of this state to adjudicate the parent-child relationship.

15 The applicable law does not depend on:

16 (1) the place of birth of the child; or

17 (2) the past or present residence of the child.

18 (c) This [act] does not create, enlarge, or diminish parental rights or duties under other
19 law of this state.

20 [(d) This [act] does not authorize or prohibit an agreement between an intended parent
21 and a woman who agrees to become pregnant through assisted reproduction and relinquish all
22 rights as a parent of a resulting child, and which provides that the intended parent is the parent of
23 the resulting child. If a birth results under such an agreement and the agreement is unenforceable
24 under [the law of this state], the parent-child relationship is determined as provided in [Article
25 2.]

26 **Official Comment**

27
28 Subsection (d) should be enacted by states that do not enact Article 8 or otherwise do not
29 statutorily address the permissibility of surrogacy agreements.
30

31 **SECTION 104. COURT OF THIS STATE.** The [designate] court is authorized to

1 adjudicate parentage under this [act].

2 **SECTION 105. PROTECTION OF PARTICIPANTS.** Proceedings under this [act]
3 are subject to other law of this state governing the health, safety, privacy, and liberty of a child or
4 other individual who could be jeopardized by disclosure of identifying information, including
5 address, telephone number, place of employment, social security number, and the child’s day-
6 care facility and school.

7 **SECTION 106. DETERMINATION OF MATERNITY.** Provisions of this [act]

8 relating to determinations of paternity apply to determinations of maternity.

9 **Reporter’s Comment**

10 We may want to return to variation of the language that was included in the 1973 UPA.

11 Section 21 of the 1973 UPA provided, in relevant part: “Insofar as practicable, the provisions of
12 this Act applicable to the father and child relationship apply [in actions to declare mother and
13 child relationship.]”

14 Here is some suggested language that we may want to consider:

15 “Insofar as practicable, provisions applicable to the father and child relationship apply to actions
16 to declare the mother and child relationship, and provisions applicable to the mother and child
17 relationship apply to actions to declare the father and child relationship.”

18
19 **ARTICLE 2**

20 **PARENT-CHILD RELATIONSHIP**

21 **SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.**

22 (a) The parent-child relationship is established between an individual and a child by:

23 (1) having given birth to the child[, except as otherwise provided in [Article] 8];

Commented [CJ11]: Atwood (AZ) asks whether this provision needs to be retained.

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Commented [CJ12]: See Cannel (NJ) memo, raising questions about numerosity and gender neutrality.

Commented [JDP13]: See memo from Cannel (NJ): exercise care about number of parents. Sometimes two is not enough; other times too many.

- 1 (2) an un rebutted presumption of parentage under Section 204;
- 2 (3) an adjudication of the individual’s parentage;
- 3 ~~(4) an adjudication of de facto parentage under this [act];~~
- 4 (5) adoption of the child by the individual;
- 5 (6) an acknowledgment of paternity under [Article] 3, unless the acknowledgment
- 6 has been rescinded or successfully challenged under Section 505;
- 7 (7) consent by the individual to assisted reproduction by a woman as provided in
- 8 [Article] 7 which resulted in the birth of a child [; or
- 9 [(8) consent by the intended parent or parents to a surrogacy agreement that
- 10 resulted in the birth of a child as provided in [Article] 8 or under law of this state other than this
- 11 [act].]

Commented [CJ14]: CJ: If we continue to encompass de facto parents under Section 204 (presumptions), this new provision may not be necessary; de facto parents may be adequately covered under subsection (2).

12 **Reporter’s Comment**

13 As noted above, the 2017 UPA updates the act so that it applies equally to children born

14 to same-sex couples. Most of the mechanisms for establishing parentage apply equally without

15 regard to gender. Accordingly, the 2017 UPA merges into a single list what had been separate

16 provisions for establishing the parentage of women and men, respectively. This approach

17 removes unnecessary distinctions based on gender. This approach is also consistent with the

18 approach taken by a number of states that have amended their parentage provisions to apply

19 equally to children born to same-sex couples. *See, e.g.,* ME. STAT., tit. § 1851; N.H. REV. STAT. §

20 168-B:2.

Commented [JDP15]: Cannel (NJ)

Commented [CJ16]: Although I agree that Cannel’s suggested language is clearer, we may want to retain the language that has been part of the UPA since 1973.

Commented [CJ17]: At the meeting Cannel (NJ) noted that despite this provision, the Act does draw distinctions between marital and nonmarital children.

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Commented [CJ18]: This new language is proposed by Commissioner Tindall (TX). This language closely tracks the language in the original, 1973 UPA. Unlike the language in the 2000/2002 UPA, this language makes clear that parents are also protected from discrimination on the basis of marital status. *See, e.g.,* Glona v. Amer. Guar. Liab. Ins. Co. (1968) (holding that a Louisiana law that precluded mothers from suing for the wrongful death of their nonmarital children was unconstitutional).

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22 **SECTION 202. ~~NO DISCRIMINATION AGAINST CHILDREN BASED ON~~**

23 **~~MARITAL STATUS OF PARENTS~~RELATIONSHIP NOT DEPENDENT ON**

24 **~~MARRIAGE.~~ The parent-child relationship extends equally to every child and to every parent,**

25 **~~regardless of the marital status of the parents.~~ A child born to parents who are not married to**

26 **~~each other has the same rights under the law as a child born to parents who are married to each~~**

27 **~~other.~~**

28 **SECTION 203. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE.**

1 Unless parental rights are terminated, a parent-child relationship established under this [act]
2 applies for all purposes, except as otherwise specifically provided by other law of this state.

3 **SECTION 204. PRESUMPTION OF PARENTAGE.**

4 (a) An individual is presumed to be the parent of a child if:

5 (1) the individual and the woman who gave birth to the child are married to each
6 other and the child is born during the marriage, except as provided by a valid gestational
7 surrogacy agreement under [[Article] 8 or]other law of this state;

8 (2) the individual and the woman who gave birth to the child were married to each
9 other and the child is born within 300 days after the marriage is terminated by death, annulment,
10 declaration of invalidity, divorce, or dissolution[, or after a decree of separation], except as
11 provided by a valid gestational surrogacy agreement under [[Article] 8 or]other law of this state;

12 (3) before the birth of the child, the individual and the woman who gave birth to
13 the child married each other in apparent compliance with law, even if the attempted marriage is
14 or could be declared invalid, and the child is born during the invalid marriage or within 300 days
15 after its termination by death, annulment, declaration of invalidity, divorce, or dissolution[, or
16 after a decree of separation], except as provided by a valid gestational surrogacy agreement
17 under [[Article] 8 or] other law of this state;

18 (4) after the birth of the child, the individual and the woman who gave birth to the
19 child married each other in apparent compliance with law, whether or not the marriage is or
20 could be declared invalid, and the individual voluntarily asserted parentage of the child, ~~and:~~

21 ~~(A) the assertion is in a record filed with [state agency maintaining birth~~
22 ~~records];~~

23 ~~(B) the individual agreed to be and is named as the child's parent on the~~

Commented [JDP19]: See memo from Cannel (NJ).

Commented [CJ20]: Mary Louise Fellows suggests placing the clause at the beginning rather than at the end of the subsection. If so redrafted, it would read: "Except as provided by a valid surrogacy agreement under [[Article] 8 or] other law of this state, the individual and the woman who gave birth to the child are married to each other and the child is born during the marriage..."

Commented [JDP21]: Langrock (VT): is "voluntarily" necessary? What does it add?

Commented [JDP22]: Langrock (VT): is this too narrow? Can assertions be filed in other agencies depending on the state?

Commented [CJ23]: CJ: I wonder if we can cut (4)(A). I don't know what it means or how one would do that, other than by being named on a birth certificate, which requires a VAP or a court order.

1 ~~child's birth certificate, except as provided by a valid gestational surrogacy contract under~~

2 ~~[[Article] 8 or]other law of this state; or~~

3 ~~_____ (C) the individual promised in a record to support the child as the~~

4 ~~individual's own; or~~

5 (5) for the first two years of the child's life, the individual resided in the same

6 household with the child and openly held out the child as the individual's own child. A period of

7 temporary absence is counted as part of the period.

8 (b) A presumption of parentage established under this section may be rebutted, and

9 competing ~~presumptions-claims to of~~ parentage may be resolved, only by an adjudication under

10 [Article] 6.

11 Reporter's Comment

12 1. MARITAL PRESUMPTIONS AND GENDER NEUTRALITY

13 To comply with the Supreme Court's decision in *Obergefell v. Hodges*, the marital
14 presumptions have been amended to apply to any spouse -- male and female -- of the woman
15 who gave birth. A number of states have made similar changes to their marital presumptions.
16 *See, e.g.*, CAL. FAM. CODE § 7611; D.C. CODE ANN. § 16-909; 750 ILL. COMP. STAT. ANN. §
17 46/204; ME. STAT., tit. § 1881(1); N.H. REV. STAT. § 168-B:2(V).

18 One state – Washington State – has gone further than the above draft goes. The newly
19 revised Washington marital presumption is fully gender neutral; it establishes a presumption of
20 parentage in any spouse – male or female – of any parent – male or female. Specifically, Wash.
21 Rev. Code Ann. § 26-26-116 provides that “a person is presumed to be the parent of a child if:
22 The person and the mother or father of the child are married to each other ... and the child is
23 born during the marriage.” Thus, under the Washington Statute, a wife is presumed to be the
24 legal parent of the biological child of her husband conceived in an extramarital relationship and
25 born to a woman not his wife.

26 The committee decided not to adopt a fully gender-neutral marital presumption for a
27 number of reasons. First, of the seven states that have amended their marital presumptions to
28 account for same-sex marriage, only one state – Washington State – has adopted a fully gender-
29 neutral version of the marital presumption. The other six states have adopted provisions similar
30 to the provision above.

31 Second, in practice, a fully-gender neutral marital presumption would rarely establish the

Commented [CJ24]: A number of people have raised questions about this provision. I think we should discuss whether the presumption based on subsequent marriage should be retained at all, particularly if we include a holding out presumption and the de facto parent provision. Who do we intend to protect with this presumption? And does it work appropriately?

Commented [CJ25]: Jack Davies (MN) suggests (I think... hard to read): “the individual's own child.”

Commented [CJ26]: Atwood (AZ) wonders whether it is better to combine the concept into the prior sentence to be something like: “for the first two years of the child's life, including a period of temporary absence, the individual resided...”

Commented [CJ27]: Elisa White noted that this “wording is confusing.” She suggested the following: “is counted as part of the two-year period.”

1 parentage of the spouse of a male parent. This is the case because the act provides that the
2 woman who gives birth is a legal parent. Section 201(a)(1). Thus, in the hypothetical described
3 above where a male spouse conceives a child with a woman not his wife, despite the fully
4 gender-neutral marital presumption, a court nonetheless would be likely to conclude that the
5 legal parents of the resulting child are the male spouse and the woman who gave birth to the
6 child. The court would be unlikely to conclude that the man's wife was a legal parent.

7
8 **2. HOLDING OUT PRESUMPTION – SECTION 204(a)(5)**
9

10 There was a discussion at the in-person drafting meeting about making the “holding out”
11 period more flexible. Language has been added to the holding out provision to account for
12 situations where the person is absent only temporarily. The language is ~~taken modeled on from~~
13 the UCCJEA’s definition of “home state.” See UCCJEA § 102(7) (“A period of temporary
14 absence of any of the mentioned persons is part of the period.”). Some members of the
15 committee expressed interest in eliminating the requirement of a two-year holding out period.
16

17 **3. COMPETING PRESUMPTIONS**
18

19 The 1973 UPA contained a provision addressing cases involving competing
20 presumptions. Section (4)(b) of the 1973 UPA provides, in relevant part: “If two or more
21 presumptions arise which conflict with each other, the presumption which on the facts is founded
22 on the weightier considerations of policy and logic controls.”
23

24 The 2002 UPA contains no provision addressing how courts should resolve cases in
25 which there are competing presumptions of parentage. Given that there is a range of
26 circumstances that could result in more than one person claiming a presumption of parentage, it
27 is important for the act to address this possibility. Section 204(b) now references the possibility
28 that a court might have to resolve competing presumptions of parentage. Newly added Section
29 612 provides factors that a court must consider in resolving such cases.
30

31 **SECTION 205. DE FACTO PARENTAGE.**

32 (a) A de facto parent is an individual who fully and completely undertook an
33 unequivocal, committed, and responsible parental role in the child's life during the child's
34 minority. Such a finding requires a determination by the court that, during the child's minority,
35 the individual;

36 (1) resided with the child for a significant period of time;

37 (2) engaged in consistent caretaking of the child;

38 (3) accepted full and permanent responsibilities as a parent of the child without

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Commented [CJ28]: I added this language to respond to the comments of Mary Louise Fellows.

Commented [CJ29]: Same point.

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1 expectation of financial compensation:

2 _____ (4) established a bonded and dependent relationship with the child and that this
3 bonded and dependent relationship with the child was fostered or supported by another parent of
4 the child; and

5 _____ (5) the continuing relationship between the person and the child is in the best interest
6 of the child.

7 (b) Where there are no other individuals with a claim to parentage other than the woman
8 who gave birth, the court shall adjudicate an individual to be a parent if the court determines that
9 the individual satisfies the requirements of subsection (a).

10 (c) In all other cases involving a de facto parent, the court shall adjudicate parentage
11 pursuant to subsections (c) and (d) of Section 612.

12 **Reporter's Comment**

13 Consistent with the directive given to me during our September 2016 committee call, I
14 have added de facto parents to the UPA. There are a few things to note and consider:

- 15 - **Placement** – In this version of the Act, de facto parents are included in a new Section.
16 Delaware, by contrast, includes de facto parents in Section 201, which lays out the means
17 by which one can establish a parent-child relationship. Maine added de facto parents in a
18 new, separate Article that follows what is considered Article 2 in this Act. In the other
19 draft of the Act, I included de facto parents in Section 204, Presumptions.
- 20 - **Effect** – In both Maine and Delaware, if a court determines that the de facto parent
21 criteria have been fulfilled, the court must declare the person to be a legal parent. In this
22 draft, I followed that approach. In the earlier circulated draft, I took a different approach.
23 In that other draft, I made de facto parentage a presumption, that could be rebutted under
24 Article 6.
- 25 - **Criteria** – The criteria above drawn heavily from the Maine statute, as well as the prior
26 draft of the Nonparental Child Custody and Visitation Act. Those provisions, as well as
27 the Delaware provision are included in the accompanying memo.

28 **ARTICLE 3**

29 **VOLUNTARY ACKNOWLEDGMENT OF PATERNITY**

30 **Reporter's Comment**

31 Article 3 implements federal law. 42 U.S.C. § 666(a)(5)(C) provides that receipt of a

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1 federal subsidy by a state for its child support enforcement program is contingent on state
2 enactment of laws establishing specific procedures for “a simple civil process for voluntarily
3 acknowledging paternity.” If a state does not have such provisions or if its provisions are not in
4 compliance with federal law, the state is at risk of losing its federal child support subsidy. *See,*
5 *e.g.,* 42 U.S.C. § 666(a) (providing that “each State must have in effect laws requiring the use of
6 the following procedures, consistent with this section and with regulations of the Secretary”). *See*
7 *also* 42 U.S.C. § 654(20)(A). Today, all states have adopted procedures for voluntary
8 acknowledgments of paternity. Indeed, “[v]oluntary acknowledgments have become the most
9 common way to establish the legal paternity of children born outside marriage.” Leslie Joan
10 Harris, *Voluntary Acknowledgments of Parentage for Same-Sex Couples*, 20 AM. U. J. GENDER
11 SOC. POL’Y & L. 467, 469-70 (2012) (footnotes omitted).

12
13 Currently, Article 3 refers only to the establishment of paternity through this
14 administrative process. Some members of the Drafting Committee feel that women should also
15 be able to establish their parentage through a similar, streamlined administrative process.

16
17 The Drafting Committee considered a number of the possibilities to implement this goal.
18 The Drafting Committee considered creating a parallel procedure that would apply to same-sex
19 couples. At the moment, however, the Drafting Committee has decided against adding separate
20 provisions that would apply only to same-sex couples. Singling out same-sex couples was
21 deemed by some members to be in tension with the charge of making the act apply equally to the
22 children of same-sex couples.

23
24 The Drafting Committee also considered two other possibilities: (1) revising the existing
25 Article 3 so that it is written in gender-neutral terms; or (2) adding an alternative, bracketed
26 version of Article 3 that is written in gender-neutral terms. If a gender-neutral Article 3 is
27 enacted by a state, it must meet the requirements of 42 U.S.C. § 666(a)(5)(C) and not prohibit
28 state child support agencies from establishing paternity in appropriate cases. According to the
29 federal Office of Child Support Enforcement (OCSE), revising Article 3 so that it is gender
30 neutral would not jeopardize the state’s receipt of the federal child support subsidy as long as the
31 state is able to meet the requirements of 42 U.S.C. § 666(a)(5)(C) and establish paternity in
32 appropriate cases. OCSE has indicated a willingness to work with the Drafting Committee to
33 ensure the revised UPA is consistent with title IV-D requirements.

34
35 **SECTION 301. ACKNOWLEDGMENT OF PATERNITY.** The woman who gave
36 birth to a child and a man claiming to be the genetic father of the child may sign an
37 acknowledgment of paternity with intent to establish the man’s paternity.

38 **SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF PATERNITY.**

39 (a) An acknowledgment of paternity must:

40 (1) be in a record;

1 (2) be signed, or otherwise authenticated, under penalty of perjury by the woman
2 who gave birth and by the man seeking to establish his paternity;

3 (3) state that the child whose paternity is being acknowledged:

4 (A) does not have a presumed parent, or has a presumed parent whose full
5 name is stated; and

6 (B) does not have another acknowledged father, or an adjudicated parent
7 or parents under [Article] 7 other than the woman who gave birth;

8 (4) state whether there has been genetic testing and, if so, that the acknowledging
9 man's claim of paternity is consistent with the results of the testing; and

10 (5) state that the signatories understand that the acknowledgment is the equivalent
11 of an adjudication of paternity of the child and that a challenge to the acknowledgment is
12 permitted only under limited circumstances and is barred after two years from the effective date
13 of the acknowledgement.

14 (b) An acknowledgment of paternity is void if:

15 (1) another individual is a presumed parent at the time of signing, unless a denial
16 of parentage signed or otherwise authenticated by the presumed parent is filed with the [agency
17 maintaining birth records];

18 (2) ~~another~~an individual other than the woman who gave birth is an adjudicated
19 parent or a parent under [Article] 7 at the time of signing; or

20 (3) another man is an acknowledged father at the time of signing.

21 (c) A presumed father may sign or otherwise authenticate an acknowledgment of
22 paternity.

23 **Reporter's Comment**
24

1 Section 302 has been amended to reflect the fact that presumed parents can be men or
2 women. The Committee also made a substantive change to Subsection (b) to better reflect what
3 we believe is the actual intent of the provision. The change makes clear that the VAP is void if
4 another person other than the woman who gave birth *is* a presumed, acknowledged, or
5 adjudicated parent. As previously drafted, the VAP was void only if it *stated* that there was
6 another presumed, acknowledged, or adjudicated parent. Thus, under the 2002 UPA, the VAP
7 was void only if the person knowingly lied on the form. As a result, under the 2002 UPA, the
8 VAP could cut off potential claims of other individuals so long as the signatories did not lie. The
9 amendments better protect the rights of other individuals who are presumed, acknowledged, or
10 adjudicated parents. If Subsection (b) is so amended, then what had previously been (b)(3) is no
11 longer necessary.

12
13 **SECTION 303. DENIAL OF PARENTAGE.** A presumed parent may sign a denial of
14 parentage. The denial is valid only if:

15 (1) an acknowledgment of paternity signed, or otherwise authenticated, by another man is
16 filed pursuant to Section 305;

17 (2) the denial is in a record, and is signed, or otherwise authenticated, under penalty of
18 perjury; and

19 (3) the presumed parent has not previously:

20 (A) acknowledged his paternity, unless the previous acknowledgment has been
21 rescinded pursuant to Section 308 or successfully challenged pursuant to Section 309; or

22 (B) been adjudicated to be the parent of the child.

23 **SECTION 304. RULES FOR ACKNOWLEDGMENT OF PATERNITY AND**
24 **DENIAL OF PARENTAGE.**

25 (a) An acknowledgment of paternity and a denial of parentage may be contained in a
26 single document or may be signed in counterparts, and may be filed separately or
27 simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both
28 are filed.

29 (b) An acknowledgment of paternity or a denial of parentage may be signed before the

1 birth of the child.

2 (c) Subject to subsection (a), an acknowledgment of paternity or denial of parentage takes
3 effect on the birth of the child or the filing of the document with the [agency maintaining birth
4 records], whichever occurs later.

5 (d) An acknowledgment of paternity or denial of parentage signed by a minor is valid if it
6 is otherwise in compliance with this [act].

7 **SECTION 305. EFFECT OF ACKNOWLEDGMENT OF PATERNITY OR**
8 **DENIAL OF PARENTAGE.**

9 (a) Except as otherwise provided in Sections 308 and 309, a valid acknowledgment of
10 paternity filed with the [agency maintaining birth records] is equivalent to an adjudication of
11 parentage of a child and confers upon the acknowledged father all of the rights and duties of a
12 parent.

13 (b) Except as otherwise provided in Sections 308 and 309, a valid denial of parentage by
14 a presumed parent filed with the [agency maintaining birth records] in conjunction with a valid
15 acknowledgment of paternity is equivalent to an adjudication of the nonparentage of the
16 presumed parent and discharges the presumed parent from all rights and duties of a parent.

17 **SECTION 306. NO FILING FEE.** The [agency maintaining birth records] may not
18 charge for filing an acknowledgment of paternity or denial of parentage.

19 **SECTION 307. RATIFICATION BARRED.** A court or administrative agency
20 conducting a judicial or administrative proceeding is not required or permitted to ratify an
21 unchallenged acknowledgment of paternity.

22 **Reporter's Comment**

23
24 Based on the comments at the in-person drafting meeting, this Section has been moved
25 up. It was previously included as Section 310. The text of new Section 307 is identical to the text

1 of former Section 310 of the 2002 UPA.

2
3 **SECTION 308. PROCEEDING FOR RESCISSION.** A signatory may rescind an
4 acknowledgment of paternity or denial of parentage by commencing a proceeding to rescind
5 before the earlier of:

6 (1) 60 days after the effective date of the acknowledgment or denial, as provided in
7 Section 304; or

8 (2) the date of the first hearing, in a proceeding to which the signatory is a party, before a
9 court to adjudicate an issue relating to the child, including a proceeding that establishes support.

10 **SECTION 309. CHALLENGE AFTER EXPIRATION OF PERIOD FOR**
11 **RESCISSION.**

12 (a) After the period for rescission under Section 308 has expired, a signatory of an
13 acknowledgment of paternity or denial of parentage may commence a proceeding to challenge
14 the acknowledgment or denial only:

15 (1) on the basis of fraud, duress, or material mistake of fact; and

16 (2) not later than two years after the effective date of the acknowledgment or the
17 denial.

18 (b) A party challenging an acknowledgment of paternity or denial of parentage has the
19 burden of proof.

20 **SECTION 310. PROCEDURE FOR RESCISSION OR CHALLENGE.**

21 (a) Every signatory to an acknowledgment of paternity and any related denial of
22 parentage must be made a party to a proceeding to rescind or challenge the acknowledgment or
23 denial.

24 (b) For the purpose of rescission of, or challenge to, an acknowledgment of paternity or

1 denial of parentage, a signatory submits to personal jurisdiction of this state by signing the
2 acknowledgment or denial, effective upon the filing of the document with the [agency
3 maintaining birth records].

4 (c) Except for good cause shown, during the pendency of a proceeding to rescind or
5 challenge an acknowledgment of paternity or denial of parentage, the court may not suspend the
6 legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay
7 child support.

8 (d) A proceeding to rescind or to challenge an acknowledgment of paternity or denial of
9 parentage must be conducted in the same manner as a proceeding to adjudicate parentage under
10 [Article] 6.

11 (e) At the conclusion of a proceeding to rescind or challenge an acknowledgment of
12 paternity or denial of parentage, the court shall order the [agency maintaining birth records] to
13 amend the birth record of the child to reflect the child's legal parentage accurately, if
14 appropriate.

15 **Reporter's Comment**

16
17 Consistent with the discussion at the in-person drafting meeting, former Section 310 has
18 been moved up to follow Section 306.

19
20 **SECTION 311. FULL FAITH AND CREDIT.** A court of this state shall give full
21 faith and credit to an acknowledgment of paternity or denial of parentage effective in another
22 state if the acknowledgment or denial has been signed and is otherwise in compliance with the
23 law of the other state.

1 **SECTION 312. FORMS FOR ACKNOWLEDGMENT OF PATERNITY AND**
2 **DENIAL OF PARENTAGE.**

3 (a) To facilitate compliance with this [article], the [agency maintaining birth records]
4 shall prescribe forms for the acknowledgment of paternity and the denial of parentage.

5 (b) A valid acknowledgment of paternity or denial of parentage is not affected by a later
6 modification of the prescribed form.

7 **SECTION 313. RELEASE OF INFORMATION.** The [agency maintaining birth
8 records] may release information relating to the acknowledgment of paternity or denial of
9 parentage to a signatory of the acknowledgment or denial and to courts and [appropriate state or
10 federal agencies] of this or another state.

11 **Reporter’s Comment**

12
13 At the in-person drafting meeting, there was a discussion about whether this provision
14 was meant to restrict the release of information, or, alternatively, to ensure some affirmative
15 right to the information for certain enumerated parties/entities. To the extent the purpose is the
16 former, one participant suggested adding the word “only” to better implement that goal.

17
18 At this point, the provision does not include the word “only” because the Reporter is of
19 the opinion that there may be some other individuals who should have a right to ask a court to
20 grant them access to the acknowledgment or the denial. Such individuals may include the child,
21 and a presumed parent who was not a signatory to the acknowledgment or the denial.

22
23 **SECTION 314. ADOPTION OF RULES.** The [agency maintaining birth records] may
24 adopt rules to implement this [article].

25 **ARTICLE 4**

26 **REGISTRY OF PATERNITY**

27 **Reporter’s Comment**

28 The provisions establishing a paternity registry were added by the 2002 UPA. Signing a
29 registry entitles the registrant to notice of and a right to oppose the adoption of an infant child;
30 signing a paternity registry is *not* a means of establishing parentage. In *Lehr v. Robertson*, 463
31 U.S. 248 (1983), the Supreme Court upheld the constitutionality of a New York “putative father

Commented [CJ30]: Atwood (AZ) noted that Hillyard (UT) has been proposing a national putative father registry. We might want to think more about this now that we have revision authority.

1 registry.” A New York statute required a father of a nonmarital child to sign a paternity registry
2 if he wished to be notified of a termination of parental rights or adoption proceeding. Thereafter,
3 a series of well-publicized adoption cases occurred in which state courts held that nonmarital
4 fathers had not been given proper notice of such proceedings and voided established adoptions.
5 A substantial number of legislatures responded to these decisions by enacting paternity registries
6 similar to the New York statute.

7
8 The 2017 UPA does not make any substantive changes to Article 4.
9

10 PART 1

11 GENERAL PROVISIONS

12 **SECTION 401. ESTABLISHMENT OF REGISTRY.** A registry of paternity is
13 established in the [agency maintaining the registry].

14 SECTION 402. REGISTRATION FOR NOTIFICATION.

15 (a) Except as otherwise provided in subsection (b) or Section 405, a man who desires to
16 be notified of a proceeding for adoption of, or termination of parental rights regarding, his
17 genetic child ~~a child that he may have fathered~~ must register in the registry of paternity before
18 the birth of the child or within 30 days after the birth.

19 (b) A man is not required to register if [:

20 (1) a ~~father~~parent-child relationship between the man and the child has been
21 established under this [act] or other law [; or

22 (2) the man commences a proceeding to adjudicate his ~~paternity~~parentage before
23 the court has terminated his parental rights].

24 (c) A registrant shall promptly notify the registry in a record of any change in the
25 information registered. The [agency maintaining the registry] shall incorporate all new
26 information received into its records but need not affirmatively seek to obtain current
27 information for incorporation in the registry.

28 **SECTION 403. NOTICE OF PROCEEDING.** Notice of a proceeding for the

1 adoption of, or termination of parental rights regarding, a child must be given to a registrant who
2 has timely registered. Notice must be given in a manner prescribed for service of process in a
3 civil action.

4 **SECTION 404. TERMINATION OF PARENTAL RIGHTS: CHILD UNDER**
5 **ONE YEAR OF AGE.** The parental rights of a man who may be the genetic father of a child
6 may be terminated without notice if:

7 (1) the child has not attained one year of age at the time of the termination of parental
8 rights;

9 (2) the man did not register timely with the [agency maintaining the registry]; and

10 (3) the man is not exempt from registration under Section 402.

11 **SECTION 405. TERMINATION OF PARENTAL RIGHTS: CHILD AT LEAST**
12 **ONE YEAR OF AGE.**

13 (a) If a child has attained one year of age, notice of a proceeding for adoption of, or
14 termination of parental rights regarding, the child must be given to every alleged father of the
15 child, whether or not he has registered with the [agency maintaining the registry].

16 (b) Notice must be given in a manner prescribed for service of process in a civil action.

17 **PART 2**

18 **OPERATION OF REGISTRY**

19 **SECTION 411. REQUIRED FORM.** The [agency maintaining the registry] shall
20 prepare a form for registering with the agency. The form must require the signature of the
21 registrant. The form must state that the form is signed under penalty of perjury. The form also
22 must state that:

23 (1) a timely registration entitles the registrant to notice of a proceeding for adoption of

1 the child or termination of the registrant’s parental rights;

2 (2) a timely registration does not commence a proceeding to establish ~~paternity~~parentage;

3 (3) the information disclosed on the form may be used against the registrant to establish
4 ~~paternity~~parentage;

5 (4) services to assist in establishing ~~paternity~~parentage are available to the registrant
6 through [the appropriate state support-enforcement agency];

7 (5) the registrant may also register in another state if conception or birth of the child
8 occurred in the other state;

9 (6) information on registries of other states is available from [appropriate state agency or
10 agencies]; and

11 (7) procedures exist to rescind the registration.

12 **Reporter’s Comment**

13 The change to subsection (7) was made in order to make this subsection more consistent
14 with the other provisions in this Article. There is no other provision that refers to a “registration
15 of a claim to paternity.” Elsewhere, the form is simply referred to as a “registration.” *See, e.g.*,
16 Sections 412 - 413. In addition, the phrase “registration of a claim of paternity” is potentially
17 misleading; the phrase could be understood to suggest that registration provides a basis for
18 asserting legal parentage, which it does not.

19 **SECTION 412. FURNISHING OF INFORMATION; CONFIDENTIALITY.**

21 (a) The [agency maintaining the registry] need not seek to locate the woman who gave
22 birth to the child who is the subject of a registration, but the [agency maintaining the registry]
23 shall send a copy of the notice of registration to a woman who gave birth to a child if she has
24 provided an address.

25 (b) Information contained in the registry is confidential and may be released on request
26 only to:

27 (1) a court or a person designated by the court;

1 (2) the woman who gave birth to the child who is the subject of the registration;

2 (3) an agency authorized by other law to receive the information;

3 (4) a licensed child-placing agency;

4 (5) a support-enforcement agency;

5 (6) a party or the party's attorney of record in a proceeding under this [act] or in a
6 proceeding for adoption of, or for termination of parental rights regarding, a child who is the
7 subject of the registration; and

8 (7) the registry of paternity in another state.

9 **SECTION 413. PENALTY FOR RELEASING INFORMATION.** An individual
10 commits a [appropriate level misdemeanor] if the individual intentionally releases information
11 from the registry to another individual or agency not authorized to receive the information under
12 Section 412.

13 **SECTION 414. RESCISSION OF REGISTRATION.** A registrant may rescind his
14 registration at any time by sending to the registry a rescission in a record signed or otherwise
15 authenticated by him, and witnessed or notarized.

16 **SECTION 415. UNTIMELY REGISTRATION.** If a man registers more than 30 days
17 after the birth of the child, the [agency maintaining the registry] shall notify the registrant that on
18 its face his registration was not filed timely.

19 **SECTION 416. FEES FOR REGISTRY.**

20 (a) A fee may not be charged for filing a registration or a rescission of registration.

21 (b) [Except as otherwise provided in subsection (c), the] [The] [agency maintaining the
22 registry] may charge a reasonable fee for making a search of the registry and for furnishing a
23 certificate.

1 [(c) A support-enforcement agency [is] [and other appropriate agencies, if any, are] not
2 required to pay a fee authorized by subsection (b).]

3 **PART 3**

4 **SEARCH OF REGISTRIES**

5 **SECTION 421. SEARCH OF APPROPRIATE REGISTRY.**

6 (a) If a parent-child relationship has not been established under this [act] for a child under
7 one year of age for an individual other than the woman who gave birth, a [petitioner] for
8 adoption of, or termination of parental rights regarding, the child, must obtain a certificate of
9 search of the registry of paternity.

10 (b) If a [petitioner] for adoption of, or termination of parental rights regarding, a child has
11 reason to believe that the conception or birth of the child may have occurred in another state, the
12 [petitioner] must also obtain a certificate of search from the registry of paternity, if any, in that
13 state.

14 **SECTION 422. CERTIFICATE OF SEARCH OF REGISTRY.**

15 (a) The [agency maintaining the registry] shall furnish to the requester a certificate of
16 search of the registry on request of an individual, court, or agency identified in Section 412.

17 (b) A certificate provided by the [agency maintaining the registry] must be signed on
18 behalf of the [agency maintaining the registry] and state that:

19 (1) a search has been made of the registry; and

20 (2) a registration containing the information required to identify the registrant:

21 (A) has been found and is attached to the certificate of search; or

22 (B) has not been found.

23 (c) A [petitioner] must file the certificate of search with the court before a proceeding for

1 adoption of, or termination of parental rights regarding, a child may be concluded.

2 **SECTION 423. ADMISSIBILITY OF REGISTERED INFORMATION.** A

3 certificate of search of the registry of paternity in this or another state is admissible in a
4 proceeding for adoption of, or termination of parental rights regarding, a child and, if relevant, in
5 other legal proceedings.

6 **ARTICLE 5**

7 **GENETIC TESTING**

8 **SECTION 501. SCOPE OF ARTICLE.**

9 (a) This [article] governs genetic testing of an individual to determine parentage, whether
10 the individual:

11 (1) voluntarily submits to testing; or

12 (2) is tested pursuant to an order of the court or a support-enforcement agency;

13 (b) Genetic testing cannot be used:

14 (1) to disestablish the parentage of an individual who is a parent under [Article] 7 [
15 or Article 8]; or

16 (2) to establish the parentage of an individual who is a donor.

17 **Reporter's Comment**

18
19 There was a discussion at the in-person drafting meeting about which word to use in
20 Subsection (b). As was true in the prior draft, Subsection (b) currently uses the term
21 "disestablish." Other possibilities include "challenge," "nullify," or "invalidate."
22

23 **SECTION 502. AUTHORITY TO ORDER OR TO DENY GENETIC TESTING.**

24 (a) Except as otherwise provided in this [article] and [Article] 6, the court shall order the
25 child and other designated individuals to submit to genetic testing if the request for testing is
26 supported by the sworn statement of a party to the proceeding:

1 (1) alleging genetic parentage and stating facts establishing a reasonable
2 probability of genetic parentage; or

3 (2) denying genetic parentage and stating facts establishing a possibility that
4 sexual contact between the individuals, if any, did not result in the conception of the child.

5 (b) A support-enforcement agency may order genetic testing only if there is no presumed,
6 acknowledged, or adjudicated parent other than the woman who gave birth.

7 (c) If a request for genetic testing of a child is made before birth, the court or support-
8 enforcement agency may not order in-utero testing.

9 (d) If two or more individuals are subject to court-ordered genetic testing, the testing may
10 be ordered concurrently or sequentially.

11 (e) Genetic testing of the woman who gave birth is not a condition precedent to testing
12 the child and the individual whose genetic paternity is being determined. If the woman who gave
13 birth is unavailable or declines to submit to genetic testing, the court may order the testing of the
14 child and every individual whose genetic paternity is being adjudicated.

15 (f) An order for genetic testing is enforceable by contempt.

16 (g) In a proceeding to adjudicate the parentage of a child having a presumed parent or to
17 challenge an acknowledgment of paternity under Section 310, a court may deny a motion
18 seeking genetic testing of the mother, the child, or the presumed parent or acknowledged father
19 based on consideration of the factors listed in Section 612, as well as the extent to which the
20 passage of time reduces the chances of establishing the parentage of another person and a child-
21 support obligation in favor of the child. Denial of a motion seeking an order for genetic testing
22 must be based on clear and convincing evidence.

1 **Reporter's Comment**

2
3 1. AUTHORITY TO ORDER AND AUTHORITY TO DENY GENETIC TESTING

4
5 Articles 5 and 6 of the 2002 UPA contain a number of provisions that are interrelated.
6 Section 502 addresses the circumstances under which a court *can order* genetic testing. Former
7 Section 608 addresses the circumstances under which a court *can deny* a request for genetic
8 testing. Having the provisions in separate Articles may create confusion. This is particularly true
9 in the states that adopt only Article 5, but not Article 6, or vice versa. Because the concepts are
10 so related, this draft includes both concepts in the same Section – Section 502.

11
12 2. NEW SUBSECTIONS 502(e) AND 502(f)

13
14 This draft includes two additional new subsections to Section 502 – 502(e) and 502(f).
15 The text for these two new subsections was taken from former Section 622. The content in new
16 Sections 502(e) and 502(f) is closely connected to the substance of Article 5, and particularly to
17 Section 502. The Reporter is of the opinion that this content is more appropriately included here,
18 in Section 502.

19
20 **SECTION 503. REQUIREMENTS FOR GENETIC TESTING.**

21 (a) Genetic testing must be of a type reasonably relied upon by experts in the field of
22 genetic testing and performed in a testing laboratory accredited by:

23 (1) AABB, formerly known as the American Association of Blood Banks, or a
24 successor to its functions; or

25 (2) an accrediting body designated by the Secretary of the United States
26 Department of Health and Human Services.

27 (b) A specimen used in genetic testing may consist of one or more samples, or a
28 combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The
29 specimen used in the testing need not be of the same kind for each individual undergoing genetic
30 testing.

31 (c) Based on the ethnic or racial group of an individual, the testing laboratory shall
32 determine the databases from which to select frequencies for use in calculation of the probability
33 of paternity. If there is disagreement as to the testing laboratory's choice, the following rules

1 apply:

2 (1) The individual objecting may require the testing laboratory, within 30 days
3 after receipt of the report of the test, to recalculate the probability of genetic paternity using an
4 ethnic or racial group different from that used by the laboratory.

5 (2) The individual objecting to the testing laboratory's initial choice shall:

6 (A) if the frequencies are not available to the testing laboratory for the
7 ethnic or racial group requested, provide the requested frequencies compiled in a manner
8 recognized by accrediting bodies; or

9 (B) engage another testing laboratory to perform the calculations.

10 (3) The testing laboratory may use its own statistical estimate if there is a question
11 regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall
12 calculate the frequencies using statistics for any other ethnic or racial group requested.

13 (d) If, after recalculation using a different ethnic or racial group, genetic testing does not
14 rebuttably identify a man as the genetic father of a child under Section 505, an individual who
15 has been tested may be required to submit to additional genetic testing.

16 **Reporter's Comment**

17
18 Section 502(a)(1) was revised because the listed entity now uses a different name.
19 Section 502(a)(2) has been deleted because the American Society for Histocompatibility and
20 Immunogenetics is no longer accrediting laboratories for parentage testing. New Section
21 502(a)(2)/former Section 502(a)(3) has been revised based on feedback from the federal Office
22 of Child Support Enforcement.

23
24 **SECTION 504. REPORT OF GENETIC TESTING.**

25 (a) A report of genetic testing must be in a record and signed under penalty of perjury by
26 a designee of the testing laboratory. A report made under the requirements of this [article] is self-
27 authenticating.

1 (b) Documentation from the testing laboratory of the following information is sufficient
2 to establish a reliable chain of custody that allows the results of genetic testing to be admissible
3 without testimony:

4 (1) the names and photographs of the individuals whose specimens have been
5 taken;

6 (2) the names of the individuals who collected the specimens;

7 (3) the places and dates the specimens were collected;

8 (4) the names of the individuals who received the specimens in the testing
9 laboratory; and

10 (5) the dates the specimens were received.

11 **SECTION 505. GENETIC TESTING RESULTS; CHALLENGE TO RESULTS.**

12 (a) Subject to challenge under subsection (b), a man is identified as the genetic father of a
13 child under this [act] if the genetic testing complies with this [article] and the results disclose
14 that:

15 (1) the man has at least a 99 percent probability of genetic paternity, using a prior
16 probability of 0.50, as calculated by using the combined paternity index obtained in the testing;
17 and

18 (2) a combined paternity index of at least 100 to 1.

19 (b) A man identified under subsection (a) as the genetic father of the child may challenge
20 the genetic testing results only by other genetic testing satisfying the requirements of this
21 [article] which:

22 (1) excludes the man as a genetic father of the child; or

23 (2) identifies another man as the possible genetic father of the child.

1 (c) Except as otherwise provided in Section 510, if more than one man is identified by
2 genetic testing as the possible genetic father of the child, the court shall order them to submit to
3 further genetic testing to identify the genetic father.

4 **Reporter’s Comment**

5
6 The references to “rebut” and “rebuttal” in this Section have been removed because those
7 terms create confusion in this context. “Rebut” and “rebuttal” are typically used to refer to
8 rebuttals of presumptions of parentage. This section, by contrast, deals with attempts to challenge
9 a *factual finding of genetic parentage*. A person identified as a genetic parent may or may not be
10 determined to be a legal parent. Using a different word seems appropriate and helps avoid
11 confusion.

12
13 At the in-person drafting meeting, the Drafting Committee noted that it might be helpful
14 to include an official comment clarifying that this section deals only with challenges to the
15 factual finding of genetic parentage; this section does not address legal parentage.

16
17 **SECTION 506. COSTS OF GENETIC TESTING.**

18 (a) Subject to assessment of costs under [Article] 6, the cost of initial genetic testing must
19 be advanced:

20 (1) by a support-enforcement agency in a proceeding in which the support-
21 enforcement agency is providing services;

22 (2) by the individual who made the request;

23 (3) as agreed by the parties; or

24 (4) as ordered by the court.

25 (b) In cases in which the cost is advanced by the support-enforcement agency, the agency
26 may seek reimbursement from a man who is identified as the genetic father.

27 **Reporter’s Comment**

28
29 The word “rebuttably” has been removed from Section 506(b) because it is unnecessary.
30 Section 505 sets out how one can challenge a factual finding of genetic parentage.

31
32 **SECTION 507. ADDITIONAL GENETIC TESTING.** The court or the support-

1 enforcement agency shall order additional genetic testing upon the request of a party who
2 contests the result of the original testing. If the previous genetic testing identified a man as the
3 genetic father of the child under Section 505, the court or agency may not order additional
4 testing unless the party provides advance payment for the testing.

5 **SECTION 508. GENETIC TESTING WHEN SPECIMENS NOT AVAILABLE.**

6 (a) Subject to subsection (b), if a genetic-testing specimen is not available from a man
7 who may be the genetic father of a child, for good cause and under circumstances the court
8 considers to be just, the court may order the following individuals to submit specimens for
9 genetic testing:

- 10 (1) the parents of the man;
- 11 (2) siblings of the man;
- 12 (3) other children of the man and their mothers; and
- 13 (4) other relatives of the man necessary to complete genetic testing.

14 (b) Issuance of an order under this section requires a finding that a need for genetic
15 testing outweighs the legitimate interests of the individual sought to be tested.

16 **SECTION 509. DECEASED INDIVIDUAL.** For good cause shown, the court may
17 order genetic testing of a deceased individual.

18 **SECTION 510. IDENTICAL BROTHERS.**

19 (a) The court may order genetic testing of a brother of a man identified as the genetic
20 father of a child if the man is reasonably believed to have an identical brother and evidence
21 suggests that the brother may be the genetic father of the child.

22 (b) If each brother satisfies the requirements as the identified genetic father of the child
23 under Section 505 without consideration of another identical brother being identified as the

1 genetic father of the child, the court may rely on nongenetic evidence to adjudicate which brother
2 is the genetic father of the child.

3 **Reporter’s Comment**

4 There was a discussion at the in-person drafting meeting about the phrase “commonly
5 believed.” The Drafting Committee concluded that the concept should be retained to cover
6 situations where the individuals are not identical twins, but many believe them to be identical
7 twins. This draft, however, replaces the word “commonly” with “reasonably.” “Reasonably”
8 continues to capture the concept, but is clearer.

9
10 **SECTION 511. CONFIDENTIALITY OF GENETIC TESTING.**

11 (a) Release of the report of genetic testing for parentage is controlled by [applicable state
12 law].

13 (b) An individual who intentionally releases an identifiable specimen of another
14 individual for any purpose other than that relevant to the proceeding regarding parentage without
15 a court order or the written permission of the individual who furnished the specimen commits a
16 [appropriate level misdemeanor].

17 **ARTICLE 6**

18 **PROCEEDING TO ADJUDICATE PARENTAGE**

19 **Reporter’s Comment**

20 While the 2017 UPA largely retains the substance of Article 6 of the 2002 UPA, it
21 substantially reorganizes the content of former Article 6 to improve its clarity and flow.

22
23
24 The dispositional table below tracks the relocation of some of the principal provisions. A
25 more comprehensive side-by-side comparison is available.

26

Former Section (2002 UPA)	New Section (2017 UPA)
Section 608(a)	Section 502(g)
Section 608(b)	Section 612
Section 609	Section 608
Section 610	Section 614
Section 611	Section 615
Section 612	Section 616
Section 621(a) & (b)	Section 609

Section 621(d)	Section 620
Section 622(a) & (c)	Section 502(f) & (e)
Section 622(b)	Section 611(2)
Section 623	Section 611(1)(B)
Section 624	Section 613
Section 631	Section 611(1)(A) & (4)
Section 632	Section 617
Section 633	Section 619
Section 634	Section 611(3)
Section 635	Section 619
Section 636	Section 620
Section 637	Section 621

PART 1

NATURE OF PROCEEDING

SECTION 601. PROCEEDING AUTHORIZED. A civil proceeding may be maintained to adjudicate the parentage of a child. The proceeding is governed by the [rules of civil procedure].

SECTION 602. STANDING TO MAINTAIN PROCEEDING.

[(a) Proceedings to adjudicate the parentage of children born pursuant to an enforceable surrogacy agreement are governed by [Article] 8.]

(b) [Except as otherwise provided in subsection (a),]subject to [Article] 3 and Sections 607 and 608, a proceeding to adjudicate parentage may be maintained by:

- (1) the child;
- (2) the woman who gave birth to the child unless her parental rights have been terminated[or she is a surrogate under [Article] 8];
- (3) an individual who is a parent under this act;
- (4) an individual whose parentage of the child is to be adjudicated, except as otherwise provided in subsection (c);
- (5) the support-enforcement agency [or other governmental agency authorized by

1 other law];

2 (6) an authorized adoption agency or licensed child-placing agency; or

3 (7) a representative authorized by law to act for an individual who would

4 otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

5 (c) If the proceeding is filed by an individual who asserts parentage under Section 205,
6 that individual must establish standing to maintain the action in accordance with the following.

7 (1) An individual seeking to be adjudicated to be a parent under Section 205 shall
8 file with the initial pleadings an affidavit alleging under oath specific facts to support the
9 existence of a de facto parent relationship with the child as set forth in Section 205. The
10 pleadings and affidavit must be served upon all parents and legal guardians of the child and any
11 other party to the proceeding.

12 (2) An adverse party, parent, or legal guardian who files a pleading in response to
13 the pleadings described in Subsection (c)(1) shall also file an affidavit in response, serving all
14 parties to the proceeding with a copy.

15 (3) The court shall determine on the basis of the pleadings and affidavits under
16 Subsections (c)(1) and (c)(2) whether the individual seeking to be adjudicated a de facto parent
17 has presented prima facie evidence of the requirements set forth in Section 205. The court may,
18 in its sole discretion, if necessary and on an expedited basis, hold a hearing to determine disputed
19 facts that are necessary and material to the issue of standing.

20 (4) If the court determines that the individual has presented prima facie evidence
21 of the requirements set forth in Section 205, the individual has standing to maintain the
22 proceeding.

23 **Reporter's Comment**

1 This draft includes a heightened standing standard that must be met where the action is
2 brought by an individual claiming to be a de facto parentage. This provision is premised on a
3 similar provision in Maine’s newly enacted Parentage Act. As I understand it, this provision was
4 added to allay the concerns of some people that permitting actions by de facto parents might
5 subject parents to unwarranted and unjustified litigation. This ensures that the action will not
6 proceed unless it appears that the person has a strong claim to being a de facto parent.

7
8 It is important to note that the Delaware Parentage Act does not include any similar
9 special standing requirements for individuals who claim de facto parentage.

10
11 As drafted, no other individuals are required to fulfill a heightened standing requirement
12 to proceed.

13
14 If we decide to include this heightened pleading standard, we may want to clarify in the
15 comment that this heightened pleading standard does not apply if the person initiating the action
16 to declare an individual to be a de facto parent is an existing legal parent of the child.
17

18 **SECTION 603. PARTIES TO PROCEEDING.**

19 [(a) Proceedings to adjudicate the parentage of children born pursuant to an enforceable
20 surrogacy agreement are governed by [Article] 8.]

21 (b) [Except as provided in subsection (a),]the following individuals must be provided
22 notice of and must be joined as parties to a proceeding to adjudicate parentage:

23 (1) a woman who gave birth unless her parental rights have been terminated[or
24 she is a surrogate under [Article] 8];

25 (2) an individual who is a parent under this act;

26 (3) any presumed, acknowledged, or adjudicated parents; and

27 (4) an individual whose parentage of the child is to be adjudicated.

28 (c) If an individual who is required to be joined under subsection (b) cannot be joined, the
29 action must proceed among the existing parties.

30 **Reporter’s Comment**

31
32 This provision is intended to ensure that steps are taken to join all persons with a claim to
33 parentage regarding a particular child in a single action. Without the requirement of joinder, the

1 rights of any absent individual with a claim to parentage could be indirectly affected. Take, for
2 example, a situation where two men are presumed parents, one because he was married to the
3 child's mother and one because he had held the child out as his own for the first two years of the
4 child's life. If the UPA did not require the court to join all parties with a claim to parentage, the
5 husband may not have a right to be notified of the action and his rights could be negatively
6 affected even though he did not have an opportunity to present his claims to the court. Indeed,
7 Section 621(d) provides that, "[e]xcept as otherwise provided in subsection (b), a determination
8 of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an
9 individual who was not a party to the earlier proceeding." (This subsection was taken verbatim
10 from former Section 637(d)).

11
12 While a goal of the revised Section 603 is to ensure that steps are taken to include all
13 parties with a potential claim to parentage in a proceeding to adjudicate parentage, another goal
14 of the revised Section is to ensure that the proceeding could go forward even if such a party
15 declines to participate in the proceeding. Subsection (c), seeks to achieve this goal. Subsection
16 (c) is modeled on Federal Rule of Civil Procedure 19. Although state court parentage actions are
17 not governed by the Federal Rules of Civil Procedure, this new Section is consistent with the
18 spirit of FRCP 19.

19
20 **SECTION 604. PERSONAL JURISDICTION.**

21 (a) An individual may not be adjudicated to be a parent unless the court has personal
22 jurisdiction over the individual.

23 (b) A court of this state having jurisdiction to adjudicate parentage may exercise personal
24 jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the
25 conditions prescribed in [Section 201 of the Uniform Interstate Family Support Act] are fulfilled.

26 (c) Lack of jurisdiction over one individual does not preclude the court from making an
27 adjudication of parentage binding on another individual over whom the court has personal
28 jurisdiction.

29 **SECTION 605. VENUE.** Venue for a proceeding to adjudicate parentage is in the
30 [county] of this state in which:

- 31 (1) the child resides or is found;
32 (2) the [respondent] resides or is found if the child does not reside in this state; or
33 (3) a proceeding for probate or administration of the presumed parent or alleged father's

1 estate has been commenced.

2 **PART 2**

3 **SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE**

4 **SECTION 606. NO STATUTE OF LIMITATION: CHILD HAVING NO**
5 **PRESUMED, ACKNOWLEDGED, OR ADJUDICATED PARENT OTHER THAN THE**
6 **WOMAN WHO GAVE BIRTH.** A proceeding to adjudicate the parentage of a child having no
7 presumed, acknowledged, or adjudicated parent other than the woman who gave birth may be
8 commenced at any time. Such a proceeding may be commenced even after the child becomes an
9 adult, but only if the child initiates the proceeding.

10 **Reporter’s Comment**

11 Former subsection (2) is no longer needed and, therefore, has been struck. Former
12 subsection (2) provided that a proceeding to adjudicate parentage could be maintained at any
13 time if “an earlier proceeding to adjudicate paternity has been dismissed based on the application
14 of a statute of limitation then in effect.” In the past, some states had very short statute of
15 limitations periods for filing an action to establish parentage. *See, e.g., Clark v. Jeter*, 486 U.S.
16 456 (1988) (holding unconstitutional a six-year statute of limitations period). Since 1984,
17 however, federal law has required all states to have a statute of limitation period that continues
18 until at least the child’s eighteenth birthday. 42 U.S.C. § 666(a)(5)(A)(i).

19 **SECTION 607. STATUTE OF LIMITATION: CHILD HAVING PRESUMED**
20 **PARENT.**

21 (a) Except as otherwise provided in subsection (b), a proceeding to challenge a presumed
22 parent’s parentage must be commenced not later than two years after the birth of the child.

23 (b) A proceeding to challenge the parent-child relationship between a child and the
24 child’s presumed parent may be ~~maintained~~ commenced at any time if the court determines that:

25 (1) the presumed parent and the woman who gave birth to the child did not
26 cohabit during the probable time of conception; and

27 (2) the presumed parent never resided with the child and never openly held out the
28

1 child as his or her own.

2 **Reporter's Comment**

3
4 Subsection (a) has been updated to clarify that a presumed parent is not precluded from
5 obtaining a court order *declaring his or her parentage* just because the child is two years old or
6 older. The intent behind the provision is to preclude *challenges* to the presumption after that
7 point.

8 **SECTION 608. STATUTE OF LIMITATION: CHILD HAVING**

9 **ACKNOWLEDGED FATHER OR ADJUDICATED PARENT.**

10
11 (a) If a child has an acknowledged father, a signatory to the acknowledgment of paternity
12 or denial of parentage may commence a proceeding seeking to rescind the acknowledgement or
13 denial or challenge the parentage of the child only within the time allowed under Section 308 or
14 309.

15 (b) If a child has an acknowledged father or an adjudicated parent, an individual, other
16 than the child, who is neither a signatory to the acknowledgment of paternity nor a party to the
17 adjudication and who seeks an adjudication of parentage of the child must commence a
18 proceeding not later than two years after the effective date of the acknowledgment or
19 adjudication.

20 (c) Subsection (b) does not apply to the child, unless the child was represented by
21 independent counsel in the prior judicial proceeding.

22 (d) A proceeding under this section is subject to the application of the considerations set
23 forth in Section 612.

24 **Reporter's Comment**

25 1. **VOID ACKNOWLEDGMENTS OF PATERNITY**

26
27 The Drafting Committee noted that it may be helpful to include an Official Comment
28 stating that an action to challenge an acknowledgment on the ground that it is void under Section
29 302 can be made at any time.

1
2 2. THE CHILD
3

4 There was a discussion at the in-person drafting meeting about whether the statute of
5 limitations period should also apply to a child who had previously been represented by counsel
6 in a prior action to adjudicate parentage. If the Drafting Committee decides that it does want to
7 include a different rule for the previously represented child, subsection (b) will need to be
8 revised accordingly.
9

10 **SECTION 609. GENERAL RULES REGARDING ADMISSIBILITY OF**
11 **RESULTS OF GENETIC TESTING.**

12 (a) Except as otherwise provided in subsection (c), a record of a genetic-testing expert is
13 admissible as evidence of the truth of the facts asserted in the report unless a party objects to its
14 admission within [14] days after its receipt by the objecting party and cites specific grounds for
15 exclusion. The admissibility of the report is not affected by whether the testing was performed:

16 (1) voluntarily or pursuant to an order of the court or a support-enforcement
17 agency; or

18 (2) before or after the commencement of the proceeding.

19 (b) A party objecting to the results of genetic testing may call one or more genetic-testing
20 experts to testify in person or by telephone, videoconference, deposition, or another method
21 approved by the court. Unless otherwise ordered by the court, the party offering the testimony
22 bears the expense for the expert testifying.

23 (c) Genetic testing is not admissible for the purpose of:

24 (1) disestablishing the parentage of an individual who is a parent under [Article]
25 7[or [Article] 8]; or

26 (2) establishing the parentage of an individual who is a donor.

1 **Reporter's Comment**

2
3 1. PLACEMENT OF THE PROVISION

4
5 This section has been moved up. It was previously included as Section 621. The Reporter
6 believes the content is better placed here, along with the other substantive rules regarding
7 adjudication of parentage. What had been addressed in former Section 621(c) is now addressed
8 in new Section 612 (adjudicating parentage in cases involving competing claims to parentage).
9

10 Former Section 621(d) has been moved into new Section 619/former Section 636 (Order
11 Adjudicating Parentage). Section 619/former Section 636 addresses other costs and expenses,
12 including “fees for genetic testing, other costs, and necessary travel and other reasonable
13 expenses incurred in a proceeding under this [article].” Thus, it seems like a better placement for
14 this content.
15

16 2. GENETIC TESTING AND INTENDED PARENTS

17
18 The new Section 609(c) is similar to the new Section 501(c); both new provisions make
19 clear that genetic testing cannot be used to challenge the parentage of an individual who is a
20 parent of a child born through assisted reproductive technology.
21

22 **SECTION 610. ADJUDICATING PARENTAGE FOR AN INDIVIDUAL WHO IS**
23 **A PARENT UNDER [ARTICLE] 7.** An individual who is a parent under [Article] 7 can bring
24 a proceeding to adjudicate parentage. Upon a finding that the individual is a parent under
25 [Article] 7, the court shall issue an order declaring that individual to be a parent to the child.

26 **Reporter's Comment**

27
28 This new section specifically authorizes the filing of a proceeding to adjudicate the
29 parentage of individuals who are intended parents under Article 7. The rules regarding
30 adjudications of parentage for individuals who are parents under Article 8 are set forth in Article
31 8.
32

33 **SECTION 611. ADJUDICATING PARENTAGE OF AN ALLEGED GENETIC**
34 **PARENT FOR A CHILD WITH NO PRESUMED PARENT.** The following rules apply in a
35 proceeding to adjudicate the parentage of an individual who is alleged to be a child's genetic
36 parent and who is not a donor, where the child has no presumed, acknowledged, or adjudicated
37 parent and no parent under [Article] 7 [or [Article] 8], other than the woman who gave birth.

1 (1) The court shall issue an order declaring the individual to be the child’s parent if:

2 (A) the individual is identified as the genetic parent of the child under Section 505
3 and that identification is not successfully challenged under Section 505; or

4 (B) the individual admits parentage by filing a pleading to that effect or by
5 admitting parentage under penalty of perjury when making an appearance or during a hearing
6 and the court finds that there is no reason to question the admission.

7 (2) If the individual whose genetic parentage is being determined declines to submit to
8 genetic testing ordered by the court, the court may adjudicate parentage contrary to the position
9 of the individual.

10 (3) If the individual whose genetic parentage is being determined is in default after
11 service of process and is found by the court to be the parent of the child, the court shall issue an
12 order adjudicating the individual to be the child’s parent.

13 (4) If the court finds that the genetic testing neither identifies nor excludes the individual
14 as the genetic parent of the child, the court may not dismiss the proceeding. In that event, the
15 results of genetic testing, and other evidence, are admissible to adjudicate the issue of parentage.

16 **Reporter’s Comment**

17
18 While this is a new Section, most of the content is taken from various provisions of the
19 2002 UPA. For example, the content of subsection (1)(A) is taken from former Section 631; the
20 content of subsection (1)(B) is taken from former Section 623; the content of subsection (2) is
21 taken from former Section 622; the content of subsection (3) is taken from former Section 634;
22 and the content of subsection (4) is taken from former Section 631.

23
24 Given that these rules all concern the adjudication of parentage for a child with no
25 presumed, adjudicated, or acknowledged parent other than the woman who gave birth, it seemed
26 advisable to put all of the pieces into a single Section.
27

1 **SECTION 612. ADJUDICATING PARENTAGE OF A CHILD WITH ONE OR**

2 **MORE PRESUMED PARENTS.** The following rules apply in a proceeding to adjudicate the
3 parentage of a child where there is one or more presumed parents and where the child has no
4 adjudicated or acknowledged parent and no parent under [Article] 7 [or [Article] 8], other than
5 the woman who gave birth.

Commented [JDP31]: Cannel (NJ): not parent, not child – who has the right to test parentage? (comment not clear to me....)

6 (1) Except as otherwise provided in Section 607, in a proceeding where there is an
7 individual, other than a donor, who is both a presumed parent and a genetic parent, and there is
8 no other individual with a claim to parentage other than the woman who gave birth, the court
9 shall issue an order declaring the individual to be the child’s parent.

10 (2) Except as otherwise provided in Section 607, in a proceeding where there is an
11 individual who is a presumed parent but who is not a genetic parent, and there is no other
12 individual with a claim to parentage other than the woman who gave birth, the court shall issue
13 an order declaring the individual to be the child’s parent unless:

Commented [CJ32]: CJ: Is this the correct appropriate for people in this category? Or should the factors outlined in subsection (3) below apply in such a case?

14 (A) the presumed parent and the woman who gave birth to the child did not
15 cohabit during the probable time of conception; and

Commented [CJ33]: We had previously considered whether to strike this provision. I am flagging it again for discussion as I don’t think we made a final decision about it.

16 (B) the presumed parent never resided with the child and never openly held out
17 the child as his or her own.

Commented [CJ34]: Behr (AK) suggests replacing “his or her” with “the presumed parent’s”

18 (3) In a proceeding where more than one individual has a claim to parentage under this
19 [act], not including the woman who gave birth, the court shall adjudicate parentage pursuant to
20 the best interests of the child, based on the following factors:

21 (A) the age of the child;

22 (B) the length of time during which the presumed or genetic parents have
23 assumed the role of parent of the child;

1 (C) the nature of the relationship between the child and the presumed or genetic
2 parents;

3 (D) the harm to the child if the relationship between the child and any presumed
4 or genetic parents is not recognized;

5 (E) the facts surrounding the individual’s discovery that ~~he~~ the individual might
6 not be the genetic parent;

Commented [CJ35]: Behr (AK) suggests replacing “he” with “the individual.”

7 (F) the length of time between the proceeding to adjudicate parentage and the
8 time that the individual was placed on notice that ~~he~~ the individual might not be the genetic
9 parent; and

Commented [CJ36]: Behr (AK) suggests replacing “he” with “the individual.”

10 (G) other equitable factors arising from the disruption of the relationship between
11 the child and a presumed or genetic parent or the chance of other harm to the child.

12 (4) In an appropriate action, a court may find that more than two individuals with a claim
13 to parentage under this [act] are parents if the court finds that recognizing only two parents
14 would be detrimental to the child. In determining detriment to the child, the court shall consider
15 all relevant factors, including, but not limited to, the harm of removing the child from a stable
16 placement with an individual who has fulfilled the child’s physical needs and the child’s
17 psychological needs for care and affection, and who has assumed that role for a substantial
18 period of time. A finding of detriment to the child does not require a finding of unfitness of any
19 of the parents or individuals with a claim to parentage.

20 **Reporter’s Comment**

21 Unlike the 1973 UPA, the 2002 UPA contained no provision explaining how a court
22 should adjudicate parentage in cases involving competing claims to parentage. This new Section
23 seeks to provide that guidance. The factors included in this new Section are largely taken from
24 former Section 608, which addressed when a court could deny a request for genetic testing.

25
26 This new section uses the phrase “individual with a claim to parentage.” This phrase is

1 now included in the definition section (Section 102).

2
3 Newly added subsection (4) allows a court to conclude that a child has more than two
4 parents. It does, however, establish a high threshold that must be met before that conclusion can
5 be reached. This provision is based on Cal. Fam. Code Section 7612(c).

6
7 **Official Comment**

8
9 In a proceeding involving application of subsection (3), the court may want to consider
10 appointing an attorney or guardian ad litem to represent the child.

11
12 **PART 3**

Commented [CJ37]: Behr (AK) – no underline.

13 **HEARINGS AND ADJUDICATION**

14 **SECTION 613. TEMPORARY ORDER.**

15 (a) In a proceeding under this [article], the court may issue a temporary order for support
16 of a child if the order is appropriate and the individual ordered to pay support is:

17 (1) a presumed parent of the child;

18 (2) petitioning to have his or her parentage adjudicated;

19 (3) identified as the genetic father through genetic testing under Section 505;

20 (4) an alleged father who has declined to submit to genetic testing;

21 (5) shown by clear and convincing evidence to be the parent of the child;

22 (6) the woman who gave birth to the child, unless her parental rights have been
23 terminated[or she is a surrogate under [Article] 8]; or

24 (7) a parent to the child under this act.

25 (b) A temporary order may include provisions for custody and visitation as provided by
26 other law of this state.

27 **SECTION 614. JOINDER OF PROCEEDINGS.**

28 (a) Except as otherwise provided in subsection (b), a proceeding to adjudicate parentage
29 may be joined with a proceeding for adoption, termination of parental rights, child custody or

1 visitation, child support, divorce, dissolution, annulment, [legal separation or separate
2 maintenance,] probate or administration of an estate, or other appropriate proceeding.

3 (b) A [respondent] may not join a proceeding described in subsection (a) with a
4 proceeding to adjudicate parentage brought under [the Uniform Interstate Family Support Act].

5 **SECTION 615. PROCEEDING BEFORE BIRTH.** [Except as otherwise provided in
6 Section 809 with regard to surrogacy,] a proceeding to determine parentage may be commenced
7 before the birth of the child, and an order or judgment may be entered before birth, but the
8 enforcement of that order or judgment shall be stayed until the birth of the child, but may not be
9 concluded until after the birth of the child. The following actions may be taken before the birth
10 of the child:

11 ~~—— (1) service of process;~~

12 ~~—— (2) discovery; and~~

13 ~~—— (3) except as prohibited by Section 502, collection of specimens for genetic testing.~~

14 **Reporter's Comment**

15 I replaced the text of former Section 611 with language based on the California provision.
16 Cal. Fam. Code § 7633. The text of former Section 611 provided that a proceeding to determine
17 parentage could not be concluded until after the birth of the child. In some instances, however, it
18 may be very helpful for the parties to have a determination of parentage prior to birth, even if the
19 order is not effective until after birth. We previously considered this language at our last in-
20 person meeting, but we did not make a decision about it.

21
22 At the prior in-person drafting meeting, the Drafting Committee also tabled a discussion
23 about whether final pre-birth orders should be authorized under Article 7 with respect to children
24 born through non-surrogacy forms of assisted reproduction. The Drafting Committee never
25 returned to the issue, and therefore we never made a decision about it. If the Drafting Committee
26 decides to permit pre-birth orders under Article 7, this provision will need to be amended
27 accordingly.

28
29 **SECTION 616. CHILD AS PARTY; REPRESENTATION.**

30 (a) A minor child is a permissible party, but is not a necessary party to a proceeding

1 under this [article].

2 (b) The court shall appoint an [attorney, guardian ad litem, or similar personnel] to
3 represent a minor or incapacitated child if the child is a party or the court finds that the interests
4 of the child are not adequately represented.

5 **SECTION 617. JURY PROHIBITED.** The court, without a jury, shall adjudicate
6 parentage of a child.

7 **SECTION 618. HEARINGS; INSPECTION OF RECORDS.**

8 (a) On request of a party and for good cause shown, the court may close a proceeding
9 under this [article].

10 (b) A final order in a proceeding under this [article] is available for public inspection.
11 Other papers and records are available only with the consent of the parties or on order of the
12 court for good cause.

13 **SECTION 619. DISMISSAL FOR WANT OF PROSECUTION.** The court may
14 issue an order dismissing a proceeding commenced under this [act] for want of prosecution only
15 without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is
16 void and has only the effect of a dismissal without prejudice.

17 **SECTION 620. ORDER ADJUDICATING PARENTAGE.**

18 (a) An order adjudicating parentage must identify the child by means provided by the law
19 of [this state].

20 (b) Except as otherwise provided in subsection (c), the court may assess filing fees,
21 reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other
22 reasonable expenses incurred in a proceeding under this [article]. The court may award
23 attorney's fees, which may be paid directly to the attorney, who may enforce the order in the

1 attorney's own name.

2 (c) The court may not assess fees, costs, or expenses against the support-enforcement
3 agency of this state or another state, except as provided by other law.

4 (d) Copies of bills for genetic testing and for prenatal and postnatal health care for the
5 mother and child which are furnished to the adverse party not less than 10 days before the date of
6 a hearing are admissible to establish:

7 (1) the amount of the charges billed; and

8 (2) that the charges were reasonable, necessary, and customary.

9 (e) On request of a party and for good cause shown, the court may order that the name of
10 the child be changed.

11 (f) If the order of the court is at variance with the child's birth certificate, the court shall
12 order [agency maintaining birth records] to issue an amended birth registration.

13 **Reporter's Comment**

14 Much of the content of this section is taken from former Section 636. The Committee
15 may want to add an Official Comment about inserting citations to other law of the state in
16 subsection (a), if such law or court rules provide alternative means for identifying the child.

17 **SECTION 621. BINDING EFFECT OF DETERMINATION OF PARENTAGE.**

19 (a) Except as otherwise provided in subsection (b), a determination of parentage is
20 binding on:

21 (1) all signatories to an acknowledgement of paternity or denial of parentage as
22 provided in [Article] 3; and

23 (2) all parties to an adjudication by a court acting under circumstances that satisfy
24 the jurisdictional requirements of [Section 201 of the Uniform Interstate Family Support Act].

25 (b) A child is not bound by a determination of parentage under this [act] unless:

1 (1) the determination was based on an unrescinded acknowledgment of paternity
2 and the acknowledgment is consistent with the results of genetic testing;

3 (2) except for determinations of parentage under [Article] 7 [or [Article] 8], the
4 adjudication of parentage was based on a finding consistent with the results of genetic testing
5 and the consistency is declared in the determination or is otherwise shown; or

6 (3) the child was a party or was represented in the proceeding determining
7 parentage by an [attorney, guardian ad litem, or similar personnel].

8 (c) In a proceeding to dissolve a marriage, the court is deemed to have made an
9 adjudication of the parentage of a child if the court acts under circumstances that satisfy the
10 jurisdictional requirements of [Section 201 of the Uniform Interstate Family Support Act], and
11 the final order:

12 (1) expressly identifies a child as a “child of the marriage,” “issue of the
13 marriage,” or similar words indicating that both spouses are parents of the child; or

14 (2) provides for support of the child by a spouse unless that spouse’s parentage is
15 specifically disclaimed in the order.

16 (d) Except as otherwise provided in subsection (b), a determination of parentage may be a
17 defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was
18 not a party to the earlier proceeding.

19 (e) A party to an adjudication of parentage may challenge the adjudication only under law
20 of this state relating to appeal, vacation of judgments, or other judicial review.

21 **Reporter’s Comment**

22 There was a discussion at the in-person drafting meeting about whether and under what
23 circumstances a child should be bound by a prior determination of parentage.
24

1 **ARTICLE 7**

2 **Reporter's Comment**

3 The content of Article 7 is substantively similar to the content of Article 7 of the 2002
4 UPA. Almost all of the changes made to Article 7 are intended to update Article 7 so that it
5 applies equally to same-sex couples. Article 7 is presented in revision form. A side-by-side
6 comparison with the 2002 UPA is available in the supporting documents.
7

8 **ASSISTED REPRODUCTION OTHER THAN SURROGACY**

9 **SECTION 701. SCOPE OF ARTICLE.** This [article] does not apply to the birth of a
10 child conceived by means of sexual intercourse [, or as the result of a ~~gestational surrogacy~~
11 agreement as provided in [Article] 8].

12 **SECTION 702. PARENTAL STATUS OF DONOR.** A donor is not a parent of a
13 child conceived by means of assisted reproduction.

14 **SECTION 703. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION.** An
15 individual who provides a gamete for, or who consents to, assisted reproduction by a woman as
16 provided in Section 704 with the intent to be the parent of the resulting child, is a parent of the
17 resulting child.

18 **SECTION 704. CONSENT TO ASSISTED REPRODUCTION.**

19 (a) Consent by the woman giving birth and the individual who intends to be a parent of a
20 child born through assisted reproduction must be in a record.

21 (b) Failure to consent in a record as required by subsection (a), before or after birth of the
22 child, does not preclude a finding of parentage if the woman giving birth and the individual,
23 during the first two years of the child's life resided together in the same household with the child
24 and openly held out the child as their own. A period of temporary absence is part of the period.

25 **SECTION 705. LIMITATION ON SPOUSE'S DISPUTE OF PARENTAGE.**

26 (a) Except as otherwise provided in subsection (b), an individual who, at the time of the

Commented [JDP38]: Rubottom (FL): can unmarried parents use assisted reproduction? Is the number of parents limited to two?

1 child's birth, is the spouse of the woman who gave birth to a child by means of assisted
2 reproduction may not challenge his or her parentage of the child unless:

3 (1) within two years after learning of the birth of the child, the spouse commences
4 a proceeding to adjudicate his or her parentage; and

5 (2) the court finds that the spouse did not consent to the assisted reproduction,
6 before or after birth of the child.

7 (b) A proceeding to adjudicate a spouse's parentage of a child born by means of assisted
8 reproduction may be maintained at any time if the court determines that:

9 (1) the spouse neither provided a gamete for, nor consented to, assisted
10 reproduction by his or her spouse;

11 (2) the spouse and the woman who gave birth to the child have not cohabited
12 since the probable time of assisted reproduction; and

13 (3) the spouse never openly held out the child as his or her own child.

14 (c) The limitation provided in this section applies to a marriage declared invalid after
15 assisted reproduction.

16 **SECTION 706. EFFECT OF DISSOLUTION OF MARRIAGE OR**
17 **WITHDRAWAL OF CONSENT.**

18 (a) If a marriage is dissolved before transfer of eggs, sperm, or embryos, the former
19 spouse is not a parent of the resulting child unless the former spouse consented in a record that if
20 assisted reproduction were to occur after a divorce, dissolution, or other term used in the
21 state divorce or dissolution, the former spouse would be a parent of the child.

22 (b) The consent of an individual to assisted reproduction under Section 704 may be
23 withdrawn by that individual in a record with notice to the woman giving birth any time before

Commented [CJ39]: Behr (AK): replace "his or her" with "the individual's."
CJ: This might be confusing, since the person would first be identified as the "spouse" and then later as "the individual," when modifying the other spouse.
What about amending the last clause to read: "by the other spouse."

Commented [CJ40]: Behr (AK) suggests replacing "his or her" with "the individual's."

Commented [CJ41]: Behr (AK) suggests adding "or dissolution of marriage."
JP suggests adding alternative language in brackets, so that a state would use the word or phrase that is appropriate in that jurisdiction.

Commented [JDP42]: Rubottom (FL): is the child stuck with only one parent?

1 transfer of eggs, sperm, or embryos that results in a pregnancy. An individual who withdraws
2 consent as provided under this section is not a parent of the resulting child.

3 **SECTION 707. PARENTAL STATUS OF DECEASED INDIVIDUAL.** If an
4 individual who consented in a record to be a parent by assisted reproduction dies before transfer
5 of eggs, sperm, or embryos, the deceased individual is not a parent of the resulting child unless
6 the deceased spouse consented in a record that if assisted reproduction were to occur after death,
7 the deceased individual would be a parent of the child.

8 **ARTICLE 8**

9 **SURROGACY AGREEMENTS**

10 **Reporter's Comment**

11
12 The 2017 UPA updates the surrogacy provisions to reflect developments in that area. The
13 2002 UPA includes a bracketed Article 8 that authorized surrogacy agreements. States have been
14 particularly slow to enact Article 8 of the 2002 UPA. Eleven (11) states adopted versions of the
15 2002 UPA. Of these eleven (11) states, however, only two (2) – Texas and Utah – enacted the
16 surrogacy provisions based on Article 8 of the 2002 UPA. At least five (5) of the eleven (11)
17 states that enacted the 2002 UPA enacted surrogacy provisions that are *not* premised on the 2002
18 UPA. These states include: Delaware (permitting) (enacted 2013); Illinois (permitting) (enacted
19 2004); Maine (permitting) (enacted 2015); North Dakota (banning) (enacted 2005); and
20 Washington (banning compensated) (enacted 1989).

21
22 The fact that very few states enacted Article 8 is likely the result of a confluence of
23 factors. One likely factor is the controversial nature of surrogacy itself. But given that four of the
24 states that enacted the 2002 UPA enacted provisions permitting surrogacy, *but did not adopt*
25 *Article 8* of the UPA, another factor appears to be a lack of enthusiasm for the substance of the
26 provisions themselves. Accordingly, the 2017 UPA updates the surrogacy provisions to make
27 them more consistent with current surrogacy practice.

28
29 As was true of the 2002 UPA, Article 8 of the 2017 UPA regulates and permits both
30 genetic (often referred to as “traditional”) and gestational surrogacy agreements. But the 2017
31 UPA differs in the way that it regulates these two types of surrogacy agreements. The 2002 UPA
32 set forth a single set of requirements that applied equally to genetic and gestational surrogacy
33 agreements. While the 2017 UPA continues to permit both types of surrogacy, the 2017 UPA
34 imposes additional safeguards or requirements on genetic surrogacy agreements. This
35 differentiation between genetic and gestational surrogacy is intended to reflect both the factual
36 differences between the two types of surrogacy as well as the reality that policy makers view
37 these two forms of surrogacy as being quite different. Of the states that permit surrogacy, almost

1 all of them permit *only* gestational surrogacy agreements.
2

3 While the 2017 UPA adds additional requirements that apply only to genetic surrogacy
4 agreements, it simultaneously liberalizes the rules governing gestational surrogacy agreements.
5 The changes to the rules governing gestational surrogacy agreements is intended to make these
6 rules more consistent with current practice and law.
7

8 Sections 801 – 806 establish the rules that apply to both types of surrogacy agreements.
9 Sections 807 – 810 include rules that apply only to gestational surrogacy agreements. Sections
10 811 – 814 include rules that apply only to genetic surrogacy agreements.
11

12 PART 1

13 GENERAL REQUIREMENTS

14 SECTION 801. ELIGIBILITY TO ENTER A GESTATIONAL OR GENETIC

15 SURROGACY AGREEMENT.

16 (a) In order to execute an agreement to act as a gestational or a genetic surrogate, a
17 woman must:

18 (1) be at least 21 years of age;

19 (2) have previously given birth to at least one child;

20 (3) complete a medical evaluation that includes a mental health consultation; and

21 (4) have independent legal representation of her own choosing and paid for by the

22 intended parent or parents regarding the terms of the surrogacy agreement and the potential legal
23 consequences of the surrogacy agreement.
24

25 (b) In order to execute a surrogacy agreement, the intended parent or parents, whether
26 genetically related to the child or not, must:

27 (1) be at least 21 years of age;

28 (2) complete a mental health consultation; and

29 (3) have independent legal representation regarding the terms of the surrogacy

Commented [JDP43]: Langrock (VT) questions all requirements. What if 20? Why does legal representation have to be paid for by others? Why a mental health consultation? What if there is minor noncompliance?

1 agreement and the potential legal consequences of the surrogacy agreement.

2 **Reporter’s Comment**

3 There was a discussion at the in-person drafting meeting about whether the intended
4 parents should be required to pay for the surrogate’s counsel. A number of states, including
5 Maine, require the intended parents to pay for the surrogate’s counsel. *See, e.g.*, ME. STAT., tit. §
6 1931(1)(D) (requiring the surrogate to have “had independent legal representation of her own
7 choosing and paid for by the intended parent or parents regarding the terms of the gestational
8 carrier agreement and have been advised of the potential legal consequences of the gestational
9 carrier agreement”). A number of other states do not require the intended parents to pay for the
10 surrogate’s counsel. *See, e.g.*, CAL. FAM. CODE § 7962(b) (“Prior to executing the written
11 assisted reproduction agreement for gestational carriers, a surrogate and the intended parent or
12 intended parents shall be represented by separate independent licensed attorneys of their
13 choosing.”).
14

15 **SECTION 802. REQUIREMENTS OF A GESTATIONAL OR GENETIC**

16 **SURROGACY AGREEMENT: PROCESS.** ~~T~~The surrogacy agreement must be executed in
17 compliance with ~~consistent with all of~~ the following conditions:

Commented [JDP44]: Rubottom (FL): substantial compliance should be OK.
CJ: This issue is addressed later, in Section 810.

18 (1) At least one of the parties must be a resident of the state, or, if no party is a resident of
19 the state, at least one of the medical procedures pursuant to the agreement must occur in this
20 state.

21 (2) The surrogate and the intended parent or parents must meet the requirements of
22 Section 801.

23 (3) The intended parent or parents, the surrogate, and the surrogate’s spouse, if any, must
24 be parties to the surrogacy agreement.

Commented [CJ45]: Edit from Behr (AK).

25 (4) The agreement must be in writing a record and signed by all parties.

Commented [CJ46]: Behr (AK) suggests replacing “writing” with “a record.”

26 (5) The surrogate and each intended parent must acknowledge in a record of having sign
27 a written acknowledgment of having received a copy of the agreement.

Commented [CJ47]: Langrock (VT) noted we should make sure that this is not inconsistent with the fed esign rules.

Commented [JDP48]: Miller (OK): why “written”? Just use “in a record”.

28 (6) The signature of each party to the agreement must be notarized, acknowledged or
29 attested by a person authorized to take oaths in accordance with the laws of the jurisdiction

Commented [CJ49]: Behr (AK) suggests amending the second half of the sentence as follows: “must sign an acknowledgement in a record of having received a record of the agreement.”

1 where it is executed.

2 (7) The surrogate and the intended parent or parents must be represented by independent
3 legal counsel in all matters concerning the agreement, and each counsel shall be identified in the
4 surrogacy agreement.

5 (8) The agreement must be executed before any medical procedures related to the
6 surrogacy agreement other than the medical evaluations required by Section 801.

7 **SECTION 803. REQUIREMENTS OF A GESTATIONAL OR GENETIC**
8 **SURROGACY AGREEMENT: CONTENT.**

9 (a) The content of the surrogacy agreement must comply with all of the following
10 requirements:

11 (1) The prospective surrogate agrees to attempt to become pregnant by means of
12 assisted reproduction;

13 (2) The prospective surrogate and her spouse, if any, have no claim to parentage
14 to any resulting child(ren);

15 (3) The surrogate's spouse, if any, must acknowledge and agree to abide by the
16 obligations imposed on the surrogate by the terms of the surrogacycyte agreement;

17 (4) The intended parent or parents will be the exclusive parent or parents of any
18 resulting child(ren) immediately upon birth regardless of the number, gender, or mental or
19 physical condition of the resulting child(ren); ~~and~~

20 (5) The intended parents will assume responsibility for the financial support of
21 any resulting child(ren) immediately upon the birth regardless of the number, gender, or mental
22 or physical condition of the resulting child(ren); ~~and~~

23 (6) The agreement must include information disclosing how the intended parents

Commented [JDP50]: Davies (MN): what about multiple children?

1 will cover the medical expenses of the surrogate and the resulting child(ren)~~newborn or~~
2 ~~newborns~~. If health-care coverage is used to cover the medical expenses, the disclosure shall
3 include a review of the health care policy provisions related to coverage for surrogate pregnancy,
4 including any possible liability liability of the surrogate, third-party liability liens or other insurance
5 coverage, and any notice requirements that could affect coverage or liability of the surrogate; -

6 (7) The agreement must permit the surrogate to use the services of a health-care
7 provider of her choosing to provide her care during her pregnancy [subject to the intended parent
8 or parents' desired level of care]; and-

9 (8) The agreement must permit ~~may not limit the right of~~ the surrogate to make all
10 health and welfare decisions ~~to safeguard regarding herself - health or that of any fetus or embryo~~
11 ~~she is carrying and her pregnancy, including the right whether or not to terminate the pregnancy~~
12 as protected by law.

13 (b) A surrogacy agreement may provide for payment of reasonable consideration.

14 (c) A surrogacy agreement may provide for reimbursement of specific expenses if the
15 agreement is terminated under this [article].

16 **SECTION 804. SURROGACY AGREEMENT: EFFECT OF SUBSEQUENT**
17 **CHANGE OF MARITAL STATUS.**

18 (a) Unless the surrogacy agreement expressly provides otherwise:

19 (1) the marriage of a surrogate after the signing of the surrogacy agreement does
20 not affect the validity of a surrogacy agreement, her spouse's consent to the surrogacy agreement
21 is not required, and her spouse is not a presumed parent of the resulting child or children; and

22 (2) the [divorce, dissolution, or appropriate term] of the surrogate after the signing
23 of the surrogacy agreement does not affect the validity of the surrogacy agreement.

Commented [JDP51]: Berh (AK): what about travel expenses?

Commented [CJ52]: Behr (AK): "medical expenses" is too narrow. She suggests that the term needs to include, among other things, medically necessary travel, and psychological counseling.

Commented [JDP53]: Benton (TX): what is the policy purpose of the requirement? These are private parties.

Commented [JDP54]: Miller (OK) what is the relationship to (8) – must the policy cover costs of terminating a pregnancy?

Commented [CJ55]: This revised language comes from a pending WA bill.

Commented [CJ56]: Behr (AK) suggests adding: "or dissolution of marriage"

1 (b) Unless the surrogacy agreement expressly provides otherwise:

2 (1) The marriage of an intended parent after the signing of the surrogacy
3 agreement does not affect the validity of a surrogacy agreement, the consent of the spouse of the
4 intended parent is not required, and the spouse of the intended parent is not a parent of the
5 resulting child or children by virtue of the surrogacy agreement; and

6 (2) The [divorce, dissolution, or appropriate term] of the intended parents after the
7 signing of the surrogacy agreement does not affect the validity of a surrogacy agreement, and the
8 intended parents are the parents of the resulting child or children.

9 **SECTION 805. INSPECTION OF RECORDS.** The petition and any other documents
10 related to the surrogacy agreement filed in the office of the clerk of the court pursuant to this part

11 shall may not be open to inspection by any person other than the parties to the proceeding, any
12 resulting child, and their attorneys and [the relevant state agency], except upon written court
13 order. A judge of the [court having jurisdiction] shall may not authorize anyone to inspect any
14 documents related to the surrogacy agreement, except in exigent circumstances and where
15 necessary. The petitioner may be required to pay the expense of preparing the copies of the
16 documents to be inspected.

17 **SECTION 806. EXCLUSIVE, CONTINUING JURISDICTION.** During the period
18 governed by the surrogacy agreement, a court that is conducting a proceeding under this [act] has
19 exclusive, continuing jurisdiction of all matters arising out of a surrogacy agreement until the
20 90th day -until 90 days- after a child is born to the surrogate; provided, however, that nothing in
21 this provision gives the court jurisdiction over a child custody or a child support action where
22 such jurisdiction is not otherwise authorized.

Commented [CJ57]: Behr (AK) suggests adding: "or dissolution of marriage"

Commented [CJ58]: Behr (AK) suggests replacing "shall" with "may"

Commented [CJ59]: Behr (AK) suggests replacing "shall" with "may"

Commented [CJ60]: Behr (AK).

Commented [CJ61]: CJ: I'm not sure if it should be "no later than then 90th day" or "no later than 90 days." Behr was not consistent. Here she seemed to suggest "90th day," but in section 813, she seemed to suggest the latter approach.

Commented [JDP62]: Benton (TX): Does this concept really work in this case? Borrowing from UCCJEA, but maybe it does not make sense. Must the surrogate remain in state?
CJ: Can she be required to remain in the state? Can she be compelled to return to the state?

1 **PART 2**

2 **SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENTS**

3 **SECTION 807. TERMINATION OF A GESTATIONAL SURROGACY**

4 **AGREEMENT.**

5 (a) A party to a gestational surrogacy agreement may withdraw consent to any medical
6 procedure and may terminate the gestational surrogacy agreement at any time before any embryo
7 transfer ~~that results in a pregnancy~~ by giving notice in a record ~~written notice~~ of termination to
8 all other parties. If the transfer does not result in a pregnancy, consent may be withdrawn any
9 time prior to any subsequent embryo transfer.

Commented [CJ63]: Behr (AK) suggests replacing “writing notice of termination” with “notice in a record of termination”

Commented [JDP64]: Lebrun (ND): notice “in a record” – should not have to be written

10 (b) Upon proper termination of the gestational surrogacy agreement under subsection (a),
11 the parties are released from all obligations recited in the agreement except that the intended
12 ~~parent(s) or parents~~ remain responsible for all expenses that are reimbursable under the
13 agreement incurred by the gestational surrogate through the date of termination. Unless the
14 agreement provides otherwise, the gestational surrogate is entitled to keep all payments ~~she~~ the
15 gestational surrogate has received and obtain all payments to which ~~she~~ the gestational surrogate
16 is entitled. Neither a prospective gestational surrogate nor ~~her~~ spouse, if any, is liable to the
17 intended parent(s) ~~or parents~~ for terminating a surrogacy agreement as provided in this Section.

Commented [CJ65]: Behr (AK) wonders if we could avoid having to use the phrase “parent or parents” by defining “parent” so that it includes both parents. If two individuals are intended to be the parents of the child. Then, maybe, we could just use “parent.”

Commented [CJ66]: Behr (AK) suggests replacing “she” with “the [gestational] surrogate.” CJ: I added gestational.

Commented [CJ67]: Behr (AK) suggests replacing “she” with “the [gestational] surrogate.”

Commented [CJ68]: Behr (AK) suggests replacing “she” with “the [gestational] surrogate’s”

18 **SECTION 808. PARENTAGE UNDER GESTATIONAL SURROGACY**

19 **AGREEMENT.**

20 (a) The intended parent or parents are, by operation of law, the parent or parents of the
21 resulting child born through an enforceable gestational surrogacy agreement immediately upon
22 the birth of the resulting child.

Commented [JDP69]: Cannel (NJ): what if there is a mistake and the surrogate’s husband is the biological child?

Commented [CJ70]: Behr (AK) suggests replacing “her” with “the [gestational] surrogate’s.” CJ: If implemented here, this sentence would be quite cumbersome: “Neither the gestational surrogate, nor the gestational surrogate’s spouse, if any, nor the gestational surrogate’s former spouse, if any, is the parent ...”

23 (b) Neither the gestational surrogate, nor ~~her~~ spouse, if any, nor her former spouse, if any,

1 is the parent of the resulting child born through an enforceable gestational surrogacy agreement.

2 (c) If the child is alleged to be the genetic child of the surrogate, the court shall order
3 genetic testing to determine the parentage of the child. If the child is the genetic child of the
4 surrogate, parentage must be determined based on other [articles] of this [act].

5 (de) If due to a laboratory error any resulting child is not genetically related to the
6 intended parent or parents, or if due to a laboratory error any resulting child is not genetically
7 related to a donor who donated to the intended parent or parents, the intended parent or parents
8 are considered the parent or parents of any resulting child born through an enforceable surrogacy
9 agreement, subject to other claims of parentage.

10 **SECTION 809. GESTATIONAL SURROGACY AGREEMENT: ORDER OF**
11 **PARENTAGE.**

12 (a) Pursuant to an enforceable gestational surrogacy agreement under this [article], before
13 or after the birth of the resulting child a party to the gestational surrogacy agreement may
14 commence a proceeding in the [appropriate court] to obtain an order:

15 (1) declaring that the intended parent or parents are the parent or parents of the
16 resulting child and ordering that parental rights and responsibilities vest exclusively in the
17 intended parent or parents immediately upon the birth of the child;

18 (2) designating the contents of the birth certificate in accordance with [applicable
19 law] and directing the [agency maintaining birth records] to designate the intended parent or
20 parents as the parent or parents of the child;

21 (3) sealing the record from the public to protect the privacy of the child and the
22 parties;

23 (4) if necessary, ordering that the child be surrendered to the intended parent or

Commented [JDP71]: Stowers (AK): sealing vs. confidential; consider UCCJEA. CJ: What if two courts have jurisdiction. How is this handled?

Commented [CJ72]: Behr (AK) provided notes in which she placed "sealing" in brackets. I'm not sure what this means, but maybe it is a similar comment.

1 parents; or

2 (5) for any relief that the court determines necessary and proper.

3 (b) An order or judgment issued pursuant to subsection (a) may be entered before the
4 birth of the child, and the court shall stay enforcement of that order or judgment ~~shall be stayed~~
5 until the birth of the child.

Commented [CJ73]: Behr (AK)

6 (c) Neither this state nor the [agency maintaining birth records] is a necessary party to a
7 proceeding under subsection (a).

Commented [JDP74]: Langrock (VT): should the child have a lawyer too?

8 **SECTION 810. EFFECT OF UNENFORCEABLE GESTATIONAL**
9 **SURROGACY AGREEMENT.**

10 (a) A gestational surrogacy agreement that ~~does not substantially comply~~ with the
11 requirements for a gestational surrogacy agreement as provided in this [article] is ~~not~~
12 enforceable. If there is non-compliance with the requirements for a gestational surrogacy
13 agreement that the court considers to be nonsubstantial, then the gestational surrogacy agreement
14 may be enforceable. If there is non-compliance with the requirements for a gestational surrogacy
15 agreement that the court considers to be substantial, then the agreement is not enforceable.

Commented [JDP75]: Miller (OK): rewrite to make the statement positive (i.e. is enforceable if it substantially complies)

Commented [JDP76]: Munson (TX): some intended parents do not think of the best interests of the surrogate

Commented [JDP77]: Benton (TX): maybe a court should be able to reform an agreement to make it enforceable?

16 (b) If a birth results under a gestational surrogacy agreement that is not enforceable as
17 provided in this [part], the parent-child relationship is determined as provided in the other
18 [articles] of this [act].

19 (c) Even if the agreement is otherwise unenforceable, individuals who are parties to an
20 unenforceable gestational surrogacy agreement as intended parents may be held liable for
21 support of the resulting child if they are parents under other [articles] of this [act].

Commented [JDP78]: Miller (OK): use “enforceable” consistently; rewrite to say that the intended parents shall be held liable unless they are not parents

Commented [CJ79]: Should this clause be struck?

22 (d) Except as expressly provided in a gestational surrogacy agreement and in subsection
23 (e), in the event of a breach of the gestational surrogacy agreement by the gestational surrogate

1 or the intended parent or parents, the gestational surrogate or the intended parent or parents are
2 entitled to all remedies available at law or in equity.

3 (e) Specific performance is not an available remedy for a breach by the gestational
4 surrogate of any term in a gestational surrogacy agreement that requires the gestational surrogate
5 to be impregnated or to terminate or not to terminate a pregnancy. Specific performance is an
6 available remedy for a breach by the gestational surrogate of any term that prevents the intended
7 parent or parents from exercising the full rights of parentage immediately upon birth of the child.

Commented [JDP80]: Langrock (VT): what about abortions in the event of genetic abnormalities?

8 PART 3

9 SPECIAL RULES FOR GENETIC SURROGACY AGREEMENTS

10 SECTION 811. REQUIREMENTS OF PETITION TO VALIDATE A GENETIC 11 SURROGACY AGREEMENT.

12 (a) To be enforceable, a genetic surrogacy agreement must be validated by [the
13 appropriate] court. The proceeding to validate the agreement must be commenced before any
14 medical procedures related to the surrogacy agreement other than the medical evaluations
15 required by Section 801 are undertaken.

16 (b) The court shall issue an order validating the traditional surrogacy agreement if the
17 court finds that:

18 (1) all of the requirements of Sections 801, 802, and 803 have been satisfied; and

19 (2) all parties have voluntarily entered into the agreement and understand its
20 terms.

21 (c) An individual who terminates a genetic surrogacy agreement pursuant to Section 812
22 shall file notice of the termination with the court. On receipt of the notice, the court shall vacate
23 the order issued under subsection (b). An individual who does not notify the court of the

Commented [JDP81]: Behr (AK): should there be a definition for "genetic surrogacy agreement"?

1 termination of the agreement is subject to ~~appropriate~~ sanctions.

2 SECTION 812. TERMINATION OF GENETIC SURROGACY AGREEMENT.

3 (a) A party to a genetic surrogacy agreement may terminate the genetic surrogacy
4 agreement as follows:

5 (1) An intended parent who is a party to a genetic surrogacy agreement may
6 withdraw consent to and may terminate the genetic surrogacy agreement at any time before the
7 use of assisted reproduction that results in a pregnancy by giving notice of termination in a
8 record ~~giving written notice of termination~~ to all other parties. The notice of termination must be
9 notarized, acknowledged, or attested by a person authorized to take oaths in accordance with the
10 laws of the jurisdiction where it is executed.

11 (2) A genetic surrogate who is a party to a genetic surrogacy agreement may
12 withdraw consent to the genetic surrogacy agreement any time before 72 hours after the birth of
13 the child. To withdraw consent, any time before 72 hours after the birth of the child, the genetic
14 surrogate must execute a signed writing record of her intent to terminate the agreement. This
15 ~~notice record~~ of termination ~~must be notarized, acknowledged, or attested by a person authorized~~
16 ~~to take oaths in accordance with the laws of the jurisdiction where it is executed,~~ and delivered to
17 the intended parent or parents any time before 72 hours after the birth of the child.

18 (b) Upon proper termination of the surrogacy agreement under subsection (a), the parties
19 are released from all obligations recited in the agreement except that the intended parent or
20 parents remain responsible for all expenses that are reimbursable under the agreement incurred
21 by the genetic surrogate through the date of termination. Unless the agreement provides
22 otherwise, the genetic surrogate is entitled to keep all payments ~~she~~ genetic surrogate has
23 received and obtain all payments to which ~~she~~ the genetic surrogate is entitled. Neither a

Commented [CJ82]: Behr (AK) suggests striking “appropriate.” She notes that there are “no standards for appropriate.” “I would delete. I would assume a court would only issue appropriate sanctions.”

Commented [CJ83]: Behr (AK) suggests replacing “giving written notice of termination” with “giving notice of termination in a record.”

Commented [JDP84]: Stowers (AK): use “record”; what about an unsworn declaration?

Commented [CJ85]: Cutrona (DE) asks: If my state adopts the Uniform Unsworn Domestic Declarations Act and then adopts the Revised UPA, what is the impact on Section 812? I think it means one isn’t required to have the notarization required by Section 812. If I’m right, are you OK with this outcome?

Commented [CJ86]: Behr (AK) suggests replacing “she” with “the [genetic] surrogate.” CJ: I added “genetic.”

1 prospective genetic surrogate nor her spouse, if any, is liable to the intended parent or parents for
2 terminating a surrogacy agreement as provided in this Section.

Commented [CJ87]: Behr (AK) suggests replacing “her” with “the [genetic] surrogate’s”

3 **SECTION 813. PARENTAGE UNDER VALIDATED GENETIC SURROGACY**
4 **AGREEMENT.**

5 (a) Unless the genetic surrogate exercises her right to terminate the agreement under
6 Section 812, the intended parent or parents are the parents of any child born as a result of a
7 validated genetic surrogacy agreement.

Commented [CJ88]: Behr (AK) suggests replacing “her” with “the [genetic] surrogate’s”. CJ: This seems awkward here – ‘Unless the genetic surrogate exercises the genetic surrogate’s right...’

8 (b) Unless the genetic surrogate exercises her right to terminate the agreement under
9 Section 812, upon proof of a court order issued pursuant to Section 811 validating the genetic
10 surrogacy agreement, the court shall issue an order:

Commented [CJ89]: Ditto.

11 (1) declaring that the intended parent or parents are the parent or parents of the
12 resulting child and ordering that parental rights and responsibilities vest exclusively in the
13 intended parent or parents;

14 (2) designating the contents of the birth certificate in accordance with [applicable
15 law] and directing the [agency maintaining birth records] to designate the intended parent or
16 parents as the parent or parents of the child;

17 (3) sealing the record from the public to protect the privacy of the child and the
18 parties;

Commented [CJ90]: Behr (AK) suggests (I think) putting brackets around “sealing” “to address varieties in state law”

Commented [JDP91]: Benton (TX): can the child unseal the record?

19 (4) if necessary, ordering that the child be surrendered to the intended parent or
20 parents; or

21 (5) for any relief that the court determines necessary and proper.

22 (c) If the parentage of a child born to a genetic surrogate is alleged not to be the result of
23 assisted reproduction, the court shall order genetic testing to determine the parentage of the child.

Commented [CJ92]: Cannel (NJ): what happens if the pregnancy results from sexual intercourse?

1 If the child was not born through assisted reproduction, parentage must be determined based on
2 other [articles] of this [act].

3 (d) Unless the genetic surrogate exercises her right to terminate the agreement under
4 Section 811, if the intended parent or parents fail to file notice required under subsection (a), the
5 genetic surrogate or [the appropriate state agency] may file notice with the court that a child has
6 been born to the genetic surrogate within not later than 300 days after assisted reproduction.

7 Unless the genetic surrogate has properly exercised her the genetic surrogate's right to
8 withdraw consent to the genetic surrogacy agreement pursuant to Section 8124, upon proof of a
9 court order issued pursuant to Section 8110 validating the genetic surrogacy agreement, the court
10 shall order that the intended parent or parents are the parents of the child and are financially
11 responsible for the child.

12 **SECTION 814. EFFECT OF NONVALIDATED GENETIC SURROGACY**
13 **AGREEMENT.**

14 (a) A genetic surrogacy agreement, whether or not in a record or not, that is not judicially
15 validated is not enforceable.

16 (b) If a birth results under a genetic surrogacy agreement that is not judicially validated as
17 provided in this [part], the parent-child relationship is determined as provided in other [articles]
18 of this [act].

19 (c) Individuals who are parties to a nonvalidated genetic surrogacy agreement as intended
20 parents may be held liable for support of the resulting child if they are parents under other
21 [articles] of this [act].

22 (d) Except as expressly provided in a genetic surrogacy agreement, in the event of a
23 breach of the genetic surrogacy agreement by the genetic surrogate or the intended parent or

Commented [CJ93]: Behr (AK) suggests replacing “within” with “not later than”

Commented [CJ94]: Behr (AK) suggests replacing “her” with “the [genetic] surrogate’s”

Commented [CJ95]: Behr (AK).

1 parents, the genetic surrogate or the intended parent or parents are entitled to all remedies
2 available at law or in equity.

3 ARTICLE 9

4 Reporter's Comment

5 Article 9 is a new addition to the UPA. The content of this Article was not included in the
6 2002 UPA. Article 9 is intended to implement the resolution approved by the Executive
7 Committee. Among other things, the Resolution directs the Drafting Committee to address "the
8 right of a child to genetic information." The content of new Article 9 is premised on a
9 Washington State provision. Wash. Rev. Code § 26.26.750.

10 IDENTIFYING INFORMATION ABOUT DONORS

11
12 SECTION 901. ~~PROSPECTIVE EFFECT ONLY APPLICABILITY~~. This [article]
13 applies only to gametes that are collected after the effective date of this [act].

Commented [CJ96]: Behr (AK).

14 SECTION 902. COLLECTION OF IDENTIFYING INFORMATION. ~~Any A~~
15 gamete bank or fertility clinic licensed in [this state] shall collect from any donor the individual's
16 identifying information and medical history. If the gametes are thereafter transferred to another
17 gamete bank or fertility clinic licensed in [this state], the sending entity must forward any
18 donor's identifying information and medical history, including a donor's signed Affidavit
19 Regarding Identity Disclosure as set forth in Section 903, to the receiving entity which must
20 collect and retain the information about the donor and the gamete bank or fertility clinic from
21 which it received the gametes. ~~All A~~ gamete banks or fertility clinics licensed in [this state] shall
22 disclose the information as provided under Section 904.

Commented [CJ97]: Behr (AK)

Commented [JDP98]: Morse (CO) in state

Commented [CJ99]: Behr (AK) suggests striking "thereafter."

Commented [JDP100]: Guyot (LA) asked about transfer to another state

23 SECTION 903. AFFIDAVITS REGARDING IDENTITY DISCLOSURE.

24 (a) A gamete bank or fertility clinic licensed in [this state] that collects or stores gametes
25 shall provide to the donor written information regarding identity disclosure.

Commented [CJ102]: Morse (CO) suggested that this provision should be amended so that it covers entities licensed in other states.

26 (b) A gamete bank or fertility clinic licensed in [this state] that collects or stores gametes

1 shall require any donor to sign an affidavit regarding identity disclosure (“Affidavit Regarding
2 Identity Disclosure”). The individual must be given the choice to sign either:

3 (1) an affidavit agreeing to disclose ~~his or her~~the donor’s identity to the resulting
4 child upon request once the child is at least eighteen years of age (“Affidavit for Identity
5 Disclosure”); or

6 (2) an affidavit that ~~he or she~~the donor does not presently agree to disclose ~~his or~~
7 ~~her~~the donor’s identity to the resulting child (“Affidavit for Identity Nondisclosure”).

8 (c) A gamete bank or fertility clinic licensed in [this state] that collects or stores gametes
9 ~~must shall~~ permit a donor who has signed an affidavit of nondisclosure as described in
10 subsection (b)(2) to withdraw ~~his or her~~the donor’s affidavit of nondisclosure at any time.

11 SECTION 904. DISCLOSURE OF IDENTIFYING INFORMATION.

12 (a) Upon request by a child conceived through assisted reproduction who is at least
13 eighteen years old, the gamete bank or fertility clinic licensed in [this state] that collected, stored,
14 and/or released for use the gametes shall provide the resulting child with the identifying
15 information of the donor who provided gametes, unless the donor signed and did not withdraw
16 an Affidavit for Identity of Nondisclosure as described in Section 903. ~~In the event If~~ a donor
17 has signed, and not withdrawn, such an affidavit, the gamete bank or fertility clinic licensed in
18 [this state] that collected, stored, and/or released for use the gametes shall make good faith
19 efforts to notify the donor, who may elect to withdraw ~~his or her~~the donor’s affidavit.

20 (b) Regardless of whether the donor signed an Affidavit ~~of~~for Identity Nondisclosure,
21 upon request by a child conceived through assisted reproduction who is at least eighteen years
22 old, the gamete bank or fertility clinic licensed in [this state] that collected, stored, and/or
23 released for use the gametes shall provide to the resulting child access to the nonidentifying

Commented [CJ103]: Behr (AK)

Commented [CJ104]: Stowers (AK) asked if the donor could withdraw the donor’s consent to disclosure.

Commented [CJ105]: Landrock (VT) asked why it is limited to those 18 years of age. Lackrock (VT) also asked about the effect on a child’s inheritance rights. CJ: this issue is

Commented [CJ106]: Behr (AK)

Commented [CJ107]: Behr (AK) suggests reordering, to say: “presently does not agree”

Commented [CJ108]: Behr (AK)

Commented [JDP109]: Behr (AK): are there already licensing requirements?

Commented [CJ110]: Behr (AK)

Commented [CJ111]: Behr (AK)

Commented [JDP112]: Stowers (AK): what about filing a new nondisclosure affidavit?

Commented [JDP113]: Langrock (VT): why 18? What if need to identify inheritance?

Commented [JDP114]: Davies (MN): child under 18 may need information for health care

Commented [JDP115]: Rowling (CA): what about an affidavit of disclosure?

Commented [CJ116]: Behr (AK)

Commented [CJ117]: Behr (AK)

Commented [JDP118]: Bauman (AZ): did the committee get input from the AMA? What is nonidentifying? What does “medical history” mean?

1 medical history of the donor.

2 **SECTION 905. RECORD KEEPING.** A gamete bank or fertility clinic licensed in
3 [this state] that collects, stores, and/or releases gametes for use in assisted reproduction shall
4 collect and maintain medical history and identifying information about all gamete donors, and
5 records of all gamete screening and testing, in accordance with federal and applicable state law
6 of this state.

7 **ARTICLE 10**

8 **MISCELLANEOUS PROVISIONS**

9 **SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
10 applying and construing this Uniform Act, consideration must be given to the need to promote
11 uniformity of the law with respect to its subject matter among states that enact it.

12 **SECTION 1002. TRANSITIONAL PROVISION.** This [act] applies to all pending
13 proceedings to adjudicate parentage commenced before its effective date with respect to issues
14 on which a judgment has not been entered.

15 **SECTION 1003. SEVERABILITY CLAUSE.** If any provision of this [act] or its
16 application to any individual or circumstance is held invalid, the invalidity does not affect other
17 provisions or applications of this [act] which can be given effect without the invalid provision or
18 application, and to this end the provisions of this [act] are severable.]

19 *Legislative Note: Include this section only if this state lacks a general severability statute or a*
20 *decision by the highest court of this state stating a general rule of severability.*

21 **SECTION 1004. REPEALS; CONFORMING AMENDMENTS.** The following
22 [acts] and parts of [acts] are repealed:

23 (1) [Uniform Act on Paternity, 1960]

24 (2) [Uniform Parentage Act, 1973]

Commented [CJ119]: Trost (TN) recommends replacing the end of this sentence with the following: "shall provide to the resulting child access only to medical history of the donor [the donor's medical history] from which the [donor's] identity cannot be determined."

Commented [CJ120]: Langrock (VT) asked about subpoena power, and more generally, about remedies under this Article. Lackrock expressed the position that all children should know their genetic history. Stowers (AK) disagreed.

Commented [CJ121]: Burton (NM): did we get input from AMA about def of medical history? What about genetic siblings?

Commented [JDP122]: Stowers (AK): if the bank is not a hospital and goes out of business, who must keep the information?

Commented [CJ123]: Behr (AK).

Commented [CJ124]: CJ: I think this is what Behr (AK) is suggesting (that is, just placing the provision in brackets).

Commented [CJ125]: Behr (AK)

1 (3) [Uniform Putative and Unknown Fathers Act, 1988]

2 (4) [Uniform Status of Children of Assisted Conception Act, 1988]

3 (5) [Uniform Parentage Act, 2002]

4 (6) [other inconsistent statutes]

5 **SECTION 1005.** ~~TIME OF TAKING EFFECT~~EFFECTIVE DATE. This [act] takes

6 effect

Commented [CJ126]: Behr (AK)

1 APPENDIX

2 FEDERAL IV-D STATUTE RELATING TO PARENTAGE

3 **42 U. S. C. § 666. Requirement of Statutorily Prescribed Procedures To Improve**
4 **Effectiveness of Child Support Enforcement.**

5 (a) **Types of procedures required.** In order to satisfy section 654(20)(A) of this title, each
6 State must have in effect laws requiring the use of the following procedures, consistent with this
7 section and with regulations of the Secretary, to increase the effectiveness of the program which
8 the State administers under this part:

9 * * *

10 **(5) Procedures concerning paternity establishment.**

11 **(A) Establishment process available from birth until age 18.**

12 (i) Procedures which permit the establishment of the paternity of a child at any
13 time before the child attains 18 years of age.

14 (ii) As of August 16, 1984, clause (i) shall also apply to a child for whom
15 paternity has not been established or for whom a paternity action was brought but dismissed
16 because a statute of limitations of less than 18 years was then in effect in the State.

17 **(B) Procedures concerning genetic testing.**

18 (i) Genetic testing required in certain contested cases. Procedures under which the
19 State is required, in a contested paternity case (unless otherwise barred by State law) to require
20 the child and all other parties (other than individuals found under section 654(29) of this title to
21 have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon
22 the request of any such party, if the request is supported by a sworn statement by the party:

23 (I) alleging paternity, and setting forth facts establishing a reasonable possibility
24 of the requisite sexual contact between the parties; or

25 (II) denying paternity, and setting forth facts establishing a reasonable
26 possibility of the nonexistence of sexual contact between the parties.

27 (ii) Other requirements. Procedures which require the State agency, in any case in
28 which the agency orders genetic testing:

29 (I) to pay costs of such tests, subject to recoupment (if the State so elects) from
30 the alleged father if paternity is established; and

31 (II) to obtain additional testing in any case if an original test result is contested,
32 upon request and advance payment by the contestant.

33 **(C) Voluntary paternity acknowledgment.**

34 (i) Simple civil process. Procedures for a simple civil process for voluntarily
35 acknowledging paternity under which the State must provide that, before a mother and a putative
36 father can sign an acknowledgment of paternity, the mother and the putative father must be given
37 notice, orally or through the use of audio or video equipment and in writing, of the alternatives
38 to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded
39 due to minority status) and responsibilities that arise from, signing the acknowledgment.

40 (ii) Hospital-based program. Such procedures must include a hospital-based
41 program for the voluntary acknowledgment of paternity focusing on the period immediately
42 before or after the birth of a child.

1 (iii) Paternity establishment services.

2 (I) State-offered services. Such procedures must require the State agency
3 responsible for maintaining birth records to offer voluntary paternity establishment services.

4 (II) Regulations.

5 (aa) Services offered by hospitals and birth record agencies. The Secretary
6 shall prescribe regulations governing voluntary paternity establishment services offered by
7 hospitals and birth record agencies.

8 (bb) Services offered by other entities. The Secretary shall prescribe
9 regulations specifying the types of other entities that may offer voluntary paternity establishment
10 services, and governing the provision of such services, which shall include a requirement that
11 such an entity must use the same notice provisions used by, use the same materials used by,
12 provide the personnel providing such services with the same training provided by, and evaluate
13 the provision of such services in the same manner as the provision of such services is evaluated
14 by, voluntary paternity establishment programs of hospitals and birth record agencies.

15 (iv) Use of paternity acknowledgment affidavit. Such procedures must require the
16 State to develop and use an affidavit for the voluntary acknowledgment of paternity which
17 includes the minimum requirements of the affidavit specified by the Secretary under section
18 652(a)(7) of this title for the voluntary acknowledgment of paternity, and to give full faith and
19 credit to such an affidavit signed in any other State according to its procedures.

20 **(D) Status of signed paternity acknowledgment.**

21 (i) Inclusion in birth records. Procedures under which the name of the father shall
22 be included on the record of birth of the child of unmarried parents only if:

23 (I) the father and mother have signed a voluntary acknowledgment of paternity;

24 or

25 (II) a court or an administrative agency of competent jurisdiction has issued an
26 adjudication of paternity.

27 Nothing in this clause shall preclude a State agency from obtaining an
28 admission of paternity from the father for submission in a judicial or administrative proceeding,
29 or prohibit the issuance of an order in a judicial or administrative proceeding which bases a legal
30 finding of paternity on an admission of paternity by the father and any other additional showing
31 required by State law.

32 (ii) Legal finding of paternity. Procedures under which a signed voluntary
33 acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any
34 signatory to rescind the acknowledgment within the earlier of:

35 (I) 60 days; or

36 (II) the date of an administrative or judicial proceeding relating to the child
37 (including a proceeding to establish a support order) in which the signatory is a party.

38 (iii) Contest. Procedures under which, after the 60-day period referred to in clause
39 (ii), a signed voluntary acknowledgment of paternity may be challenged in court only on the
40 basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger,
41 and under which the legal responsibilities (including child support obligations) of any signatory
42 arising from the acknowledgment may not be suspended during the challenge, except for good
43 cause shown.

1 **(E) Bar on acknowledgment ratification proceedings.** Procedures under which
2 judicial or administrative proceedings are not required or permitted to ratify an unchallenged
3 acknowledgment of paternity.

4 **(F) Admissibility of genetic testing results.** Procedures:

5 (i) requiring the admission into evidence, for purposes of establishing paternity, of
6 the results of any genetic test that is:

7 (I) of a type generally acknowledged as reliable by accreditation bodies
8 designated by the Secretary; and

9 (II) performed by a laboratory approved by such an accreditation body;

10 (ii) requiring an objection to genetic testing results to be made in writing not later
11 than a specified number of days before any hearing at which the results may be introduced into
12 evidence (or, at State option, not later than a specified number of days after receipt of the
13 results); and

14 (iii) making the test results admissible as evidence of paternity without the need
15 for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

16 **(G) Presumption of paternity in certain cases.** Procedures which create a rebuttable
17 or, at the option of the State, conclusive presumption of paternity upon genetic testing results
18 indicating a threshold probability that the alleged father is the father of the child.

19 **(H) Default orders.** Procedures requiring a default order to be entered in a paternity
20 case upon a showing of service of process on the defendant and any additional showing required
21 by State law.

22 **(I) No right to jury trial.** Procedures providing that the parties to an action to establish
23 paternity are not entitled to a trial by jury.

24 **(J) Temporary support order based on probable paternity in contested cases.**
25 Procedures which require that a temporary order be issued, upon motion by a party, requiring the
26 provision of child support pending an administrative or judicial determination of parentage, if
27 there is clear and convincing evidence of paternity (on the basis of genetic tests or other
28 evidence).

29 **(K) Proof of certain support and paternity establishment costs.** Procedures under
30 which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without
31 requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts
32 incurred for such services or for testing on behalf of the child.

33 **(L) Standing of putative fathers.** Procedures ensuring that the putative father has a
34 reasonable opportunity to initiate a paternity action.

35 **(M) Filing of acknowledgments and adjudications in State registry of birth**
36 **records.** Procedures under which voluntary acknowledgments and adjudications of paternity by
37 judicial or administrative processes are filed with the State registry of birth records for
38 comparison with information in the State case registry.