D R A F T

FOR APPROVAL

PROPOSED REVISIONS OF THE UNIFORM PARENTAGE ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-NINTH YEAR
ST. AUGUSTINE, FLORIDA

JULY 28 – AUGUST 4, 2000

PROPOSED REVISIONS OF THE UNIFORM PARENTAGE ACT

WITH PREFATORY NOTE AND REPORTER'S NOTES

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting

Committee and its Members and Reporters. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

DRAFTING COMMITTEE TO REVISE THE UNIFORM PARENTAGE ACT

HARRY L. TINDALL, 600 Travis Street, 2800 Texas Commerce Tower, Houston, TX 77002-3094, *Chair*
JACK DAVIES, Court of Appeals, Judicial Building, 25 Constitution Avenue, St. Paul, MN 55155-1501
FRANK W. DAYKIN, 4745 Giles Way, Carson City, NV 89704-9158, *Committee on Style Liaison*
GAIL H. HAGERTY, P.O. Box 1013, 514 E. Thayer Avenue, Bismarck, ND 58502-1013
LYLE W. HILLYARD, 175 E. 100 N., Logan, UT 84321-4688
PETER K. MUNSON, P.O. Box 1949, 123 S. Travis Street, Sherman, TX 75091-1949
JAMES C. NELSON, Montana Supreme Court, 215 N. Sanders Street, Room 425, P.O. Box 20031, Helena, MT 59601-4522
ARTHUR H. PETERSON, 350 N. Franklin Street, Juneau, AK 99801-1148, *Enactment Plan Coordinator*
ELWAINE F. POMEROY, 1415 S.W. Topeka Boulevard, Topeka, KS 66612-1818
JOHN J. SAMPSON, University of Texas Law School, 727 E. Dean Keeton Street, Austin, TX 78705-3299, *Reporter*

EX OFFICIO

JOHN L. McCLAUGHERTY, P.O. Box 553, Charleston, WV 25332-0533, *President*
ROBERT C. ROBINSON, P.O. Box 568, 12 Portland Pier, Portland, ME 04112-0568, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

NINA VITEK, 222 E. Mason Street, 2nd Floor, Milwaukee, WI 53202-3602

EXECUTIVE DIRECTOR

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman, OK 73019, *Executive Director*
WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611

312/915-0195
www.nccusl.org

PROPOSED REVISIONS OF THE UNIFORM PARENTAGE ACT

TABLE OF CONTENTS

ARTICLE 4. REGISTRY OF PATERNITY

PART 1. GENERAL PROVISIONS

PART 2. OPERATION OF REGISTRY

PART 3. SEARCH OF REGISTRIES

ARTICLE 5. GENETIC TESTING

ARTICLE 6. PROCEEDING TO ADJUDICATE PARENTAGE

PART 1. NATURE OF PROCEEDING

ARTICLE 9. MISCELLANEOUS PROVISIONS

PROPOSED REVISIONS OF THE UNIFORM PARENTAGE ACT

PREFATORY NOTE

The National Conference of Commissioners on Uniform State Laws addressed the subject of parentage as early as 1922. Several Acts on the subject have been adopted throughout the 20th Century addressing the special needs of a nonmarital child. In 1973, the Conference approved the Uniform Parentage Act (1973), which has been adopted in 19 States stretching from Delaware to California; in addition, many States have enacted portions of the Act. This landmark Act declared equality for parents and children without regard to marital status of the parents. The Act set forth a set of rules for presumption of parentage, shunned the term "illegitimate," and chose instead to employ the term "child with no presumed father." The Act has contributed much to bringing about a more enlightened approach to some sensitive issues that can divide people of goodwill.

Case law has not been so kind. Widely differing treatment on subjects not dealt with by the Act has been common. For example, California holds that a nonmarital father does not have standing to sue an intact family to assert his rights of fatherhood. Two other Uniform Parentage Act States, Colorado and Texas, have declared that under their state constitutions the father may not be denied such rights. Similarly, the binding effect of a judgment on the child or on others seeking to claim a benefit of the judgment or collaterally attack that judgment is very confused in the case law. The Uniform Parentage Act (1973) was entirely silent as to the relationship between a divorce and a determination of parentage.

Other major developments include the fact that genetic testing has undergone a sea change since 1973. Further, the federal government initiated an ever-expanding Title IV-D program mandating some quite prescriptive rules in this area if the State is to retain the substantial federal subsidy for child support enforcement. Beginning in the 1980s, States began to adopt paternity registries in an attempt to deal with late claims of parentage when the mother wishes to relinquish the child for adoption. The Conference adopted the Uniform Putative and Unknown Fathers Act in 1988) to deal with the rights of such men, but the Act has not been enacted in a single State. Also in 1988, the Conference also adopted the Uniform Status of Children of Assisted Conception Act . Assisted reproduction and gestational agreements became commonplace in the 1990s, long after the promulgation of Uniform Parentage Act (1973). The Uniform Status of Children of Assisted Conception Act more closely resembled a model act in that it provided two diametrically opposed options regarding "surrogacy agreements." To date, only two States have enacted the Act, with each choosing a different option.

This draft integrates the Uniform Parentage Act (1973), as revised by this version, along with provisions covered by the Uniform Putative and Unknown Fathers Act (1988), and the Uniform Status of Children of Assisted Conception Act (1988), into a single coherent Act. The Drafting Committee has recommended that the Uniform Putative and Unknown Fathers Act (1988) and the Uniform Status of Children of Assisted Conception Act (1988) be withdrawn as Acts of the Conference. Assuming the Conference accepts this recommendation and approves this revision, the Uniform Parentage Act (2000) will be the only product of the Conference dealing with parentage. Article 2, Parent-Child relationship, will look familiar to past users of the Act. Article 3, Voluntary Acknowledgment of Paternity, is entirely new and is driven by federal mandates in an effort to force States to adopt nonjudicial means to achieve early determination of paternity. Article 4, Registry of Paternity, is entirely new and attempts to draft a well-considered registry law that takes a variety of conflicting policy issues into account. Article 5, Genetic Testing, comprehensively covers that subject in ten separate sections [Uniform Parentage Act (1973) had one section]. Article 6, Proceeding to Adjudicate Parentage, is the traditional litigation section. Article 7, Child of Assisted Reproduction, recodifies the same subjects covered in Uniform Parentage Act (1973) and Uniform Status of Children of Assisted Conception Act (1988) without substantial change. Article 8, Gestational Agreement, closely follows Uniform Status of children of Assisted Conception Act (1988).

Our mission is to draft workable and sound rules for determining the parentage of a child. This Act does not approve or condemn behavior that some people might find troubling. Most observers are alarmed by the high nonmarital birthrate in this country, but our goal is to resolve serious issues concerning parentage. The primary focus remains on protecting the child, who had no voice in often-complex circumstances giving rise to the child's birth. The Act does not deal with reproductive rights or attempt to regulate assisted reproduction activities. This Act does not attempt to list the rights of parents; that is left to other state law. Finally, in contrast to Uniform Parentage Act (1973), issues of custody, visitation, and support are avoided because existing state law amply covers these issues.

The Drafting Committee has met six times to produce this draft. We have been fortunate to have the past Chairs of Uniform Putative and Unknown Fathers Act (Arthur H. Peterson) and Uniform Status of Children Of Assisted Conception Act (Robert C. Robinson) to serve on the Committee. We have also had very valuable input from our advisors and observers from the child support community, prosecutors, matrimonial lawyers, genetic testing laboratories, and the federal Office of Child Support Enforcement, U.S. Department of Health and Human Services.

PROPOSED REVISIONS OF THE UNIFORM PARENTAGE ACT

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Parentage Act.

SECTION 102. DEFINITIONS. In this [Act]:

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

(2) "Adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.

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

(A) a presumed father;

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

(C) a male donor.

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

(A) intrauterine insemination;

(B) donation of eggs;

(C) donation of embryos;

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

(E) intracytoplasmic sperm injection.

(5) "Child" means an individual of any age whose parentage may be determined under this [Act].

(6) "Commence" means to file the initial pleading seeking an adjudication of parentage in [the appropriate court of this State].

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

(8) "Donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:

(A) a husband who provides sperm, or a wife who provides eggs, to be used for assisted reproduction by the wife; or

(B) a woman who gives birth to a child by means of assisted reproduction[, except as otherwise provided in [Article] 8].

(9) "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of his or her ancestry or that is so identified by other information.

(10) "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father of a child. The term includes an analysis of one or a combination of the following:

(A) deoxyribonucleic acid; and

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

(11) "Gestational mother" means the woman who gives birth to a child.

(12) "Intended parents" means the individuals who enter into an agreement providing that they will be the parents of a child born to a gestational mother by means of assisted reproduction, whether or not they have a genetic relationship with the child.

(13) "Man" means a male individual of any age.

(14) "Parent" means an individual who has established a parent-child relationship under Section 201.

(15) "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

(16) "Paternity index" means the likelihood of paternity calculated by computing the ratio between:

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

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

(17) "Presumed father" means a man who, by operation of law under Section 204, is recognized to be the father of a child until that status is rebutted or confirmed in a judicial proceeding.

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

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

(20) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(21) "Support-enforcement agency" means a public official or agency authorized to seek:

(A) enforcement of support orders or laws relating to the duty of support;

(B) establishment or modification of child support;

(C) determination of parentage; or

(D) location of child-support obligors and their income and assets.

Comment

Subsection (3) is derived from Uniform Putative and Unknown Fathers Act § 1(2).

Subsection (4) is derived from Uniform Status of Children of Assisted Conception Act § 1(1).

Subsection (6) is derived from Uniform Child Custody Jurisdiction and Enforcement Act § 102(5).

Subsection (8) is derived from Uniform Status of Children of Assisted Conception Act § 1(2).

Subsection (12) is derived from Uniform Status of Children of Assisted Conception Act § 1(3).

Subsection (13) is derived from Uniform Putative and Unknown Fathers Act § 1(1). Note that the subsection settles any question of whether a minor is included in the definition of "man." The Act takes the sensible position that a minor old enough to procreate is old enough to be determined to be the child's father.

Subsection (15) is derived from Uniform Parentage Act § 1.

Subsection (16) attempts to define the paternity index. Several definitions of this complex term were considered. One may note that the definition includes statistical measures of the mother and tested man. The tested man may be an alleged, putative or any other potential biological father. Article 5 provides for testing without the mother or alleged father. In these cases the expert statistically reconstructs the missing potential mother or biological father, therefore the definition is correct even in cases involving a missing parent.

Subsection (19) is derived from Uniform Electronic Transfer Act § 102(13), which establishes a standard for either paper or electronic recordkeeping.

Subsection (20) is based on the definition of "State" in the Uniform Child-Custody Jurisdiction and Enforcement Act Section 102(15)-(16). Subsection (21) is derived from Uniform Interstate Family Support Act § 101(20).

SECTION 103. SCOPE OF [ACT]; CHOICE OF LAW.

(a) This [Act] governs every determination of parentage in this State.

(b) The court shall apply the law of this State to adjudicate the parent-child relationship. The applicable law does not depend on:

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

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

(c) This [Act] does not create, enlarge, or diminish parental rights or duties under other law of this State.

[(d) This [Act] does not authorize or prohibit an agreement between a gestational mother and intended parents in which the gestational mother relinquishes all rights as a parent of a child born through assisted reproduction, and which provides that the intended parents become the parents of the child. If a birth results under a gestational agreement that is unenforceable under [the law of this State], the parent-child relationship is determined as provided in [Article] 2.]

Comment

The Act, in its entirety, conforms to the mandate of 42 U.S.C. § 666(a)(5)(A) requiring States to provide for parentage proceedings at any time before a child attains 18 years of age on penalty of losing federal funds that subsidize child support enforcement, see Appendix A, Federal IV-D Statute Relating to Parentage.

This section makes clear that the Act applies not just in so-called "paternity suits," but also in all disputes of parentage, whether in a proceeding involving divorce, paternity, probate, or any other legal matter. In contrast to Uniform Parentage Act §§ 17, 18, and 22-25, (1973), this Act does not provide any significant substantive rules regarding enforcement, modification, support, birth records, adoption, or termination of parental rights. Except for references to unspecified rights and duties regarding custody, visitation, and child support, these matters are left to other provisions in each State's statutory scheme.

Subsection (b) is derived from Uniform Interstate Family Support Act § 303 and Uniform Parentage Act (1973) § 8(b). This section simplifies choice of law principles; the local court always applies local law. If in fact this State is an inappropriate forum, dismissal for forum non-conveniens may be appropriate. Subsection (d) is applicable only if a State chooses not to enact Article 8.

SECTION 104. COURT OF THIS STATE. The following courts are authorized to adjudicate parentage under this [Act]:[list appropriate courts].

Comment

Sources: Uniform Interstate Family Support Act § 102; Uniform Child Custody Jurisdiction and Enforcement Act § 102(6).

State courts that are authorized to adjudicate parentage vary enormously, i.e. district, superior, chancery, surrogate, county, family, probate, etc. Identifying the appropriate courts is left to each enacting jurisdiction.

SECTION 105. PROTECTION OF PARTICIPANTS. Proceedings under this [Act] are subject to other law of this State governing the health, safety, privacy, and liberty of a child or other individual that could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, social security number, and the child's day-care facility and school.

Comment

Source: Uniform Child Custody Jurisdiction and Enforcement Act § 209(e).

ARTICLE 2

PARENT-CHILD RELATIONSHIP

SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.

(a) The mother-child relationship is established between a child and a woman by:

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

(2) an adjudication of the woman's maternity; [or]

(3) adoption of the child by the woman[; or

(4) an adjudication confirming the woman as a parent of a child born pursuant to a gestational agreement validated under [Article] 8 or other enforceable gestational agreement].

(b) The father-child relationship is established between a child and a man by:

(1) an unrebutted presumption of the man's paternity of the child under Section 204;

(2) the man's having signed an acknowledgment of paternity under [Article] 3, unless the acknowledgement has been rescinded or successfully challenged;

(3) an adjudication of the man's paternity;

(4) adoption of the child by the man; [or]

(5) the man's having consented to the use of assisted reproduction by his wife under [Article] 7 which resulted in the birth of the child[; or

(6) an adjudication confirming the man as a parent of a child born pursuant to a gestational agreement validated under [Article] 8 or other enforceable gestational agreement].

Comment

Derived from Uniform Parentage Act (1973), § 4, and expanded to include all possible bases of the parent-child relationship

SECTION 202. NO DISCRIMINATION BASED ON MARITAL STATUS. A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

Comment

Derived from Massachusetts Gen. Laws ch. 209C, § 1 and Uniform Parentage Act § 2(1973). The broad statement according equal treatment to a nonmarital child with regard to his or her parents is not to be construed as eliminating all possible distinctions in all aspects of the lives of the nonmarital child and parents. For example, Uniform Probate Code § 2-705(b) states that "in construing a dispositive provision of a transferor who is not a natural parent, an individual born to the natural parent is not considered a child of that parent unless the individual lived while a minor as a regular member of the household of that parent or of that parent's parent, brother, sister, spouse, or surviving spouse." That is, UPC § 2-705(b) provides that an individual is presumed not to be included in a class gift from someone other than the child's parent unless that individual lived as a member of the parent's family during childhood. This presumed intent of the donor is rebuttable. Moreover, note that although this provision probably has a disproportionate effect on nonmarital children, the disparity is not based on the circumstances of birth, but rather on post-birth living conditions.

In contrast, Uniform Probate Code § 2-114(c) may affect inheritance rights from a nonmarital child that otherwise might flow to a parent of the child or to his or her family. That statute provides that, regardless of the marital status of the parents, "Inheritance from or through a child by either natural parent or his [or her]

kindred is precluded unless that natural parent has openly treated the child as his [or hers] and has not refused to support the child." The Drafting Committee is of the opinion that this provision does not conflict with Uniform Parentage Act § 202.

SECTION 203. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE. Unless parental rights are terminated, the parent-child relationship established under this [Act] applies for all purposes except as otherwise provided by other law of this State.

Comment

Derived from Uniform Status of Children Assisted Conception Act § 10. This may seem to state the obvious, but both the statement and the qualifier are necessary because a literal reading of §§ 201-203 could lead to erroneous constructions without further explanation. The basic statement of the section is to make clear that a birth mother is not a parent once her parental rights have been terminated. Similarly, a man whose paternity has been established by acknowledgment or by court determination may subsequently have his parental rights terminated. The qualifier is necessary because other statutes may restrict rights of a parent. For example, Uniform Probate Code § 2-114(c) precludes a parent of a child (and the parent's family) from inheriting from the child by intestate succession "unless that natural parent has openly treated the child as his [or hers] and has not refused to support the child." Similarly, Uniform Probate Code § 2-705(b) affects the right of the child to take under class gifts from persons who are not the parents of the child.

SECTION 204. PRESUMPTION OF PATERNITY IN CONTEXT OF MARRIAGE.

(a) A man is presumed to be the father of a child if:

(1) he and the mother of the child are married to each other and the child is born during the marriage;

(2) he and the mother of the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce[, or after a decree of separation];

(3) before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is, or could be, declared invalid and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(4) after the birth of the child, he and the mother of the child have married each other in apparent compliance with law, whether or not the marriage is, or could be declared invalid, and he voluntarily:

(A) asserted his paternity of the child in a record filed with [state agency maintaining birth records];

(B) agreed to be and is named as the child's father on the child's birth certificate; or

(C) promised in a record to support the child as his own.

(b) A presumption of paternity established under this section may be rebutted only by an adjudication under [Article] 6.

Comment

Source: Uniform Parentage Act § 4 (1973).

The presumptions established in subsections (a)(1)-(4) of the 1973 Act are virtually unchanged, but the two nonmarital presumptions found in (a)(5), (6) have been eliminated. The presumptions based on the marital status of the parties are readily ascertainable by proof of a valid or attempted marriage. The nonmarital

presumptions were totally fact driven and required time-consuming inquiries. Genetic testing is a far more economical method to resolve the question of the paternity of a nonmarital child.

ARTICLE 3

VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

Introductory Comment

Although voluntary acknowledgment of paternity has long been an alternative to the contested paternity suit, action by the U.S. Congress has fundamentally changed the procedure. Under Uniform Parentage Act § 4 (1973) the inclusion of a man's name on the child's birth certificate merely created a presumption of paternity. In the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, also known as the Welfare Reform Act) Congress conditioned federal child support enforcement funds to a requirement that all States enact laws that greatly strengthen the effect of a man's voluntary acknowledgment of paternity. See 42 U.S.C. § 666(a)(5)(C). In brief, a valid acknowledgment of paternity is to be considered the equivalent of a judicial determination of paternity. This article provides a comprehensive version for the States to comply with this mandate of Congress.

A comprehensive approach is required because the congressional act is nonspecific in many respects. Primary among the issues that Congress did not take into account was the fact that a mother who, in cooperation with the actual father of a child, seeks to have that man acknowledge paternity of the child may, in fact, be married to another man. By virtue of the laws in universal effect, including this version of the Uniform Parentage Act, the husband of the mother is the presumed father of the child, see § 204, supra. Thus, by ignoring the real possibility that there will be both an acknowledged father and a presumed father, Congress inadvertently left it to the States to sort out the difficulties inherent in such a fact situation. Sections 302-305 clarify that if a child the subject of an acknowledgment has a presumed father, that man must cooperate by filing a denial of paternity in conjunction with the acknowledgment or the document is void. If the presumed father is unwilling to cooperate or his whereabouts are unknown, a court proceeding is necessary to resolve the issue of parentage.

Congress also directed that the acknowledgment could both be rescinded within a particular timeframe and challenged – without stating a timeframe. This too is dealt with in Article 3, see Sections 307-309.

Further, PRWORA does not mention that a person acknowledging parentage asserts genetic parentage of the child. Section 301 is designed to prevent circumvention of adoption laws by demanding a sworn assertion of actual parentage of the child through sexual intercourse in support of an acknowledgment under this article.

The federal law relating to paternity establishment in conjunction with proceedings involving the support-enforcement agency, 42 U.S.C. § 666, is reproduced in Appendix to Article 3, infra.

SECTION 301. ACKNOWLEDGMENT OF PATERNITY. The mother of a child and a man claiming to be the father of the child conceived as the result of sexual intercourse with the mother may sign an acknowledgment of paternity with intent to establish the man's paternity.

Comment

Derived from 42 U.S.C. § 666(a)(5)(C), see Introductory Comment above.

SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF PATERNITY.

(a) An acknowledgment of paternity must:

(1) be in a record;

(2) be signed under penalty of perjury by the mother and by the man seeking to establish his paternity;

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

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

(B) does not have another acknowledged or adjudicated father; and

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

(b) An acknowledgement of paternity is void if it:

(1) states that another man is a presumed father, unless a denial of paternity signed by the presumed father is filed with the [agency maintaining birth records];

(2) states that another man is an acknowledged or adjudicated father; or

(3) falsely denies the existence of a presumed, acknowledged, or adjudicated father of the child.

(c) A presumed father may sign an acknowledgment of paternity.

Comment

The federal statute declaring that a federal subsidy is dependent on state law providing procedures for the voluntary acknowledgment of paternity is simple to mandate, but the application is quite complicated. Problems apparently not foreseen by Congress include fact situations in which the mother is married to someone other than the man who is willing to admit to paternity. Federal law gives no guidance. Recognizing that a large number of births will occur under such circumstances, most States have passed laws allowing the presumed father to sign a denial of paternity, which must be filed as part of the acknowledgment. The draft adopts this common sense solution; otherwise the acknowledgment would have no legal consequence because it cannot affect the legal rights of the presumed father. Similarly, in an attempt to assure full disclosure, subsection (a)(4) requires information regarding whether there has been genetic testing, and if so, that the acknowledgment be consistent with the results of that testing.

SECTION 303. DENIAL OF PATERNITY. A presumed father of a child may sign a denial of his paternity, which is valid only if:

(1) an acknowledgement of paternity signed by another man is filed pursuant to Section 305;

(2) the denial is in a record, and signed under penalty of perjury; and

(3) the presumed father has not previously:

(A) acknowledged his paternity, unless the previous acknowledgement has been rescinded pursuant to Section 307 or successfully challenged pursuant to Section 308; or

(B) been adjudicated to be the father of child.

SECTION 304. SPECIAL RULES FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY.

(a) An acknowledgment of paternity and a denial of paternity may be contained in a single document or may be signed in counterparts, and may be filed separately or simultaneously.

(b) An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.

(c) An acknowledgment or denial of paternity takes effect on the birth of the child or the filing of the document with the [agency maintaining birth records], whichever occurs later.

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

Comment

Derived from 42 U.S.C. § 666(a)(5)(C)(i), requiring a "simple civil process" for voluntary acknowledgment of paternity.

SECTION 305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY.

(a) Except as otherwise provided in Sections 307 and 308, a valid acknowledgment of paternity filed with the [agency maintaining birth records] is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all the rights and duties of a parent.

(b) Except as otherwise provided in Sections 307 and 308, a valid denial of paternity filed with the [agency maintaining birth records] in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all of the rights and duties of a parent.

Comment

Derived from 42 U.S.C. § 666(a)(5)(D)(ii), requiring that an acknowledgment of paternity be "a legal finding of Paternity," and 42 U.S.C. § 666(a)(5)(M), directing that acknowledgments be "filed with the State registry of birth records . . . ."

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

SECTION 307. PROCEEDING FOR RESCISSION. A signatory may rescind an acknowledgment or denial of paternity by commencing a proceeding to rescind before the earlier of:

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

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

Comment

This section reflects the decision of the Drafting Committee to require an adjudicatory process to rescind a voluntary acknowledgment of paternity. A federal statute, 42 U.S.C. § 666(a)(5)(c)(D)(ii), mandates that in order to retain the federal child support subsidy, state law must provide a right of rescission to signatories of an acknowledgment of paternity. However, the federal statute does not prescribe the method for the rescission.

SECTION 308. CHALLENGE AFTER EXPIRATION OF TIME FOR RESCISSION.

(a) After the period for rescission under Section 307 has elapsed, a signatory of an acknowledgment or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:

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

(2) within two years after the acknowledgement or denial is filed with the [agency maintaining birth records].

(b) A party challenging an acknowledgment or denial of paternity bears the burden of proof.

Comment

After the time period for rescission of a voluntary acknowledgment of paternity has elapsed, Congress added a provision for a later "challenge" to an

acknowledgment . In 42 U.S.C. § 666(a)(5)(c)(D)(iii) this challenge must be made "in court." The potential proceeding is limited to a "challenge" based on alleged "fraud, duress, or material mistake of fact." None of these terms are defined; it will be left to state courts to construe this ambiguous language.

SECTION 309. PROCEDURE FOR RESCISSION OR CHALLENGE.

(a) Every signatory to an acknowledgment or denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

(b) For the purpose of rescission of, or challenge to, an acknowledgment or denial of paternity, a signatory submits to personal jurisdiction of this State by signing the acknowledgment or denial, effective upon the filing of the document with the [agency maintaining birth records].

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

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

(e) At the conclusion of a proceeding to rescind or challenge an acknowledgement or denial of paternity, the court shall order the [agency maintaining birth records] to amend the birth record of the child, if appropriate.

Comment

The federal statute does not prescribe the method for "rescission" of an acknowledgment of paternity, but it does require a proceeding in court for a

subsequent "challenge." Because an acknowledgment of paternity is an act of significant legal consequence, the proposed adjudicatory requirement for both acts disputing an acknowledgment should require a formal procedure because it will result in a legal determination of the child's parentage. A system that allows a signatory of an acknowledgment of paternity merely to file a rescission with the state bureau of vital statistics would be an unwise policy choice. The Drafting Committee opted to provide for the same adjudicatory procedure for either withdrawal of a previous acknowledgment. Many jurisdictions have come to the same conclusion. Appendix to Section 309, infra, provides a table identifying the methods with which various States currently address the issue.

SECTION 310. RATIFICATION BARRED. A court or administrative agency conducting a judicial or administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of paternity.

Comment

Derived from 42 U.S.C. § 666(a)(5)(E).

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

Comment

This section conforms to the mandate of 42 U.S.C. § 666(a)(5)C)(iv), requiring States "to give full faith and credit such an affidavit [of acknowledgment] signed in any other State according to its procedures." Further, a "signed voluntary acknowledgment is considered a legal finding of paternity . . . ." 42 U.S.C. § 666(a)(5)(D)(ii). In sum, an acknowledgment of paternity has the same status as a "judgment," 28 U.S.C. § 1738, a "child custody determination," 28 U.S.C. § 1738A, and a "child support order," 28 U.S.C. § 1738B.

SECTION 312. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY.

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

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

Comment

Derived from 42 U.S.C. § 666(a)(5)C)(i),(iv).

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

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

Comment

States will implement voluntary acknowledgment of paternity procedures in a variety of ways, depending on local practice. This grant of rulemaking authority to carry out the provisions of this Article, could include electronic transmission of birth and acknowledgment data to the designated state agency.

ARTICLE 4

REGISTRY OF PATERNITY

PART 1

GENERAL PROVISIONS

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

Comment

Beginning with *Stanley v. Illinois*, 405 U.S. 545 (1972) and continuing through the 1970s and early 1980s the Supreme Court of the United States recognized the rights of nonmarital fathers with respect to their nonmarital children. In 1983, the Court upheld the constitutionality of the New York paternity registry in the case of *Lehr v. Robertson*, 463 U.S. 248 (1983). The New York statute requires fathers of children born out of wedlock to register if they wish to be notified of any termination of parental rights or adoption proceeding. Following a series of well-publicized adoption cases wherein nonmarital fathers had not been given proper notice, legislatures began responding to these cases by enacting paternity registries similar to the New York statute. As of May, 2000, at least 28 States had enacted legislation creating paternity registries. This draft accepts the concept, but with some significant differences from the New York model.

In Lehr, the father was actually already in litigation seeking to establish his parental rights, but still did not prevail because he had failed to register his claim. This Act excepts from registration those persons who initiate a proceeding for paternity, notwithstanding the failure to register. In addition, the Act applies only to children under one year of age at the time of the court hearing, see Section 405, infra. This recognizes the need to expedite infant adoptions, while properly protecting the rights of nonmarital fathers who may have had some informal relationship with the child following birth. This gives the nonmarital father the opportunity to step forward to accept the responsibilities of parenthood, but failing to do so, will not derail the termination or adoption proceeding.

See Appendix to Section 401, infra.

SECTION 402. REGISTRATION FOR NOTIFICATION.

(a) Except as otherwise provided in subsection (b) or Section 405, a man who desires to be notified of a proceeding for adoption of, or termination of parental rights to, a child that he may have fathered must register in the registry of paternity before the birth of the child or no later than 30 days after the birth.

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

(1) a father-child relationship between the man and the child has been established under this [Act]; or

(2) the man commences a proceeding to adjudicate his paternity before the court has terminated his parental rights.

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

Comment

A registrant insures that he will receive notice of the birth of a child that he may have fathered if the birth occurs in the State of registration. In this manner, a man may seek to protect his right to assert parentage, even if he and the mother have separated. A consequential effect is that the act of registration submits the man to the personal jurisdiction of the tribunals of the States, see Uniform Interstate Family Support Act § 201(7).

Although often advertised as being designed to protect the claims of paternity from arbitrary elimination, in truth the primary purpose of such a registry is to facilitate infant adoptions by licensed agencies. Therefore, limiting the consequence of a failure to register with a registry of paternity to termination of paternal rights in cases of infant adoption seems appropriate. If an adoption is not consummated in the first year of the child's life, throughout the minority of the child the nonmarital father and the mother remain responsible for support and eligible for

custody or visitation. The latter fact situation distinguishes it from an infant adoption in which both parents lose those right and duties for the benefit of the child.

SECTION 403. NOTICE OF PROCEEDING. Notice of a proceeding for the adoption of, or termination of parental rights to, a child must be given to a registrant who has timely registered. Notice must be given in a manner prescribed for service of process in a civil action.

Comment

This section is the logical conclusion to the legal rationale for establishing a paternity registry. In a adoption of a child or termination of parental rights proceeding, the registry provides a clear procedure for resolving whether a nonmarital father intends to assert his rights with regard to the child. If he registers, termination of his rights and adoption of his child may not proceed without notice to him, thereby affording him the opportunity to assert his paternity and claims for custody or visitation.

SECTION 404. TERMINATION OF PARENTAL RIGHTS: CHILD LESS THAN ONE YEAR OF AGE. The parental rights of a man who may be the father of a child may be terminated without notice if:

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

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

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

Comment

This section is the obverse logical conclusion to the legal rationale for establishing a paternity registry. In a adoption of a child or termination of parental

rights proceeding, the registry provides a clear procedure for resolving that a man does not intend to assert parental rights with regard to the child. Although the registry protects a man's right to notice in a termination or adoption proceeding, his failure to register waives those rights. Thus, the registry is both a first step for claiming parental rights and the end of those rights for those individuals who do not register. If a man fails to register with the paternity registry, a termination and adoption may proceed without fear of a belated claim, most particularly a claim coming after adoptive parents have received custody of the child. This expedited procedure greatly facilitates infant adoption, which in truth explains the existence – and popularity – of the registries and their strong support by the adoption community.

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

(a) If a child has attained one year of age, notice of a proceeding for adoption of, or termination of parental rights to, the child must be given to a man who may be the child's father whether or not he has registered with the [agency maintaining the registry].

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

Comment

With the exception of children under one year of age, this section reaffirms *Stanley v. Illinois*, supra, and its progeny by requiring notice to the nonmarital father of a adoption of a child or termination of parental rights proceeding. This section is derived from Uniform Putative and Unknown Fathers Act § 3 (1988). This protects those fathers who may have had some informal nonlegal relationship with the child or mother for some time and prevents unilateral action to adversely affect the father's rights. Although Stanley involved a nonmarital father who had established a long-term parental relationship with his children, the principle of notice to such men is expanded to apply to all fathers of nonmarital toddlers to teenagers.

PART 2

OPERATION OF REGISTRY

SECTION 411. REQUIRED FORM. The [agency maintaining the registry] shall prepare a form for registering with the agency. The form must be signed by the registrant. The form must contain a notice to the registrant that he signs the form under penalty of perjury. The form must also provide notice to the registrant that:

(1) a timely registration entitles the registrant to notice of a proceeding for adoption of the child or termination of the registrant's parental rights; and

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

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

(4) services to assist in establishing paternity are available to him through the support-enforcement agency;

(5) he should also register in another State if conception or birth of the child occurred in the other State;

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

(7) procedures exist to revoke the registration of a claim of paternity.

SECTION 412. FURNISHING OF INFORMATION; CONFIDENTIALITY.

(a) The [agency maintaining the registry] need not seek to locate the mother of a child who is the subject of a registration, but, if the mother's address has been provided, the [agency maintaining the registry] shall send a copy of the notice of the registration to her at that address.

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

(1) a court;

(2) the mother of the child who is the subject of the registration;

(3) an agency authorized by other law;

(4) a licensed child-placing agency;

(5) a support-enforcement agency;

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

(7) the registry of paternity in another State.

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

SECTION 414. REVOCATION OF REGISTRATION. A registrant may revoke his registration at any time by sending to the registry a written revocation signed by him and witnessed or notarized.

SECTION 415. UNTIMELY REGISTRATION. If a man registers more than 30 days after the birth of the child, the [agency] shall notify the registrant that on its face his registration was not filed timely. If the [agency maintaining the registry] receives notice of an order terminating the rights of a registrant with regard to a child from the clerk of the court, the [agency] shall notify the registrant that it has received an order terminating his rights.

SECTION 416. FEES FOR REGISTRY.

(a) A fee may not be charged for filing a registration.

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

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

PART 3
SEARCH OF REGISTRIES

SECTION 421. SEARCH OF APPROPRIATE REGISTRY.

(a) If a father-child relationship has not been established under this [Act] for a child under one year of age, [a petitioner] for adoption of, or termination of parental rights to, the child must obtain a certificate of search of the registry of paternity.

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

SECTION 422. CERTIFICATE OF SEARCH OF REGISTRY.

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

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

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

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

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

(B) has not been found.

(c) A [petitioner] must file the certificate of search with the court before a proceeding for adoption of, or termination of parental rights to, a child may be concluded.

SECTION 423. ADMISSIBILITY OF REGISTERED INFORMATION. A certificate of search of the registry of paternity in this or another State is admissible in a proceeding for adoption of, or termination of parental rights to, a child and, if relevant, in other legal proceedings.

ARTICLE 5

GENETIC TESTING

SECTION 501. SCOPE OF ARTICLE. This [article] governs genetic testing of an individual whether the individual:

(1) voluntarily submits to testing; or

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

Comment

This section is intended to avoid problems with regard to the admissibility of the result of voluntary genetic testing to such as those encountered in *Catawba County v. Khatod*, 479 S.E.2d 270 (N.C. App 1997) and *Yokley v. Townsend*, 849 S.W.2d 722 (Mo. App. W.D. 1993).

SECTION 502. ORDER FOR TESTING.

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

(1) alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or

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

(b) A support-enforcement agency may order genetic testing only if there is no presumed, acknowledged, or adjudicated father.

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

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

Comment

This section conforms to the mandate of 42 U.S.C. § 666(a)(5)(B)(i) requiring genetic testing in certain cases, see Appendix A, Federal IV-D Statute Relating to Parentage.

Subsection (a) speaks to testing of "designated individual" rather than to "mother, and alleged or presumed father" to take into account the fact that testing for paternity may proceed without testing the mother. Further, testing may also proceed without testing the alleged father by testing close relatives of that man. Moreover, the right of the court to order testing is not plenary; Sections 607-609 place limitations on genetic testing if the child has a presumed, acknowledged, or adjudicated father.

Subsection (c) is intended to prevent the court from ordering the mother to undergo prenatal testing, such as amniocentesis or other in utero collection method These procedures have a measurable risk to the life and health of both the fetus and the mother. Of course, if the mother volunteers for such testing, she may undergo prenatal sample collection for parentage determination.

Subsection (d) recognizes that multiple men may be participating in the establishment process. The laboratories prefer to evaluate all persons concurrently, as concurrent testing may prevent multiple sample collections from the child and in rare cases (such as evaluating two non-identical siblings) the laboratory can continue testing until one or both of the tested men are excluded. However, sequential testing is also acceptable.

SECTION 503. REQUIREMENTS FOR GENETIC TESTING.

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

(1) the American Association of Blood Banks, or a successor to its functions;

(2) the American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or

(3) an accrediting body designated by the U.S. Secretary of Health and Human Services.

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

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

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

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

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

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

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

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

Comment

Subsections (a) and (b) conform to the mandates of 42 U.S.C. § 666(a)(5)(B)(i)(I)(II) and § 666(a)(5)(F)(i)(I)(II), see Appendix A, Federal IV-D Statute Relating to Parentage.

As of May, 2000, the Secretary of Health and Human Services has not officially designated any accreditation bodies as referenced in subsection (b)(3). However, Information Memorandum O.C.S.E.-IM-97-03, April 10, 1997, from the Deputy Director of O.C.S.E. identifies the American Association of Blood Banks and American Society for Histocompatibility and Immunogenetics as meeting this requirement. The accreditation requirement assures that the testing will "be of a type reasonably relied upon by experts in the field of genetic testing."

Subsection (b) clarifies that a "specimen" suitable for genetic testing may be composed from one of a wide variety of constituent elements of "body tissue and fluids." This conforms the statutory language to biological terminology in order to assure common understanding between the scientific community and the legal profession. In States with statutes employing only the broad terms, bench and bar

have evidenced confusion about the fact that blood, buccal cells, bone, hair, etc. are "body tissues."

SECTION 504. REPORT OF GENETIC TESTING.

(a) The report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory.

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

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

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

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

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

(5) the dates the specimens were received.

(c) An individual commits a [appropriate level misdemeanor] if the individual intentionally releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen. [Release of the results of genetic testing is controlled by [applicable state law].]

Comment

This section conforms to the mandate of 42 U.S.C. § 666(a)(5)(F) requiring genetic testing in certain cases, see Appendix A, Federal IV-D Statute Relating to Parentage.

Subsection (b) is designed to indicate that in these civil trials only a minimal showing of reliability of the chain of custody is needed. This section is to avoid evidentiary problems, such as finding that the report of the results of genetic testing is not admissible in a paternity case because the pilot of the airplane that transported the specimens did not testify, reversed in *Dotson v. Petty*, 359 S.E.2d 403 (Va. App. 1987). Most jurisdictions apparently do not have this problem. See *State v. Brashear*, 841 S.W.2d 754 (Mo. App. 1992); *DeLaGarza v. Salazar*, 851 S.W.2d 380 (Tex. App. – San Antonio 1993, no writ).

Subsection (c) is included to make an attempt at protecting the privacy rights of persons who are tested for a parentage determination. Although the Drafting Committee was not informed of an instance in which a paternity laboratory had released samples or performed unauthorized testing, the Committee was aware that several States have proposed or passed laws regulating the "genetic privacy" of paternity tests. This section is intended to provide some guidance in this area. The term "identifiable specimen" is included, as there are beneficial uses of samples for anonymous research purposes. For example the frequency tables used to make calculations are compiled from anonymous data and provide a more precise calculation for all persons involved in paternity testing. On occasion a court may order the laboratory to release samples. For example, a man who had been tested in one paternity proceeding and then dies may have his samples utilized in another paternity proceeding if a court orders testing in the second action. Courts have also ordered the release of samples when the tested man has engaged in criminal conduct. This has occurred when the alleged father has sent an imposter for sample collection. If the State pursues criminal charges, a court might order the laboratory to release the samples to a state crime laboratory for further identification and possible criminal prosecution. The Committee was informed that in one case, after the State did this, a grand jury brought indictments for multiple counts of a scheme to defraud, tampering with physical evidence and perjury against the alleged father and imposter. The results of genetic testing for paternity purposes appear to have no medical or predictive value and the regulation of the results is left to the States. In some States the records of paternity proceedings are open, thus allowing anyone to obtain the results. A more comprehensive treatment on this subject must necessarily be left for future study of genetic privacy.

SECTION 505. GENETIC TESTING RESULTS; REBUTTAL.

(a) Under this[Act], a man is rebuttably identified as the father of a child if the genetic testing complies with this [article] and the results disclose that:

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

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

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

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

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

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

Comment

This section conforms to the mandate of 42 U.S.C. § 666(a)(5)(G) requiring genetic testing in certain cases, see Appendix A, Federal IV-D Statute Relating to Parentage.

The selection of a probability of paternity of 99.0% and a combined paternity index of 100 to 1 as the rebuttably identified man as father of the child is consistent with the current standard of practice in the genetic-testing community. Because all States except Texas use the probability of paternity, the combined paternity index, or both, there will be a minimum impact on legal precedents. Accrediting agencies require the reporting of both of these numbers. Currently, 27 States have established a presumption at less than this genetic level. However, for several years the standard of practice in the scientific community has been 99.0%. Therefore, raising the genetic presumption to the 99.0% level should have no impact on those States. This number represents a reasonable level of testing, given the breadth of

the Act and potential difficulty of working with some specimens in a probate case. It is not intended as a standard of practice for the laboratories, but as a legal presumption given the legal standard of proof. The standard of practice in paternity laboratories may change, which is safeguarded by the requirement that laboratories be accredited in order to perform testing under the Act. If the accrediting organizations change the standard of practice, the legal significance of the genetic presumption stated in this section will be unaffected.

Genetic testing results will often exceed the statutory minimum. During the drafting meetings several statutory presumptions were considered, i.e., 95%, 99%, 99.9% and 99.99%. Genetic testing laboratory representatives presented quite persuasive arguments for a variety of choices. The Drafting Committee ultimately chose 99% because:

(1) The 99% standard reflects the current standard of the American Association of Blood Banks (Standards for Parentage Testing Laboratories, 4th Edition);

(2) The standards promulgated by the various accrediting bodies (American Association of Blood Banks and the American Society for Histocompatibility and Immunogenetics) will, in reality, set the benchmark for genetic testing;

(3) The 99% status represents the plurality of American jurisdictions;

(4) At present, a standard higher than 99% could cause evidentiary problems in probate proceedings because of degraded specimens. Similarly, that problem may arise in cases involving one or more missing individuals, e.g., the mother is not available, but the child and alleged father are available;

(5) The percentage is an evidentiary presumption that the respondent may always challenge by requesting a second test under Section 507; and

(6) A proceeding to adjudicate paternity is a civil action based on a preponderance of the evidence, not a criminal action based on evidence beyond reasonable doubt.

Given the rapid progress of science in this subject matter, it is likely that accrediting standards will rise over time.

See table in Appendix to Section 505, infra.

SECTION 506. COSTS OF GENETIC TESTING.

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

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

(2) by the individual who made the request;

(3) as agreed by the parties; or

(4) as ordered by the court.

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

Comment

Source: Uniform Parentage Act (1973) § 11.

This section conforms to the mandate of 42 U.S.C. § 666(a)(5)(B)(ii)(I) requiring the agency to pay the cost of testing, subject to recoupment, see Appendix A, Federal IV-D Statute Relating to Parentage; *Little v. Streater*, 454 U.S. 1, (1981).

SECTION 507. ADDITIONAL GENETIC TESTING. The court or the support-enforcement agency shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child under Section 505, the court or agency may not order additional testing unless the party provides advance payment for the testing.

Comment

Source: Uniform Parentage Act § 11.

This section conforms to the mandate of 42 U.S.C. § 666(a)(5)(B)(ii)(II) requiring additional testing if the original testing is contested, see Appendix A, Federal IV-D Statute Relating to Parentage.

SECTION 508. GENETIC TESTING WHEN NOT ALL INDIVIDUALS AVAILABLE.

(a) If a genetic-testing specimen is not available from a man who may be the father of a child, a court may order the following individuals to submit specimens for genetic-testing:

(1) the parents of the man;

(2) brothers and sisters of the man;

(3) other children of the man and their mothers; and

(4) other individuals necessary to complete genetic testing.

(b) If a specimen from the mother of a child is not available for genetic testing, the court may order genetic testing to proceed without a specimen from the mother.

Comment

In rare cases, both the mother and alleged father may be missing. In such cases, testing the mother's relatives may be useful in establishing paternity. Subsection (a) accommodates those cases where the mother and alleged father are both missing. If only the mother is missing, as provided for in subsection (b), there is generally no need to collect samples from the mother's relatives in order to establish paternity.

It is likely that none of the individuals listed for testing in subsection (a) will be parties to the proceeding. If an individual does not volunteer to participate in the testing and is not a party, in the absence of this provision the court will need to decide whether it has the authority to order the testing and the necessity of testing

the objecting individual. In some cases, a court has refused to order the testing for lack of personal jurisdiction. Other courts have ordered the testing as the individual needed for testing is an essential witness. See *William M. v. Superior Court* (Dana F.), 275 Cal. Rptr. 103 (Cal. App. 3 Dist. 1990); *Estate of Rodgers*, 583 A.2d 782 (N.J. Super. A.D. 1990). At least one State has incorporated similar language in its statutes, see: Minn. Stat. Ann. § 257.62(1). Given the fact that genetic testing in the modern age is not invasive – using the buccal swab method, the intrusion into the privacy of the individual seems relatively slight when compared to the right of the child to have parentage established. Moreover, the alleged parent also has a right to have that fact determined.

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

Comment

In some States the court with jurisdiction to adjudicate parentage might not have jurisdiction to order disinterment of a deceased individual. If so, that authority is provided by this section.

SECTION 510. IDENTICAL BROTHERS.

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

(b) If genetic testing excludes none of the brothers as the genetic father, and each brother satisfies the requirements as the identified father of the child under Section 505 without consideration of another identical brother being identified as the father of the child, the court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

Comment

See *Illinois Dept. of Public Aid v. Whitworth*, 652 N.E.2d 458 (Ill. App. 4 Dist. 1995). In some cases, non-identical brothers (and even other related men) will not be excluded after initial testing. This section should not be used to resolve those cases; the appropriate response is for the court to order additional testing as provided in Section 505(c).

Genetic testing can differentiate non-identical siblings; there should never be a case with non-identical siblings where one is not excluded. If a case occurs in which, after initial testing, two men are not excluded, both men should be ordered to submit to additional testing in order to determine which is the father. In the extremely rare case in which a competent laboratory exhausts all of its in-house testing and still cannot determine which non-identical sibling is excluded, the common practice is to provide the genetic material to another laboratory for more extensive testing to resolve the case.

Contrasting identical brothers with non-identical twins, identical twin alleged fathers can never be differentiated by additional genetic testing. This creates a completely different situation for the court. This section resolves the identical-twin conundrum as much as it is possible to do, and is designed to prevent the court from simply dismissing the case.

ARTICLE 6

PROCEEDING TO ADJUDICATE PARENTAGE

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].

Comment

Source: derived from Uniform Parentage Act (1973) § 14.

This section authorizes the proceeding to adjudicate parentage, which is declared to be a "civil proceeding" to eliminate any implication that criminal law is involved. The bracket for filling in appropriate court rules should be tailored to local court structure. For example some jurisdictions have special rules for family court, surrogate court, etc.

Drawing on medieval English precedent, many States originally treated determination of paternity as a criminal or quasi-criminal prosecution. The impetus for suits for bastardy, filiation, or paternity, was to transfer the financial burden of the support of a nonmarital child from the taxpayers of the county or the parish to the child's biological father. Early bastardy prosecutions often granted the alleged father procedural advantages adapted from criminal law, including the option of refusing to testify, sharply limiting discovery, and requiring of proof beyond a reasonable doubt. These strategic advantages aided the alleged father in avoiding an erroneous paternity finding, but came at the cost of a greatly increased risk to the mother and child of an erroneous finding of nonpaternity. All remnants of this unfortunate history are swept away by the simple declaratory sentence that a suit for parentage is a civil proceeding.

Henceforth, a determination of paternity is governed by the ordinary rules of civil procedure. The party seeking to establish paternity is entitled to full discovery, to compel the testimony of all witnesses, and to have the case tried by a preponderance of the evidence. "The equipoise of the private interests that are at stake in a paternity proceeding supports the conclusion that the standard of proof

normally applied in private litigation is also appropriate for these cases." *Rivera v. Minnich*, 483 U.S. 574, 581 (1987).

As first promulgated in 1969, Uniform Probate Code, § 2-114. Parent and Child, provided for inheritance by a deceased father's nonmarital child on proof of paternity by clear and convincing evidence. Until that time, most States adhered to the rule derived from the common law of England which absolutely prohibited paternal inheritance by an illegitimate child, no matter how conclusive the proof of paternity might be. One such categorical prohibition was sustained in *Labine v. Vincent*, 401 U.S. 532 (1971). Thus, the Uniform Probate Code was ahead of its time in allowing inheritance from the paternal side. The procedure in the current version of the Uniform Probate Code was added in 1978. Section 2-114 provides for parentage to be established under the provision of the Uniform Parentage Act (1973) or other comparable state law. Under this provision, a parentage determination in probate proceedings will be treated as a civil suit in a State that has adopted the Uniform Parentage Act (1973), and similarly in other States that have adopted comparable provisions. This provision was not the exclusive alternative provided by the 1978 amendments, however. Because a handful of States had adopted the clear and convincing evidence requirements of the original version of the Uniform Probate Code, this more onerous provision was retained as a secondary alternative.

The Uniform Probate Code was again revised to its current version in 1990. By that time, imposing discriminatory burdens on children born out of wedlock seeking paternal inheritance had been recognized as illogical and unjust, and had been ruled unconstitutional by application of the intermediate scrutiny test formulated under the 14th Amendment. *Reed v. Campbell*, 476 U.S. 852 (1986). Moreover, by 1990 the preponderance of the evidence standard had been adopted by a number of States for determinations of paternity and probate proceedings. Some of these States adopted the preferred alternative of the 1978 Uniform Probate Code, while others adopted the preponderance standard independently without reference to that act. Against this background, the Committee revising the Uniform Probate Code in 1990 abandoned the clear and convincing evidence alternative for determining paternal relationships.

SECTION 602. STANDING TO MAINTAIN PROCEEDING. Subject to [Article] 3 and Sections 607 and 609, a proceeding to adjudicate parentage may be maintained by:

(1) the child;

(2) the mother of the child;

(3) a man whose paternity of the child is to be adjudicated;

(4) the support-enforcement agency [or other authorized governmental agency authorized by other law];

(5) an authorized adoption agency or licensed child-placing agency; [or]

(6) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor[; or

(7) an intended parent under [Article] 8].

Comment

Sources: Uniform Parentage Act (1973) § 6 and Uniform Putative and Unknown Fathers Act § 2.

This section conforms to the mandate of 42 U.S.C. § 666(a)(5)(L) requiring that a putative father have a reasonable opportunity to initiate a paternity proceeding, see Appendix A, Federal IV-D Statute Relating to Parentage.

SECTION 603. PARTIES TO PROCEEDING. The following individuals must be joined as parties in a proceeding to adjudicate parentage:

(1) the mother of the child; and

(2) a man whose paternity of the child is to be adjudicated.

Comment

Source: Uniform Parentage Act (1973) § 9.

This section partially follows, and partially rejects, the original requirements regarding who must be named as parties. First, contra to Uniform Parentage Act (1973), the child is not a necessary party. Few States require children as necessary parties; with the widespread use of DNA testing, such a requirement has outlived its

usefulness. On the other hand, failure to join a child as a party may result in a later successful collateral attack on the original determination of paternity to be filed by the child, see *Lalli v. Lalli*, 977 P.2d 776 (Ariz. 1999).

Second, as far as can be adjudicated, no State requires the children to be named as parties in every divorce proceeding; and, those decrees serve as res judicata if a later attack on a earlier determination is mounted.

SECTION 604. PERSONAL JURISDICTION.

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

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

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

Comment

Source: Uniform Parentage Act (1973) § 6(b).

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

(1) the child resides or is found;

(2) the [respondent] resides or is found if the child does not reside in this State; or

(3) a proceeding for probate of the presumed or alleged father's estate has been commenced.

Comment

Source: Uniform Parentage Act (1973) § 8(c).

SECTION 606. NO LIMITATION: CHILD HAVING NO PRESUMED, ACKNOWLEDGED, OR ADJUDICATED FATHER. A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after:

(1) the child becomes an adult; or

(2) an earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

Comment

Source: Uniform Parentage Act (1973) § § 6, 7.

In order for a State to retain the federal child support enforcement subsidy, 42 U.S.C. 666(a)(5)(A)(i) mandates that the State must have laws to "permit the establishment of the paternity of a child at any time before the child attains 18 years of age." States have chosen a wide range of age options: age 18 (20 States), age 19 (6 States), age 20 (2 States), age 21 (10 States), age 22 (2 States), age 23 (2 States), and no limitation (9 States). Several States limit the establishment of parental rights to a shorter time period. The Drafting Committee believes that an individual's right to determine his or her own parentage is a very important right and should not be subject to limitation except when an estate has been closed. Accordingly, this section allows a proceeding to adjudicate parentage at any time. Anecdotally, there appear to be no reported problems encountered in States without a statute of limitations for such actions. See Appendix to Section 606, infra, for a table of the state laws on this issue.

SECTION 607. LIMITATION: CHILD HAVING PRESUMED FATHER.

(a) Except as otherwise provided in subsection (b), a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father must be commenced not later than two years after the birth of the child.

(b) A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the court determines that:

(1) the presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and

(2) the presumed father never openly treated the child as his own.

Comment

Source: Uniform Parentage Act (1973) § 6.

This section represents an attempt to deal with difficult issues. First, the right of a mother or the presumed father to challenge the presumption of paternity established by Section 204 – basically, the age-old presumption that marriage creates a presumption that the mother's husband is the father of a child born to her (with some additional complexities). Second, the right, if any, of a third-party male to claim paternity of a child who has an existing presumed father must be clarified.

The Uniform Parentage Act (1973) places a five-year limitation on the former issue [Section 6(a)]. Ten States have denied standing to a man claiming to be the father when the mother was married to another at the time of the child's birth. In some of these States, even though a presumed father may seek to rebut his presumed paternity, a third-party male will be denied standing to raise that same issue.

The right of an "outsider" to claim paternity of a child born to a married woman varies considerably among the States. Thirty-three States allow a man alleging himself to be the father of a child with a presumed father to rebut the marital presumption. Some States have granted this right through legislation. In

other States, courts have recognized the alleged father's right to rebut the presumption and establish his paternity. Further, in some States, there are both statutory and common law support for the standing of a man alleging himself to be the father to assert his paternity of a child born to a married woman.

This draft attempts a middle ground on these exceedingly complex issues. Subsection (a) establishes a limitation for rebutting the presumption of paternity established under Section 204 of two years if the mother and presumed father were cohabiting at the time of conception. However, subsection (b) is open-ended if the mother did not live with the presumed father or engage in sexual intercourse with him at the probable time of conception. This distinction is based on the belief that a two-year period allows an adequate time period to resolve the status of a child within the context of an intact family unit; a longer period may have severe consequences for the child. On the other hand, if the family is not intact and the presumed father neither cohabited with the mother at the time of conception nor treated the child as his own, as a practical matter the issue of nonpaternity of the presumed father is generally assumed by all the parties concerned under those facts. See Uniform Probate Code § 2-114(c). It is inappropriate to assume a presumption known by all those concerned to be untrue. Appendix to Section 605, infra, provides a table listing the limitation periods of the various States.

Although unlikely to arise with any frequency, the section is also is designed to provide for an action by a "legal stranger" when the child has a presumed father as a result of mistake of fact or fraud. A third party male may collaterally attack a earlier acknowledgment or adjudication when he was not a participant in the proceeding. Because he was neither a signatory nor a party to the earlier determination of paternity, he can creditably assert that that the doctrine of res judicata is inapplicable to him. This class of individuals is limited to the same periods of time as for the individuals challenging the status of a presumed father. This subsection does not deal with the limitation on support enforcement agencies seeking to bring an independent action to challenge an earlier acknowledgment or adjudication. See Section 637 for a further discussion of this issue.

SECTION 608. AUTHORITY TO DENY GENETIC TESTING.

(a) In a proceeding to adjudicate parentage under circumstances described in Section 607, a court may deny genetic testing of the mother, the child, and the presumed father if the court determines that:

(1) the conduct of the mother or the presumed father estops that party from denying parentage; and

(2) it would be inequitable to disprove the father-child relationship between the child and the presumed father.

(b) In determining whether to deny genetic testing under this section, the court shall consider the best interest of the child, including the following factors:

(1) the length of time between the proceeding to adjudicate parentage and the time that the presumed father was placed on notice that he might not be the genetic father;

(2) the length of time during which the presumed father has assumed the role of father of the child;

(3) the facts surrounding the presumed father's discovery of his possible nonpaternity;

(4) the nature of the father-child relationship;

(5) the age of the child;

(6) the harm to the child which may result if presumed paternity is successfully disproved;

(7) the relationship of the child to any alleged father;

(8) the extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and

(9) other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed father or the chance of other harm to the child.

(c) In a proceeding involving the application of this section, the child must be represented by a guardian ad litem.

(d) A denial of genetic testing must be based on clear and convincing evidence.

(e) If the court denies genetic testing, it shall issue an order adjudicating the presumed father to be the father of the child.

SECTION 609. LIMITATION: CHILD HAVING ACKNOWLEDGED OR ADJUDICATED FATHER.

(a) If a child has an acknowledged father, a signatory to the acknowledgment or denial of paternity must commence any proceeding seeking to rescind or challenge the paternity of that child only within the time allowed under Section 307 or 308.

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

Comment

A two-year period is prescribed for a challenge in which the acknowledged or adjudicated father mistakenly believed himself to be the father. A similar limitation is prescribed for an individual who was not a signatory or a party to the earlier determination.

SECTION 610. JOINDER OF PROCEEDINGS.

(a) Except as provided in subsection (b), a proceeding to adjudicate parentage may be joined with an original proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce or annulment, legal separation or separate maintenance, probate or administration of an estate, or other appropriate proceeding.

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

Comment

Source: Uniform Parentage Act (1973) § 8.

Subsection (b) is designed to prevent a conflict with Uniform Interstate Family Support Act § 314, which provides limited immunity from the assertion of personal jurisdiction in other civil proceedings over a litigant engaged in a proceeding to establish, enforce, or modify child support under UIFSA. This immunity specifically does not apply to a parentage suit prefatory to establishing child support, UIFSA § 701. Relitigation of a prior parentage finding is also prohibited, UIFSA § 315.

SECTION 611. PROCEEDING BEFORE BIRTH. Although a proceeding to determine parentage may be commenced before the birth of the child, the proceeding may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

(1) service of process;

(2) discovery; and

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

SECTION 612. REPRESENTATION OF CHILD.

(a) A child is not a necessary party to a proceeding under this [article].

(b) If the court finds that the interests of a child are not adequately represented, the court shall appoint an [attorney ad litem] to represent the child.

Comment

This section rejects Uniform Parentage Act (1973) § 9. Consistent with § 603, supra, this Act rejects the view of Uniform Parentage Act (1973) that the child necessarily has an independent standing in a parentage proceeding. On the other hand, if the court determines that the child in fact does have a position at variance with all the other litigants, an attorney may be appointed to represent that interest.

SECTION 613. MOTHER-CHILD RELATIONSHIP. The provisions of this [article] relating to a proceeding to adjudicate paternity may be applied to a proceeding to adjudicate maternity.

Comment

See Uniform Parentage Act (1973) § 21 Comments.

[Sections 614-620 reserved for expansion.]

PART 2

SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE

SECTION 621. ADMISSIBILITY OF RESULTS OF GENETIC TESTING; EXPENSES.

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

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

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

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

(c) If a child has a presumed, acknowledged, or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

(1) with the consent of both the mother and the presumed, acknowledged, or adjudicated father; or

(2) pursuant to an order of the court under Section 502.

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

(1) the amount of the charges billed; and

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

Comment

Sources: 42 U.S.C. § 666(a)(5)(F)(ii); Uniform Parentage Act (1973) §§ 10, 13.

This section greatly simplifies the introduction of genetic testing results, but preserves a party's right to call the expert as a witness if desired. Subsection (c) is intended to discourage unilateral genetic testing, usually done in the context of a suspicious spouse seeking to determine whether a child is actually the child of the presumed father. While such testing cannot be stopped, the admissibility of the result may be excluded unless the court determines that the requirements of Section 607 have been satisfied.

SECTION 622. CONSEQUENCES OF REFUSING GENETIC TESTING.

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

(b) If an individual subject to an order for genetic testing declines to submit to genetic testing, the denial may be admitted as evidence.

(c) If an individual declines to submit to genetic testing as ordered by the court, the court may adjudicate parentage contrary to the position of the individual.

(d) Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother declines to submit to genetic testing, the court may order the testing of the child and every man whose paternity is being adjudicated.

Comment

Source: Uniform Parentage Act (1973) § 10.

SECTION 623. ADMISSION OF PATERNITY AUTHORIZED.

(a) A [respondent] in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.

(b) If the court finds that the admission of paternity was made pursuant to this section and finds that there is no reason to question the admission, the court shall issue an order adjudicating the child to be the child of the man admitting paternity.

Comment

Source: 42 U.S.C. 666(a)(5)(D)(i)(II).

This section is intended to clarify that a formal acknowledgment of paternity under Article 3 is not required when a respondent admits the paternity of the alleged father. The admission may be made by either the mother or alleged father. However, this section is not designed to be used by a petitioner to determine paternity. In that instance, a proceeding to adjudicate parentage as provided in Part 1, Article 6, is appropriate.

SECTION 624. TEMPORARY ORDER.

(a) In a proceeding under this [article], the court shall issue a temporary order for support of a child if the individual ordered to pay support:

(1) is a presumed father of the child;

(2) is petitioning to have his paternity adjudicated or has admitted paternity in pleadings filed with the court;

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

(4) has declined to submit to genetic testing;

(5) is shown to be the father of the child by clear and convincing evidence; or

(6) is the mother of the child.

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

Comment

Sources: Uniform Interstate Family Support Act § 401; 42 U.S.C. 666(a)(5)(J).

[Sections 625-630 reserved for expansion]

PART 3

HEARINGS AND ADJUDICATION

SECTION 631. RULES FOR ADJUDICATION OF PARENTAGE. The court shall apply the following rules to adjudicate the paternity of a child:

(1) The paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding the man as the father of the child or identifying another man to be the father of the child.

(2) Unless the results of genetic testing are admitted to rebut earlier results of genetic testing, the man identified as the father of the child under Section 505, must be adjudicated the father of the child.

(3) If the court finds that genetic testing under Section 505 neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, along with other evidence, are admissible to adjudicate the issue of paternity.

(4) Unless the results of genetic testing are admitted to rebut earlier results of genetic testing, a man excluded as the father of a child by a genetic testing must be adjudicated not to be the father of the child.

Comment

Source: Uniform Parentage Act (1973) § 14.

Paragraph (3) is intended to indicate that on occasion genetic testing may not reach the level required to establish a rebuttably identified man as the father of the child. In modern paternity testing, this is a very rare occurrence when living individuals are tested. On the other hand, this may present a problem in probate matters, which often must rely on the use of non-traditional specimens, such as bone and hair. In this context, the amount of testing may be limited by the specimen available. This section is designed to indicate that if the result of the genetic testing is less than the presumption, the probability of paternity is not an indicator of nonpaternity. A probability of paternity percentage and a combined paternity index that do not exclude the alleged father but also do not establish a presumption of paternity as provided by Section 505 are to be considered as indicators of paternity and weighed along with all the other evidence produced in the proceeding.

The inclusion of the first clause in paragraph (4) indicates that although a genetic testing exclusion can be absolute, errors may occur in testing. Some courts have imposed a rule that a party must first show the test is in error before ordering another test. This imposes an impossible burden because the only accurate method to show that a test is in error is to repeat the testing. Without this clause some litigants have argued that once an exclusion is obtained it is absolute and no other test can be ordered, even when the first test is shown to be wrong, see *Cable v.*

Anthou, 674 A.2d 732 (Pa. Super. 1996), affirmed, 699 A.2d 722 (Pa. 1997); *In re Paternity of Bratcher*, 551 N.E.2d 1160 (Ind. App. 1st Dist. 1990).

SECTION 632. JURY PROHIBITED. The court, without a jury, shall adjudicate parentage of a child.

Comment

Derived from 42 U.S.C. § 666(a)(5)(I), requiring state law to provide that "parties to an action to establish paternity are not entitled to trial by jury."

SECTION 633. HEARINGS; INSPECTION OF RECORDS.

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

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

Comment

Source: Uniform Parentage Act (1973) § 20.

SECTION 634. ORDER ON DEFAULT. The court shall issue an order adjudicating the paternity of a man who:

(1) after service of process, is in default; and

(2) is found by the court to be the father of a child.

Comment

Source: 42 U.S.C. 666(a)(5)(H).

While federal law mandates the issuance of a default judgment in a paternity case, there is no mention of the procedures authorized for use for setting aside such

judgments. This draft makes no attempt to deal with the innumerable local variations for setting aside such judgments. That subject is left to each State's own rules of civil procedure.

SECTION 635. DISMISSAL ORDER. The court may issue an order dismissing a proceeding commenced under this [Act] for want of prosecution only without prejudice. An order of dismissal for want of prosecution with prejudice is void and may be challenged in another judicial or an administrative proceeding.

SECTION 636. FINAL ORDER ADJUDICATING PARENTAGE.

(a) The court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.

(b) An order adjudicating parentage must identify the child by name and date of birth.

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

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

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

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

Comment

Sources: Uniform Interstate Family Support Act § 313; Uniform Parentage Act (1973) §§ 15, 16; 23 Uniform Putative and Unknown Fathers Act § 6(a).

SECTION 637. BINDING EFFECT OF DETERMINATION OF PARENTAGE.

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

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

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

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

(1) the determination of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or

(2) the child was represented in the previous proceeding by an [attorney ad litem].

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

(1) expressly identifies a child as a "child of the marriage," "issue of the marriage," or similar words indicating that the husband is the father of the child; or

(2) provides for support of the child by the husband unless paternity is specifically disclaimed in the order.

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

(e) A party to an adjudication of paternity may challenge the adjudication only under law of this State relating to appeal and vacation of judgments.

Comment

This section codifies rules regarding the effect of a final order determining parentage. A considerable amount of litigation involves just exactly who is bound and who is not bound by such orders. Subsection (a) provides that, if the order is issued under standards of personal jurisdiction of the Uniform Interstate Family Support Act, the order is binding on all parties to the proceeding. This solves the problem of an order issued without the appropriate jurisdiction, as would be the case of a divorce based on status jurisdiction in which the court lacked the requisite personal jurisdiction over a nonresident party.

Subsection (b) partially resolves the question as to whether a child is bound by the terms of the order. Uniform Parentage Act (1973) required the child to be made a party to a parentage proceeding, and therefore would be bound. However, the 1973 Act did not address whether a divorce decree had a the legal impact on paternity. A majority of jurisdictions holds that the child is not bound by the divorce decree because the child was not a party to the proceeding. See, Nadine E. Roddy, The Preclusive Effect of Paternity Findings in Divorce Decrees, Divorce Litigation

(1998). A minority of States holds that the child is bound to the order and that the child is in privity with the actions of the parents. In its present formulation, this subsection adopts the majority rule and which does not bind the child during minority unless the parentage order is based on genetic testing, or the child was represented by an ad litem.

Subsection (c) resolves whether a divorce decree constitutes a finding of paternity. This subsection provides that a decree is a determination of paternity if the decree states that the child was born of the marriage or grants the husband visitation, custody or orders support. This is the majority rule in American jurisprudence. See Roddy, supra.

Subsection (d) gives protection to third parties who may claim benefit of an earlier determination of parentage

Finally, the section is silent on whether state IV-D agencies are bound by prior determinations of parentage. This controversial issue is left to state law. Similarly, issues of collateral attack on final judgments are to be resolved by recourse to state law as in civil proceedings generally.

ARTICLE 7

CHILD OF ASSISTED REPRODUCTION

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

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

Comment

Source: Uniform Status of Children of Assisted Conception § 4(a).

SECTION 703. HUSBAND'S PATERNITY OF CHILD OF ASSISTED REPRODUCTION. If a husband provides sperm for, or consents to, assisted reproduction by his wife as provided in Section 704, he is the father of a resulting child born to his wife.

Comment

Sources: Uniform Parentage Act (1973) § 5; Uniform Status of Children of Assisted Conception §§ 1, 3.

SECTION 704. CONSENT TO ASSISTED REPRODUCTION.

(a) A consent to the use of assisted reproduction by a married woman must be in a record signed by the woman and her husband.

(b) Failure of the husband to sign a consent required by subsection (a) does not preclude a finding that the husband is the father of a child born to his wife if the wife and husband openly treated the child as their own.

Comment

Sources: Uniform Parentage Act (1973) § 5; Uniform Probate Code § 2-114(c).

The latter provides "Inheritance from or through a child by either natural parent or his [or her] kindred is precluded unless that natural parent has openly treated the child as his [or hers] and has not refused to support the child."

SECTION 705. LIMITATION ON HUSBAND'S DISPUTE OF PATERNITY.

(a) Except as otherwise provided in subsection (b), the husband of a wife who gives birth to a child by means of assisted reproduction may not challenge his paternity of the child unless:

(1) within two years after learning of the birth of the child he commences a proceeding to adjudicate his paternity; and

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

(b) A proceeding to adjudicate paternity may be maintained at any time if the court determines that:

(1) the husband did not provide sperm for, or consent to, the use of assisted reproduction by his wife;

(2) the husband and the mother of the child have not cohabited since the probable time of the use of assisted reproduction; and

(3) the husband never openly treated the child as his own.

(c) The limitation provided in this section applies to a marriage declared invalid after the use of assisted reproduction.

Comment

Source: Uniform Status of Children of Assisted Conception § 3; Uniform Probate Code § 2-114(c).

SECTION 706. EFFECT OF DISSOLUTION OF MARRIAGE. If a marriage is dissolved before placement of eggs, sperm, or an embryo, the former spouse is not a parent of the resulting child unless the former spouse consented in a record that if the use of assisted reproduction were to continue after a divorce, the former spouse would be a parent of the child.

Comment

This section is entirely new, but is derived from the policy stated in Section 707, infra. If there is to be no liability for a child conceived after death, then there should be no liability for a child conceived or implanted after divorce. This Act does not attempt to resolve issues as to control of frozen embryos following dissolution of marriage. Those matters are left to other state laws, usually in the context of settlement of divorce and regulation of health care facilities.

SECTION 707. PARENTAL STATUS OF DECEASED SPOUSE. If a spouse dies before placement of eggs, sperm or an embryo, the deceased spouse is not a parent of the resulting child unless the deceased spouse consented in a record

that if the use of assisted reproduction were to occur after death, the deceased spouse would be a parent of the child.

Comment

Source: Uniform Status of Children of Assisted Conception § 4

[ARTICLE 8

GESTATIONAL AGREEMENT

Introductory Comment

The subject of gestational agreements was last addressed by the Conference in 1988 with the adoption of the Uniform Status of Children of Assisted Conception Act (USCACA). That Act offers two alternatives on the subject: to regulate such activities through a judicial review process or to void such contracts. Only two States have adopted either version of the Act; Virginia chose to regulate such agreements, while North Dakota opted to void them.

The Drafting Committee recognizes that there are strongly held differences on this subject. Nonetheless, the Committee has concluded that the advances of science and the wide use of such reproductive agreements virtually demand that provisions for judicial supervision of gestational agreements be enacted. For this reason, Article 8 is included as an option in the Act. However, the Committee includes this article without a recommendation either for or against its adoption. The Uniform Parentage Act, as revised, contains too many important changes to jeopardize its passage because of opposition to this article. If the inclusion of Article 8 is so controversial in a State considering adoption of this Act to cause a risk of failure, the article may be omitted entirely.

Childless couples may choose modern science over traditional adoption in hopes of having a child of their own genetic making. Voiding or criminalizing gestational agreements will force individuals to find friendly legal forums for the process, which raises a host of legal issues. For example, a couple returning to their home State with a child born as the consequence of a gestational agreement entered into in a State recognizing that agreement presents a full faith and credit question if their home State has a statute declaring gestational agreements to be void. One thing is clear; a child born under these circumstances is surely entitled to have its status clarified.

In the opinion of the Drafting Committee, entering into a gestational agreement is a significant legal act that should be reviewed by a court, just as an adoption is judicially reviewed. This draft generally follows the 1988 Act but departs in two important ways. First, nonvalidated gestational agreements are unenforceable, thereby providing a strong incentive for the participants to seek judicial scrutiny. Second, individuals who enter into nonvalidated gestational agreements and later refuse to adopt the resulting child may be liable for support of the child.

Assisted reproduction facilities and numerous other entities are involved in the subject. Internet sites are omnipresent promoting the activity. Currently States take a variety of approaches to the issue: eleven States allow such agreements by statutes or case law; six States void such agreements by statute; eight States statutorily ban compensation to the gestational mother; and two States have judicially refused to recognize such agreements. See Appendix to Article 8, infra.

Although the recognition of gestational agreements is undoubtedly controversial, the plain fact is that medical science has raced ahead without heed to the views of average people. Courts have recently come to acknowledge this reality when forced to render decisions regarding collaborative reproduction, noting that artificial insemination, traditional surrogacy, gestational carriers, cloning and gene splicing are part of the present as well as of the future. One court supposed that even if all forms of assisted reproduction were outlawed in a particular State, courts would still be called upon to decide on the identity of the lawful parents of a child resulting from those procedures, and who must provide the child with maintenance and support. In its opinion, that court called upon the Legislature to sort out the parental rights and responsibilities of those involved in artificial reproduction . . . . Courts can continue to make decisions on an ad hoc basis without necessarily imposing some grand scheme . . . . Or, the Legislature can act to impose a broader order which, even though it might not be perfect on a case-by-case basis, would bring some predictability to those who seek to make use of artificial reproductive techniques. *In re Buzzanca*, 1998 Cal. App. Lexis 180; 72 Cal. Rptr. 2d 280, 61 Cal. App. 4th 1410 (1998).

SECTION 801. GESTATIONAL AGREEMENT AUTHORIZED.

(a) A gestational mother, her husband if she is married, a donor or the donors, and the intended parents may enter into a written agreement providing that:

(1) the gestational mother, her husband if she is married, and the donors relinquish all rights and duties as the parents of a child to be conceived through assisted reproduction; and

(2) the intended parents become the parents of the child.

(b) The intended parents must be married, and both spouses must be parties to the gestational agreement.

(c) A gestational agreement is enforceable only if validated as provided in Section 803.

(d) A gestational agreement does not apply to the birth of a child conceived by means of sexual intercourse.

Comment

Sources: Uniform Parentage Act (1973) § 5.

SECTION 802. REQUIREMENTS OF PETITION.

(a) The intended parents and the gestational mother may file a petition in the [appropriate court] to validate a gestational agreement.

(b) A petition to validate a gestational agreement may not be maintained unless either the mother or intended parents have been residents of this State for at least 90 days.

(c) The gestational mother's husband, if she is married, must join in the petition.

(d) A copy of the gestational agreement must be attached to the petition.

Comment

Source: Uniform Parentage Act (1973) § 6(a).

SECTION 803. HEARING TO VALIDATE GESTATIONAL AGREEMENT.

(a) If the requirements of subsection (b) are satisfied, a court may issue an order validating the gestational agreement and declaring that the intended parents will be the parents of a child born during the term of the of the agreement.

(b) The court may issue an order under subsection (a) only on finding that:

(1) the requirements of Section 802 for residence have been satisfied and the parties have submitted to jurisdiction of the court under the jurisdictional standards of this [Act];

(2) medical evidence shows that the intended mother is unable to bear a child or is unable to do so without unreasonable risk to her physical or mental health or to the unborn child;

(3) unless waived by the court, the [relevant child-welfare agency] has made a home study of the intended parents and the intended parents meet the standards of fitness applicable to adoptive parents;

(4) all parties have voluntarily entered into the agreement and understand its terms;

(5) the gestational mother has had at least one pregnancy and delivery and her bearing another child will not pose an unreasonable health risk to the unborn child or to the physical or mental health of the gestational mother; and

(6) adequate provision has been made for all reasonable health-care expense associated with the gestational agreement until the birth of the child, including responsibility for those expenses if the agreement is terminated.

(c) Whether to validate a gestational agreement is within the discretion of the court, subject only to review for abuse of discretion.

Comment

Source: Uniform Parentage Act (1973) § 6(b).

SECTION 804. INSPECTION OF RECORDS. The proceedings, records, and identities of the individuals to a gestational agreement under this [article] are subject to inspection under the confidentiality standards applicable to adoptions as provided under other law of this State.

SECTION 805. EXCLUSIVE, CONTINUING JURISDICTION. Subject to the jurisdictional standards of [Section 201 of the Uniform Child Custody Jurisdiction and Enforcement Act], the court conducting a proceeding under this [article] has exclusive, continuing jurisdiction of all matters arising out of the gestational agreement until a child born to the gestational mother during the period governed by the agreement attains the age of 180 days.

Comment

Source: Uniform Parentage Act (1973) § 6(e).

SECTION 806. TERMINATION OF GESTATIONAL AGREEMENT.

(a) After issuance of an order under this [article], but before the gestational mother becomes pregnant by means of assisted reproduction, the gestational mother, her husband, or the intended parents may terminate the gestational agreement by

giving written notice of termination to all other parties. The court for good cause shown also may terminate the gestational agreement.

(b) An individual who terminates an agreement shall file notice of the termination with the court. On receipt of the notice, the court shall vacate the order issued under this [article]. An individual who does not notify the court of the termination of the agreement is subject to appropriate sanctions.

(c) A gestational mother is not liable to the intended parents for terminating an agreement pursuant to this section.

Comment

Source: Uniform Parentage Act (1973) § 7.

SECTION 807. PARENTAGE UNDER VALIDATED GESTATIONAL AGREEMENT. Upon birth of a child to a gestational mother, the intended parents shall file notice with the court that a child has been born to the gestational mother within 300 days after the use of assisted reproduction. Thereupon, the court shall issue an order;

(1) confirming that the intended parents are the parents of the child ;

(2) if necessary, ordering that the child to be surrendered to the intended parents; and

(3) directing the [agency maintaining birth records] to issue a birth certificate naming the intended parents as parents of the child.

Comment

Source: Uniform Parentage Act (1973) § 8.

SECTION 808. GESTATIONAL AGREEMENT: MISCELLANEOUS PROVISIONS.

(a) A gestational agreement may provide for payment of consideration.

(b) A gestational agreement may not limit the right of the gestational mother to make decisions to safeguard her health or that of the embryo or fetus.

(c) After the issuance of an order under this [article], subsequent marriage of the gestational mother does not affect the validity of a gestational agreement, and her husband's consent to the agreement is not required, nor is her husband a presumed father of the resulting child.

Comment

Source: Uniform Parentage Act (1973) § 9.

SECTION 809. EFFECT OF NONVALIDATED GESTATIONAL AGREEMENT.

(a) A gestational agreement, whether in a record or not, which is not validated by a court is not enforceable.

(b) If a birth results under a gestational agreement that is not judicially validated as provided in this [article], the parent-child relationship is determined as provided in [Article] 2.

(c) The individuals who are parties to a nonvalidated gestational agreement as intended parents may be held liable for support of the resulting child, even if the

agreement is otherwise unenforceable. The liability under this subsection includes assessing all expenses and fees as provided in Section 636.]

Comment

This section distinguishes between an unenforceable agreement and a prohibited one. Given the widespread use of assisted reproductive technologies in modern society, the Act attempts only to regularize the parentage aspects of the science, not to regulate the practice of assisted reproduction. However, if individuals choose to ignore the protections afforded gestational agreements by the Act, parentage questions remain when a child is born as a result of an nonvalidated gestational agreement. The Act provides no assistance to the intended parents; the gestational mother is denominated the mother irrespective of the source of the eggs. While donors of either eggs or sperm are not parents in this circumstance subsection (c) permits the court to hold the intended parents to an obligation to support the resulting child, even though the balance of the agreement will not be enforced. See *Buzzanca v. Buzzanca*, 72 Cal. Rptr.2d 280 (Cal. App. 1998).

ARTICLE 9

MISCELLANEOUS PROVISIONS

SECTION 901. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 902. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to an individual or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 903. TIME OF TAKING EFFECT. This [Act] takes effect on _____.

SECTION 904. [REPEAL]. The following acts and parts of acts are repealed:

(1) [Uniform Act on Paternity, 1960]

(2) [Uniform Parentage Act, 1973]

(3) [Uniform Putative and Unknown Fathers Act, 1989]

(4) [Uniform Status of Children of Assisted Conception Act, 1989]

(5) [other inconsistent statutes]

SECTION 905. TRANSITIONAL PROVISION. A proceeding to adjudicate parentage which was commenced before the effective date of this [Act] is governed by the law in effect at the time the proceeding was commenced.

APPENDIX TO ARTICLE 3

FEDERAL IV-D STATUTE RELATING TO PARENTAGE

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

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

* * *

(5) Procedures concerning paternity establishment.

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

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

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

(B) Procedures concerning genetic testing.

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

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

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

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

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

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

(C) Voluntary paternity acknowledgment.

(i) Simple civil process. Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the mother and the

putative father must be given notice, orally or through the use of audio or video equipment and in writing,, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

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

(iii) Paternity establishment services.

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

(II) Regulations.

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

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

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

(D) Status of signed paternity acknowledgment.

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

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

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

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

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

(I) 60 days; or

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

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

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

(F) Admissibility of genetic testing results. Procedures –

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

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

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

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

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

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

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

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

(J) Temporary support order based on probable paternity in contested cases. Procedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or judicial

determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).

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

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

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

APPENDIX TO SECTION 309

METHODOLOGY FOR RESCINDING ACKNOWLEDGMENT OF PATERNITY

As Reported by Office of Inspector General,
U.S. Dept. of Health & Human Services, as of May 3, 1999

State	Rescission Process
Alaska	No answer
Alabama	Other: Procedures not yet developed by IV-D agency
Arkansas	No answer
Arizona	Fully-administrative process
California	Judicial process
Colorado	Not applicable
Connecticut	Fully-administrative process
D.C.	Judicial process
Delaware	Judicial process
Florida	No answer
Georgia	Judicial process
Hawaii	Not applicable
Iowa	Fully-administrative process
Idaho	Quasi-administrative process (limited court involvement)
Illinois	Fully-administrative process
Indiana	Judicial process
Kansas	Judicial process
Kentucky	Judicial process
Louisiana	Fully-administrative process
Massachusetts	Judicial process
Maryland	Fully-administrative process
Maine	Quasi-administrative process (limited court involvement)
Michigan	Judicial process
Minnesota	Fully-administrative process
Missouri	Quasi-administrative process (limited court involvement)
Mississippi	No answer
Montana	Other: From either parent within 60 days of signing paternity

State	Rescission Process
North Carolina	Judicial process
North Dakota	Fully-administrative process
Nebraska	Not applicable
New Hampshire	Fully-administrative process
New Jersey	Fully-administrative process
New Mexico	Quasi-administrative process (limited court involvement)
Nevada	Other: Written request to rescind the paternity. If the father is to be removed, a court order is necessary.
New York	Judicial process
New York City (NYC)	Judicial process
Ohio	Fully-administrative process
Oklahoma	Not applicable
Oregon	Fully-administrative process
Pennsylvania	Quasi-administrative process (limited court involvement)
Rhode Island	Judicial process
South Carolina	Quasi-administrative process (limited court involvement)
South Dakota	Judicial process
Tennessee	Fully-administrative process
Texas	Judicial process
Utah	Fully-administrative process
Virginia	Other: Awaiting instructions from CSE
Vermont	Fully-administrative process
Washington	Fully-administrative process
Wisconsin	Fully-administrative process
West Virginia	Judicial process
Wyoming	Fully-administrative process

APPENDIX TO SECTION 401

PATERNITY REGISTRY STATUTES

(As of May 3, 1999)

State	Statutory Citations
Alabama	Ala Code § 26-10C-2
Arizona	Ariz. Rev. Stat. Ann. § 8-106.01
Arkansas	Ark. Stat. Ann. § 9-9-212
Georgia	Ga. Dom. Rel. Code §§ 15-11-82 and 15-11-83 (1998)
Idaho	(1985) Idaho Code § 16-1513
Illinois	750 Ills 50/12.1
Indiana	Ind. Code Ann. § 31-3-1.5-1-21
Iowa	(1994) Iowa Code Ann. § 144.12A
Kansas	Kan. Stat. Ann. § 59-2136
Louisiana	La. Ch. Code Art. § 1103
Massachusetts	Mass. Ann. Laws Ch. 210 § 4A
Michigan	Mi. St. 552.1201
Minnesota	1998 Minn. Laws Ch. 6 § 354
Missouri	(1988) Mo. Stat. Ann. § 192.016
Montana	Montana § 42-2-201 et. seq.
New Hampshire	N.H. Ras 546-B:3
New Mexico	(1993) N.M. Stat. Ann. § 32A-5-20
New York	N.Y. Soc. Serv. Law § 372-C
Ohio	Ohio Rev. Code Ann. § 3107.062
Oklahoma	Okla. Stat. Ann. § 7506-1.1
Oregon	Or. Rev. Stat. § 109.096(3) and § 109.225
South Dakota	S.D. Cod. Laws Ann. § 25-6-1 and § 25-6-1.1
Tennessee	(1996) Tenn. Code Ann. § 36-2-209
Texas	C.F.C. § 160.250 et. seq.
Utah	(1995) Tit. 78, Ch. 30, Adoption, Vital Records
Vermont	Vt. Stat. Ann. Tit. 15A § 3-404
Wisconsin	Wisc. Stat. § 48.41
Wyoming	Wyo. Stat. § 1-22-110 through 117

Source: National Adoption Information Clearinghouse, U.S. Dept; Health and Human Services; *Adoption Law and Practice* (Matthew Bender & Co. 1998)

APPENDIX TO SECTION 505

TABLE OF PATERNITY PRESUMPTION STATUTES *

The following table contains the statistical presumptions adopted by the District of Columbia and the fifty States. The table also indicates other statistics that the States may require if more than one is needed to establish the presumption. The next-to-last column indicates whether the statistical presumption is rebuttable (R), or conclusive (C). In the last column, if there is a statement in the paternity statutes about how to rebut the presumption, the mechanism or evidence level is indicated. The common evidence levels are indicate as C & C for Clear, Cogent and Convincing and P of E for preponderance of the evidence. Note that some jurisdictions have more than one statistical value; if so, both values are given.

State	Statute	Probability of paternity	Prior Probability	Probability of Exclusion	Combined Paternity index	**R**ebuttable or **C**onclusive	Rebutted by
Alabama	§ 26-17-13	97				R	C & C
Alaska	§ 25.20.050	95				R	C & C
Arizona	§ 25-807	95				R	C & C
Arkansas	§ 9-10-108	95				R	
California	§ 7555				100	R	P of E
Connecticut	§ 46b-168	99				R	
District of Columbia	§ 16-909	99				C	
Delaware	§ 804	99				R	C & C
Florida	§ 742.12	95				R	
Georgia	§ 19-7-46	97				R	Competent Evidence
Hawaii	§ 584-11			99.0	500		
Idaho	§ 7-1116	98				R	
Illinois	§ 45/11				500	R	C & C

State	Statute	Probability of paternity	Prior Probability	Probability of Exclusion	Combined Paternity index	**R**ebuttable or **C**onclusive	Rebutted by
Indiana	§ 31-6-6.1-9	99				R	
Iowa	§ 600B.41	95				R	C & C
Kansas	§ 38-1114	97				R	C & C
Kentucky	§ 406.111	99			100	R	P of E
Louisiana	§ 397.3	99.9				R	
Maine	§ 280	97				R	C & C
Maryland	§ 5-1029	99		97.3		R	
Massachusetts	§ 17	97				R	
Michigan	§ 25.496	99				R	C & C
Minnesota	§ 257.62(5)(a)	92	No more than 0.5			R**	
Minnesota	§ 257.62(5)(b)	99	No more than 0.5			R	C & C
Mississippi	§ 93-9-27	98				R	P of E
Missouri	§ 210.822	98	0.5			R	C & C
Montana	§ 40-5-234	95				R	P of E
Nebraska	§ 43-1415	99				R	
Nevada	§ 126.051	99				R	C & C
New Hampshire	§ 522:4	97				R	C & C
New Jersey	§ 9:17-48	99***				C	
New Mexico	§ 40-11-5	99				R	
New York	§ 418	95				R	
North Carolina	§ 8-50.1	97				R	C & C
North Dakota	§ 14-17-04	95				R	C & C

State	Statute	Probability of paternity	Prior Probability	Probability of Exclusion	Combined Paternity index	**R**ebuttable or **C**onclusive	Rebutted by
Ohio	§ 3111.03	99				R	C & C
Oklahoma	§ 505	98				C	
Oklahoma	§ 505	95				R	C & C
Oregon	§ 416.430				99	R	
Pennsylvania	§ 4343	99				R	C & C
Rhode Island	§ 15-8-3	97				C	
South Carolina	§ 20-7-956	95				R	
South Dakota	§ 25-8-58	99				R	
Tennessee	§ 24-7-112	95				R	
Texas	§ 160.110			99		R	
Utah	§ 78-45a-10				150	R	Second Genetic test
Vermont	§ 308	98				R	
Virginia	§ 20-49.1	98				R	
Washington	§ 26.26.040	98				R	C & C
West Virginia	§ 48A-6-3	98				C	
Wisconsin	§ 767.48	99				R	
Wyoming	§ 14-2-109	97				R	C & C

* **Maha, G. C. ,** *Analysis of Genetic Test Results for Courtroom Use*, § 15-A. In N. M. Vitek, ed. *Disputed Paternity Proceedings* (Matthew Bender & Company, Inc., New York, NY. 1997)

*** In Minnesota at a probability of paternity of 92% or greater the court "shall" order the alleged father to pay temporary child support*

*** *New Jersey's statute reads ". . . specific threshold probability as set by the State . . ." . The level given is their current probability as set by the State.*

APPENDIX TO SECTION 606

STATUTES OF LIMITATION FOR ESTABLISHMENT OF PATERNITY CHILD WITHOUT PRESUMED FATHER

State	Statute of Limitation	State	Statute of Limitation
Alabama	Age 19	Nebraska	Age 18
Alaska	Age 18	Nevada	Age 18
Arkansas	None	N. Hampshire	Age 19
Arizona	Age 18	New Jersey	Age 23
California	None*	N. Mexico	Age 21
Colorado	Age 21	New York	Age 21
Connecticut	Age 18	N. Carolina	Age 18
Delaware	Age 18	N. Dakota	Age 21
D.C.	Age 21	Ohio	Age 23
Florida	Age 22	Oklahoma	Age 19
Georgia	None	Oregon	None
Hawaii	Age 21	Pennsylvania	Age 18
Idaho	Age 18	Puerto Rico	Age 22
Illinois	Age 20	Rhode Island	None
Indiana	Age 20	S. Carolina	Age 18
Iowa	Age 19	S. Dakota	None
Kansas	Age 18	Tennessee	Age 19
Kentucky	Age 18	Texas	Age 20
Louisiana	Age 19	Utah	Age 18
Massachusetts	None	Vermont	Age 21
Maine	Age 18	Virgin Is.	None
Maryland	Age 18	Virginia	Age 18
Michigan	None	Washington	Age 18
Minnesota	Age 18	W. Virginia	Age 21
Missouri	Age 21	Wisconsin	Age 19
Mississippi	Age 18	Wyoming	Age 21
Montana	Age 18		

* (IV-D agency enforces to age 18)

Source: Office of Child Support Enforcement, U.S. Department of Health and Human Services, website as of February 23, 1999.

APPENDIX TO SECTION 607

STANDING TO CHALLENGE THE MARITAL PRESUMPTION OF PATERNITY

State	Standing	Statutes/Case
Alabama	No	Ala. Code § 26-17-6(a) (1992) Ex Parte Presse, 554 So.2d 406 (Ala. 1989)
Alaska	Unknown	
Arizona	Yes	Ariz. Rev. Stat. § 25-803 (Supp. 1997) *R.A.J. v. L.B.V.*, 817 P.2d 37 (Ariz. Ct. App.1991)
Arkansas	Yes	*Willmon v. Hunter*, 761 S.W.2d 924 (Ark. 1988)
California	No	Cal. Fam. Code Ann. § 7630 (West 1998)
Colorado	Yes	*R. McG. v. J.W.*, 615 P.2d 666 (Colo. 1988)
Connecticut	Yes	*Weldenbacher v. Duclos*, 661 A.2d 988 (Conn. 1995)
Delaware	Yes	Del. Code Ann. tit. 13, § 805(a) (1993)
Florida	No	*G.F.C. v. S.G.*, 686 So.2d 1382 (Fla. Dist. Ct. App. 1997)
Georgia	Yes	Ga. Code Ann. § 19-7-43 (1991)
Hawaii	Yes	Haw. Rev. Stat. Ann. § 584-6(a) (Michie 1997)
Idaho	Yes	*Johnson v. Studley-Preston*, 812 P.2d 1216 (Idaho 1991)
Illinois	Yes	750 Ill. Comp. Stat. 45/7 (West 1993)
Indiana	Yes	Ind. Code § 31-14-4-1 (1997) *K. S. v. R. S.*, 669 N.E.2d 399 (Ind. 1996)
Iowa	Yes	*Callender v. Skiles*, No. 276/98-308 (Iowa 1999)
Kansas	Yes	*D.B.S. by & through P.S. v. M.S.*, 888 P.2d 875 (Kan. App. 1995)
Kentucky	No	Ky. Rev. Stat. Ann. § 406.021 (Banks-Baldwin)
Louisiana	Yes	*Green v. Green*, 666 So.2d 1192 (La. Ct. App. 1995)
Maine	Yes	Me. Rev. Stat. Ann. tit. 19-A, § 1562 (West 1998)
Maryland	Yes	*Turner v. Whisted*, 607 A.2d 935 (Md. 1992)

State	Standing	Statutes/Case
Massachusetts	Yes	*C.C. v. A.B.*, 550 N.E.2d 365 (Mass. 1990)
Michigan	No	Mich. Comp. Laws Ann. § 722.714 (West Supp. 1997) *Hauser v. Reilly*, 536 N.W.2d 865 (Mich. Ct. App. 1995)
Minnesota	No	Minn. Stat. § 257.57 *Market v. Behm*, 394 N.W.2d 239 (Minn. Ct. App. 1986)
Mississippi	Yes	*Ivy v. Harrington*, 644 So.2d 1218 (Miss. 1994)
Missouri	Unknown	
Montana	Yes	Mont. Code Ann. § 40-6-107(1) (1997)
Nebraska	Yes	Neb. Rev. Stat. § 43-1411 (1993)
Nevada	Yes	Nev. Rev. Stat. § 126.071 (1997)
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 168-A:2 (Supp. 1997)
New Jersey	Yes	*M.F. v. N.H.*, 599 A.2d 1297 (N.J. Super. Ct. App. Div. 1991) (Subject to a "best interest" finding)
New Mexico	Yes	N.M. Stat. Ann. § 40-11-7 (Michie 1994)
New York	Unknown	
North Carolina	Unclear	N.C. Gen. Stat. § 49-16 (1984)
North Dakota	No	*B.H. v. K.D.*, 506 N.W.2d 368 (N.D. 1993)
Ohio	Yes	Ohio Rev. Code Ann. § 3111.04 (Banks-Baldwin Supp. 1998) *Crawford County Child Support Enforcement Agency v. Sprague*, 1997 WL 746770 (Ohio Ct. App. 1997)
Oklahoma	Yes	Okla. Stat. Ann. tit. 10, § 3 (West 1998)
Oregon	Yes	Or. Rev. Stat. § 109.125 (1)(e) (1997)
Pennsylvania	No	*Brinkley v. King*, 701 A.2d 176 (Pa. 1997)
Rhode Island	Unclear	R.I. Gen. Laws § 15-8-2 (1996)
South Carolina	Yes	S.C. Code Ann. § 20-7-952 (Lawyers Co-op 1985)
South Dakota	Unknown	
Tennessee	Yes	Tenn. Code Ann. § 36-2-305 (Supp. 1996)
Texas	Yes	Tex. Fam. Code Ann. § 160.110 (West 1997) *In re J.W.T.*, 872 S.W.2d 189 (Tex. 1994)

Utah	Yes	Utah Code Ann. § 78-45a-2 (1996)

State	Standing	Statutes/Case
Vermont	Unknown	
Virginia	Yes	Va. Code Ann. § 20-49-2 (Michie 1995)
Washington	Yes	*McDaniels v. Carlson*, 738 P.2d 254 (Wash. 1987)
West Virginia	Yes	*State ex. rel. Roy Allen S. v. Stone*, 474 S.E.2d 554 (W. Va. 1996)
Wisconsin	Yes	Wis. Stat. § 767.45 (1993) *In re Paternity of C.A.S.*, 468 N.W.2d 719 (Wis. 1991)
Wyoming	No	Wyo. Stat. Ann. § 14-2-104 (Michie 1997) *A v. X, Y, & Z*, 641 P.2d 1222 (Wyo. 1982)

* Compiled by Jenny L. Womack, Austin, Texas (Advanced Family Law Seminar 1998, Univ. of Texas School of Law).

APPENDIX TO ARTICLE 8

TABLE OF GESTATIONAL AGREEMENT LAWS *

State	Status of Gestational Agreements	Statute
Alabama	Specifically "not covered" in prohibition against payment to parent for adoption of child	Code of Ala. § 26-10A-34 (1997)
Arizona	No, by statute	Ariz. Rev. Stat. Ann. § 25-218 (1996)
Arkansas	Yes, by statute	Ark. Code Ann. § 9-10-20 *et seq.* (Michie 1995)
California	Yes, by case law	*Marriage of Balduzzi*, 72 Cal. Rptr.2d 280 (1998)
D.C.	No, by statute	D.C. Code Ann. §§ 16-401, 402 (1996)
Florida	Yes, by statute	Fla. Stat. Ann. §§ 63.212, 742.15 (West 1997)
Indiana	No, by statute	Ind. Code Ann. § 31-8-2.1 *et seq.* (Burns Cum. Supp. 1994)
Illinois	Yes, by statute	S.H.A. ch. 40 &2506
Iowa	Yes, by statute	Iowa Code Ann. § 710.11 (West 1997)
Kentucky	No, compensation prohibited	Ky. Rev. Stat. Ann. § 199.590 (Michie/Bobbs-Merrill)
Louisiana	No, compensation prohibited	La. Rev. Stat. Ann. § 2713 (West 1991)
Massachusetts	No, by case law	*RR v. MH*
Michigan	No, compensation prohibited	Mich. Comp Laws Ann. § 722.853 *et seq.* (West 1997)
Nebraska	No, compensation prohibited	Neb. Rev. Stat. § 25-21, 200 (1989)
Nevada	Yes, by statute	Nev. Rev. Stat. Ann. §§ 126.045, 126.051 (Michie 1995)
New Hampshire	Yes, by statute	N.H. Rev. Stat. Ann. § 168-B:16 *et seq.* (1996)

State	Status of Gestational Agreements	Statute
New Jersey	No, by case law	Baby M, 537 A.2d 1227 (1988)
New Mexico	No, compensation prohibited	Cite not available
New York	No, compensation prohibited	N.Y. Dom. Rel. Law § 121 *et seq.* (McKinney 1997)
North Dakota	No, by statute	N.D. Cen. Code § 14-18-05 (1991)
Ohio	Yes, by case law	*Balsito v. Clark*, 644 N.E.2d 760
Tennessee	Yes, by statute (vague)	Tenn. Code Ann. 36-1-102 (1996)
Utah	No, compensation prohibited	Utah Code Ann. § 76-7-204 (1997)
Virginia	Yes, by statute	Va. Code Ann. § 20-160 (Michie 1997)
Washington	No, compensation prohibited	Wash. Rev. Code Ann. § 26.26.210 (West 1997)
West Virginia	Yes, by statute	W. Va. Code § 48-4-16 (1997)
Wisconsin	Yes, by statute	Wis. Stat. Ann. § 69.14 (West 1997)

* Remaining jurisdictions have no statutory or case law on the subject. However, Illinois House of Representatives has bill to allow surrogacy (information as of May 1, 1999).

Source: The American Surrogacy Center, Inc. *www.surrogacy.com*; Organization of Parents Through Surrogacy *www.opts.com*. The Institute for Science, Law & Technology, Illinois Institute of Technology, "Changing Conceptions" by Lori B. Andrews, J.D. and Nanette Elster, J.D., M.P.H. (December 5, 1997).

Disclaimer: Information as represented in this chart has not been independently verified on a State by State search.