

D R A F T  
FOR DISCUSSION ONLY

**UNIFORM PARENTAGE ACT (Last amended [2017])**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIFTH YEAR  
STOWE, VERMONT  
JULY 8 - JULY 14, 2016

**UNIFORM PARENTAGE ACT (Last amended [2017])**

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ON UNIFORM STATE LAWS

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*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 Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.*

June 13, 2016

## **UNIFORM PARENTAGE ACT (Last amended [2017])**

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1 **Uniform Parentage Act (UPA) (Last amended [2017])**

2  
3 **Drafted by:**

4 National Conference of Commissioners on Uniform State Laws (NCCUSL)  
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6 312-450-6600, www.uniformlaws.org  
7

8 **Brief description of act:**

9 The Uniform Parentage Act (UPA) was originally promulgated in 1973 (1973 UPA). The 1973  
10 UPA removed the legal status of illegitimacy and provided a series of presumptions used to  
11 determine a child’s legal parentage. A core principle of the 1973 UPA was to ensure that “all  
12 children and all parents have equal rights with respect to each other,” regardless of the marital  
13 status of their parents. 1973 UPA, Section 2, Comment.  
14

15 The UPA was amended in 2002 (UPA 2002). The 2002 UPA augmented and streamlined the  
16 original 1973 UPA. The 2002 UPA added provisions permitting a non-judicial acknowledgment  
17 of paternity procedure that is the equivalent of an adjudication of parentage in a court and added  
18 a paternity registry. The 2002 UPA also included provisions governing genetic testing and rules  
19 for determining the parentage of children whose conception was not the result of sexual  
20 intercourse. Finally, the 2002 UPA included a bracketed Article 8 that authorizes surrogacy  
21 agreements.  
22

23 The 2017 UPA updates the Act to address three primary issues. First, the 2017 UPA seeks to  
24 ensure the equal treatment of children born to same-sex couples. The 2002 UPA is written in  
25 gendered terms, and its provisions presume that couples consist of one man and one woman. For  
26 example, Section 703 of the 2002 UPA provides that “[a] man who provides sperm for, or  
27 consents to, assisted reproduction by a woman as provided in Section 704 with the intent to be  
28 the parent of her child, is a parent of the resulting child.”  
29

30 In its 2015 decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the United States Supreme  
31 Court held that laws barring marriage between two people of the same sex are unconstitutional.  
32 After *Obergefell*, some parentage laws that treat same-sex couples differently than different-sex  
33 couples may be unconstitutional. For example, in July 2015, a federal district court in Utah held  
34 that refusing to apply Utah’s assisted reproduction parentage provisions equally to same-sex  
35 couples likely was unconstitutional. Under the Utah Uniform Parentage Act, which is modeled  
36 on the 2002 UPA, a husband who consents to his wife’s insemination is the legal father of the  
37 resulting child. Utah Code Ann. §§ 78B-15-703, 78B-15-704; 78B-15-201(2)(e). The court  
38 concluded that the plaintiffs were “highly likely to succeed in their claim” that extending the  
39 “benefits of the assisted reproduction statutes to male spouses in opposite-sex couples but not for  
40 female spouses in same-sex couples” was unconstitutional. *Roe v. Patton*, 2015 WL 4476734, \*3  
41 (D. Utah. 2015). The 2017 UPA updates the Act to address this potential constitutional infirmity  
42 by amending the provisions so that they address and apply equally to same-sex couples.  
43

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



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

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

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

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

### 38 **Questions about UPA?**

39 For further information contact the following persons:  
40

---

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

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

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

3  
4  
5 **Notes about ULC Acts:**

6 For information on the specific drafting rules used by ULC, the Conference *Procedural and*  
7 *Drafting Manual* is available online at [www.uniformlaws.org](http://www.uniformlaws.org).

8  
9 Because these are uniform acts, it is important to keep the numbering sequence intact while  
10 drafting.

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

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

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

1 **UNIFORM PARENTAGE ACT (Last amended [2017])**

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

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

10  
11 **SECTION 101. SHORT TITLE.** This ~~[Act]~~ [act] may be cited as the Uniform  
12 Parentage Act (~~2002~~ 2017).

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

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

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

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

21 (A) a presumed father;

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

23 (C) a male donor.

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

26 (A) intrauterine insemination;

27 (B) donation of eggs;

- 1 (C) donation of embryos;  
2 (D) in-vitro fertilization and transfer of embryos; and  
3 (E) intracytoplasmic sperm injection.

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

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

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

11 (8) “Donor” means an individual who produces ~~eggs or sperm~~ gametes used for assisted  
12 reproduction, whether or not for consideration. The term does not include:

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

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

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

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

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

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

4 (A) deoxyribonucleic acid; and

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

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

10 [(14) (12) “Gestational ~~mother~~ surrogate” means an adult woman who ~~gives birth to a~~  
11 ~~child under~~ is not an intended parent and who agrees to become pregnant through assisted  
12 reproduction using gametes that are not her own, pursuant to a gestational surrogacy agreement  
13 as set forth in [Article] 8.]

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

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

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

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

18 (15) “Individual with a claim to parentage” means any individual who has a claim to be  
19 adjudicated a parent under this act, but who has not yet been adjudicated to be a parent and who  
20 is not a parent as a matter of law under the act. “Individual with a claim to parentage” includes  
21 presumed parents and individuals identified as genetic parents under Section 505.

22 (16) “Intended parent” means an individual, married or unmarried, who manifests the  
23 intent to be legally bound as the parent of a child resulting from assisted reproduction.

1           (12) (17) “Man” means a male individual of any age.

2           (13) (18) “Parent” means an individual who has established a parent-child relationship  
3 under Section 201.

4           (14) (19) “Parent-child relationship” means the legal relationship between a child and a  
5 parent of the child. The term includes the mother-child relationship and the father-child  
6 relationship.

7           (15) (20) “Paternity index” means the likelihood of genetic paternity calculated by  
8 computing the ratio between:

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

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

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

19           (17) (22) “Probability of paternity” means the measure, for the ethnic or racial group to  
20 which the alleged father belongs, of the probability that the man in question is the father of the  
21 child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a  
22 percentage incorporating the paternity index and a prior probability.

23           (18) (23) “Record” means information that is inscribed on a tangible medium or that is

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

2 (19) (24) “Signatory” means an individual who authenticates a record and is bound by its  
3 terms.

4 (20) (25) “State” means a ~~State~~ state of the United States, the District of Columbia,  
5 Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the  
6 jurisdiction of the United States.

7 (24) (26) “Support-enforcement agency” means a public official or agency authorized to  
8 seek:

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

10 (B) establishment or modification of child support;

11 (C) determination of parentage; or

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

13 [(27) “Surrogacy agreement” means an agreement under [Article] 8 by which a woman  
14 agrees to become pregnant through assisted reproduction with the intention that she will  
15 relinquish the resulting child to the intended parent or parents. Unless otherwise specified, the  
16 term “surrogacy agreement” refers to such an agreement regardless of the surrogate’s genetic  
17 connection to the resulting child or lack thereof.]

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

### 19 **Reporter’s Comment**

#### 20 1. GENDER NEUTRALITY

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

#### 23 2. ASSISTED REPRODUCTION

24 The draft also includes a number of new definitions regarding assisted reproduction.  
25  
26  
27  
28

1 3. DEFINITION OF DONOR

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

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

14 (a) This ~~[Act]~~ [act] applies to determination of parentage in this ~~State~~ state.

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

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

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

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

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

28 **Official Comment**

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







1 state.

2 **SECTION 204. PRESUMPTION OF ~~PATERNITY~~ PARENTAGE.**

3 (a) ~~A~~ An individual man is presumed to be the ~~father~~ parent of a child if:

4 (1) ~~he~~ the individual and the ~~mother of~~ woman who gave birth to the child are  
5 married to each other and the child is born during the marriage;

6 (2) ~~he~~ the individual and the ~~mother of~~ woman who gave birth to the child were  
7 married to each other and the child is born within 300 days after the marriage is terminated by  
8 death, annulment, declaration of invalidity, ~~or divorce,~~ or dissolution[, or after a decree of  
9 separation];

10 (3) before the birth of the child, ~~he~~ the individual and the ~~mother of the child~~  
11 woman who gave birth to the child married each other in apparent compliance with law, even if  
12 the attempted marriage is or could be declared invalid, and the child is born during the invalid  
13 marriage or within 300 days after its termination by death, annulment, declaration of invalidity,  
14 ~~or divorce,~~ or dissolution[, or after a decree of separation];

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

19 (A) the assertion is in a record filed with [state agency maintaining birth  
20 records];

21 (B) ~~he~~ the individual agreed to be and is named as the child's ~~father~~ parent  
22 on the child's birth certificate; or

23 (C) ~~he~~ the individual promised in a record to support the child as ~~his~~ the

1 individual's own; or

2 (5) for the first two years of the child's life, ~~he~~ the individual resided in the same  
3 household with the child and openly held out the child as ~~his~~ the individual's own. A period of  
4 temporary absence is part of the period.

5 (b) A presumption of ~~paternity~~ parentage established under this section may be rebutted,  
6 and competing presumptions of parentage may be resolved, only by an adjudication under  
7 [Article] 6.

### 8 **Reporter's Comment**

#### 9 10 1. MARITAL PRESUMPTIONS AND GENDER NEUTRALITY

11  
12 To comply with the Supreme Court's decision in *Obergefell v. Hodges*, the marital  
13 presumptions have been amended to apply to any spouse -- male and female -- of the woman  
14 who gave birth. A number of states have made similar changes to their marital presumptions.  
15 *See, e.g.*, CAL. FAM. CODE § 7611; D.C. CODE ANN. § 16-909; 750 ILL. COMP. STAT. ANN. §  
16 46/204; ME. STAT., tit. § 1881(1); N.H. REV. STAT. § 168-B:2(V).

17  
18 One state – Washington State – has gone further than the above draft goes. The newly  
19 revised Washington marital presumption is fully gender neutral; it establishes a presumption of  
20 parentage in any spouse – male or female – of any parent – male or female. Specifically, Wash.  
21 Rev. Code Ann. § 26-26-116 provides that “a person is presumed to be the parent of a child if:  
22 The person and the mother or father of the child are married to each other ... and the child is  
23 born during the marriage.” Thus, under the Washington Statute, a wife is presumed to be the  
24 legal parent of the biological child of her husband conceived in an extramarital relationship and  
25 born to a woman not his wife.

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

32  
33 Second, in practice, a fully-gender neutral marital presumption would rarely establish the  
34 parentage of the spouse of a male parent. This is the case because the act provides that the  
35 woman who gives birth is a legal parent. Section 201(a)(1). Thus, in the hypothetical described  
36 above where a male spouse conceives a child with a woman not his wife, despite the fully  
37 gender-neutral marital presumption, a court nonetheless would be likely to conclude that the  
38 legal parents of the resulting child are the male spouse and the woman who gave birth to the  
39 child. The court would be unlikely to conclude that the man's wife was a legal parent.

1 2. HOLDING OUT PRESUMPTION – SECTION 204(a)(5)

2  
3 There was a discussion at the in-person drafting meeting about making the “holding out”  
4 period more flexible. Language has been added to the holding out provision to account for  
5 situations where the person is absent only temporarily. The language is taken from the  
6 UCCJEA’s definition of “home state.” *See* UCCJEA § 102(7) (“A period of temporary absence  
7 of any of the mentioned persons is part of the period.”). Some members of the committee  
8 expressed interest in eliminating the requirement of a two-year holding out period.  
9

10 3. COMPETING PRESUMPTIONS

11  
12 The 1973 UPA contained a provision addressing cases involving competing  
13 presumptions. Section (4)(b) of the 1973 UPA provides, in relevant part: “If two or more  
14 presumptions arise which conflict with each other, the presumption which on the facts is founded  
15 on the weightier considerations of policy and logic controls.”  
16

17 The 2002 UPA contains no provision addressing how courts should resolve cases in  
18 which there are competing presumptions of parentage. Given that there is a range of  
19 circumstances that could result in more than one person claiming a presumption of parentage, it  
20 is important for the act to address this possibility. Section 204(b) now references the possibility  
21 that a court might have to resolve competing presumptions of parentage. Newly added Section  
22 612 provides factors that a court must consider in resolving such cases.  
23  
24

25 **ARTICLE 3**

26 **VOLUNTARY ACKNOWLEDGMENT OF PATERNITY**

27 **Reporter’s Comment**

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

40 Currently, Article 3 refers only to the establishment of paternity through this  
41 administrative process. Some members of the Drafting Committee feel that women should also  
42 be able to establish their parentage through a similar, streamlined administrative process.  
43

1 The Drafting Committee considered a number of the possibilities to implement this goal.  
2 The Drafting Committee considered creating a parallel procedure that would apply to same-sex  
3 couples. At the moment, however, the Drafting Committee has decided against adding separate  
4 provisions that would apply only to same-sex couples. Singling out same-sex couples was  
5 deemed by some members to be in tension with the charge of making the act apply equally to the  
6 children of same-sex couples.

7  
8 The Drafting Committee also considered two other possibilities: (1) revising the existing  
9 Article 3 so that it is written in gender-neutral terms; or (2) adding an alternative, bracketed  
10 version of Article 3 that is written in gender-neutral terms. If a gender-neutral Article 3 is  
11 enacted by a state, it must meet the requirements of 42 U.S.C. § 666(a)(5)(C) and not prohibit  
12 state child support agencies from establishing paternity in appropriate cases. According to the  
13 federal Office of Child Support Enforcement (OCSE), revising Article 3 so that it is gender  
14 neutral would not jeopardize the state's receipt of the federal child support subsidy as long as the  
15 state is able to meet the requirements of 42 U.S.C. § 666(a)(5)(C) and establish paternity in  
16 appropriate cases. OCSE has indicated a willingness to work with the Drafting Committee to  
17 ensure the revised UPA is consistent with title IV-D requirements.

18  
19 **SECTION 301. ACKNOWLEDGMENT OF PATERNITY.** The ~~mother of~~ woman  
20 who gave birth to a child and a man claiming to be the genetic father of the child may sign an  
21 acknowledgment of paternity with intent to establish the man's paternity.

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

23 (a) An acknowledgment of paternity must:

24 (1) be in a record;

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

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

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

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

32 (4) state whether there has been genetic testing and, if so, that the acknowledging

1 man's claim of paternity is consistent with the results of the testing; and

2 (5) state that the signatories understand that the acknowledgment is the equivalent  
3 of an ~~judicial~~ adjudication of paternity of the child and that a challenge to the acknowledgment is  
4 permitted only under limited circumstances and is barred after two years from the effective date  
5 of the acknowledgement.

6 (b) An acknowledgment of paternity is void if ~~it~~:

7 (1) ~~states that~~ another ~~man~~ individual is a presumed ~~father~~ parent at the time of  
8 signing, unless a denial of paternity parentage signed or otherwise authenticated by the presumed  
9 ~~father~~ parent is filed with the [agency maintaining birth records];

10 (2) ~~states that~~ another ~~man~~ individual other than the woman who gave birth is an  
11 ~~acknowledged or adjudicated~~ parent or a parent under [Article] 7 at the time of signing; or

12 (3) another man is an acknowledged father at the time of signing; ~~or~~

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

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

### 17 Reporter's Comment

18  
19 Section 302 has been amended to reflect the fact that presumed parents can be men or  
20 women. The Committee also made a substantive change to Subsection (b) to better reflect what  
21 we believe is the actual intent of the provision. The change makes clear that the VAP is void if  
22 another person other than the woman who gave birth *is* a presumed, acknowledged, or  
23 adjudicated parent. As previously drafted, the VAP was void only if it *stated* that there was  
24 another presumed, acknowledged, or adjudicated parent. Thus, under the 2002 UPA, the VAP  
25 was void only if the person knowingly lied on the form. As a result, under the 2002 UPA, the  
26 VAP could cut off potential claims of other individuals so long as the signatories did not lie. The  
27 amendments better protect the rights of other individuals who are presumed, acknowledged, or  
28 adjudicated parents. If Subsection (b) is so amended, then what had previously been (b)(3) is no  
29 longer necessary.

30

1           **SECTION 303. DENIAL OF PATERNITY PARENTAGE.** A presumed ~~father~~  
2 parent may sign a denial of paternity parentage. The denial is valid only if:

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

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

7           (3) the presumed ~~father~~ parent has not previously:

8                   (A) acknowledged his paternity, unless the previous acknowledgment has been  
9 rescinded pursuant to Section ~~307~~ 308 or successfully challenged pursuant to Section ~~308~~ 309; or

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

11           **SECTION 304. RULES FOR ACKNOWLEDGMENT OF PATERNITY AND**  
12 **DENIAL OF PATERNITY PARENTAGE.**

13           (a) An acknowledgment of paternity and a denial of paternity parentage may be contained  
14 in a single document or may be signed in counterparts, and may be filed separately or  
15 simultaneously. If the acknowledgement and denial are both necessary, neither is valid until both  
16 are filed.

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

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

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





1 Section 304; or

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

4 **SECTION ~~308~~ 309. CHALLENGE AFTER EXPIRATION OF PERIOD FOR**  
5 **RESCISSION.**

6 (a) After the period for rescission under Section ~~307~~ 308 has expired, a signatory of an  
7 acknowledgment of paternity or denial of ~~paternity~~ parentage may commence a proceeding to  
8 challenge the acknowledgment or denial only:

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

10 (2) ~~within~~ not later than two years after the effective date of the acknowledgment  
11 or the denial is filed with the [~~agency maintaining birth records~~].

12 (b) A party challenging an acknowledgment of paternity or denial of ~~paternity~~ parentage  
13 has the burden of proof.

14 **SECTION ~~309~~ 310. PROCEDURE FOR RESCISSION OR CHALLENGE.**

15 (a) Every signatory to an acknowledgment of paternity and any related denial of ~~paternity~~  
16 parentage must be made a party to a proceeding to rescind or challenge the acknowledgment or  
17 denial.

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

22 (c) Except for good cause shown, during the pendency of a proceeding to rescind or  
23 challenge an acknowledgment of paternity or denial of ~~paternity~~ parentage, the court may not

1 suspend the legal responsibilities of a signatory arising from the acknowledgment, including the  
2 duty to pay child support.

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

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

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

13 **Reporter's Comment**

14  
15 Consistent with the discussion at the in-person drafting meeting, former Section 310 has  
16 been moved up to follow Section 306.

17  
18 **SECTION 311. FULL FAITH AND CREDIT.** A court of this ~~State~~ state shall give  
19 full faith and credit to an acknowledgment of paternity or denial of ~~paternity~~ parentage effective  
20 in another ~~State~~ state if the acknowledgment or denial has been signed and is otherwise in  
21 compliance with the law of the other ~~State~~ state.

22 **SECTION 312. FORMS FOR ACKNOWLEDGMENT OF PATERNITY AND**  
23 **DENIAL OF PATERNITY PARENTAGE.**

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

26 (b) A valid acknowledgment of paternity or denial of ~~paternity~~ parentage is not affected



1 **PART 1**

2 **GENERAL PROVISIONS**

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

5 **SECTION 402. REGISTRATION FOR NOTIFICATION.**

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

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

11 (1) a father-child relationship between the man and the child has been established  
12 under this ~~{Act}~~ [act] or other law [; or

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

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

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



1 paternity;

2 (4) services to assist in establishing paternity are available to the registrant through [the  
3 appropriate state support-enforcement agency];

4 (5) the registrant ~~should~~ may also register in another ~~State~~ state if conception or birth of  
5 the child occurred in the other ~~State~~ state;

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

8 (7) procedures exist to rescind the registration ~~of a claim of paternity~~.

9 **Reporter's Comment**

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

16  
17 **SECTION 412. FURNISHING OF INFORMATION; CONFIDENTIALITY.**

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

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

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

25 (2) the ~~mother of~~ woman who gave birth to the child who is the subject of the  
26 registration;

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

- 1 (4) a licensed child-placing agency;
- 2 (5) a support-enforcement agency;
- 3 (6) a party or the party's attorney of record in a proceeding under this [~~Act~~] [act]
- 4 or in a proceeding for adoption of, or for termination of parental rights regarding, a child who is
- 5 the subject of the registration; and
- 6 (7) the registry of paternity in another ~~State~~ state.

7 **SECTION 413. PENALTY FOR RELEASING INFORMATION.** An individual

8 commits a [appropriate level misdemeanor] if the individual intentionally releases information

9 from the registry to another individual or agency not authorized to receive the information under

10 Section 412.

11 **SECTION 414. RESCISSION OF REGISTRATION.** A registrant may rescind his

12 registration at any time by sending to the registry a rescission in a record signed or otherwise

13 authenticated by him, and witnessed or notarized.

14 **SECTION 415. UNTIMELY REGISTRATION.** If a man registers more than 30 days

15 after the birth of the child, the [agency maintaining the registry] shall notify the registrant that on

16 its face his registration was not filed timely.

17 **SECTION 416. FEES FOR REGISTRY.**

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

19 (b) [Except as otherwise provided in subsection (c), the] [The] [agency maintaining the

20 registry] may charge a reasonable fee for making a search of the registry and for furnishing a

21 certificate.

22 [(c) A support-enforcement agency [is] [and other appropriate agencies, if any, are] not

23 required to pay a fee authorized by subsection (b).]



1 **PART 3**

2 **SEARCH OF REGISTRIES**

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

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

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

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

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

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

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

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

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

20 (B) has not been found.

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



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

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

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

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

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

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

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

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

1  
2  
3 **Reporter’s Comment**

4  
5 1. AUTHORITY TO ORDER AND AUTHORITY TO DENY GENETIC TESTING

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

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

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

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

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

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

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

27 ~~(3) (2) an accrediting body designated by the federal Secretary of the United~~  
28 ~~States-Department~~ of Health and Human Services.

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

33 (c) Based on the ethnic or racial group of an individual, the testing laboratory shall

1 determine the databases from which to select frequencies for use in calculation of the probability  
2 of paternity. If there is disagreement as to the testing laboratory's choice, the following rules  
3 apply:

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

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

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

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

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

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

#### 18 **Reporter's Comment**

19  
20 Section 502(a)(1) was revised because the listed entity now uses a different name.  
21 Section 502(a)(2) has been deleted because the American Society for Histocompatibility and  
22 Immunogenetics is no longer accrediting laboratories for parentage testing. New Section  
23 502(a)(2)/former Section 502(a)(3) has been revised based on feedback from the federal Office  
24 of Child Support Enforcement.

#### 25 26 **SECTION 504. REPORT OF GENETIC TESTING.**

27 (a) A report of genetic testing must be in a record and signed under penalty of perjury by

1 a designee of the testing laboratory. A report made under the requirements of this [article] is self-  
2 authenticating.

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

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

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

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

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

12 (5) the dates the specimens were received.

13 **SECTION 505. GENETIC TESTING RESULTS; ~~REBUTTAL~~ CHALLENGE TO**  
14 **RESULTS.**

15 (a) ~~Under this [Act],~~ Subject to challenge under subsection (b), a man is ~~rebuttably~~  
16 identified as the genetic father of a child under this [act] if the genetic testing complies with this  
17 [article] and the results disclose that:

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

20 and

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

22 (b) A man identified under subsection (a) as the genetic father of the child may ~~rebut~~  
23 challenge the genetic testing results only by other genetic testing satisfying the requirements of

1 this [article] which:

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

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

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

7 **Reporter’s Comment**

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

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

19  
20 **SECTION 506. COSTS OF GENETIC TESTING.**

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

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

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

26 (3) as agreed by the parties; or

27 (4) as ordered by the court.

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

1 **Reporter’s Comment**

2  
3 The word “rebuttably” has been removed from Section 506(b) because it is unnecessary.  
4 Section 505 sets out how one can challenge a factual finding of genetic parentage.

5  
6 **SECTION 507. ADDITIONAL GENETIC TESTING.** The court or the support-  
7 enforcement agency shall order additional genetic testing upon the request of a party who  
8 contests the result of the original testing. If the previous genetic testing identified a man as the  
9 genetic father of the child under Section 505, the court or agency may not order additional  
10 testing unless the party provides advance payment for the testing.

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

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

- 16 (1) the parents of the man;
- 17 (2) ~~brothers and sisters~~ siblings of the man;
- 18 (3) other children of the man and their mothers; and
- 19 (4) other relatives of the man necessary to complete genetic testing.

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

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

24 **SECTION 510. IDENTICAL BROTHERS.**

25 (a) The court may order genetic testing of a brother of a man identified as the genetic  
26 father of a child if the man is ~~commonly~~ reasonably believed to have an identical brother and



1 evidence suggests that the brother may be the genetic father of the child.

2 (b) If each brother satisfies the requirements as the identified genetic father of the child  
3 under Section 505 without consideration of another identical brother being identified as the  
4 genetic father of the child, the court may rely on nongenetic evidence to adjudicate which brother  
5 is the genetic father of the child.

6 **Reporter’s Comment**

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

12  
13 **SECTION 511. CONFIDENTIALITY OF GENETIC TESTING.**

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

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

20 **ARTICLE 6**

21 **PROCEEDING TO ADJUDICATE PARENTAGE**

22 **Reporter’s Comment**

23  
24 While the 2017 UPA largely retains the substance of Article 6 of the 2002 UPA, it  
25 substantially reorganizes the content of former Article 6 to improve its clarity and flow. Because  
26 so many provisions were moved, reading the Article in amendment form proved difficult.  
27 Accordingly, the Drafting Committee decided that Article 6 should be presented in revision  
28 form, without strike and underscore. The Scope and Program Committee and the Executive  
29 Committee approved this request on June 2, 2016, and June 10, 2016, respectively.  
30

1 The dispositional table below tracks the relocation of some of the principal provisions. A  
 2 more comprehensive side-by-side comparison is available in the supporting documents.  
 3

<b>Former Section (2002 UPA)</b>	<b>New Section (2017 UPA)</b>
Section 608(a)	Section 502(g)
Section 608(b)	Section 612
Section 609	Section 608
Section 610	Section 614
Section 611	Section 615
Section 612	Section 616
Section 621(a) & (b)	Section 609
Section 621(d)	Section 620
Section 622(a) & (c)	Section 502(f) & (e)
Section 622(b)	Section 611(2)
Section 623	Section 611(1)(B)
Section 624	Section 613
Section 631	Section 611(1)(A) & (4)
Section 632	Section 617
Section 633	Section 619
Section 634	Section 611(3)
Section 635	Section 619
Section 636	Section 620
Section 637	Section 621

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**PART 1**

**NATURE OF PROCEEDING**

**SECTION 601. PROCEEDING AUTHORIZED.** A civil proceeding may be

maintained to adjudicate the parentage of a child. The proceeding is governed by the [rules of civil procedure].

**SECTION 602. STANDING TO MAINTAIN PROCEEDING.**

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

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

- (1) the child;

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

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

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

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

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

8 (7) a representative authorized by law to act for an individual who would  
9 otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

10 **SECTION 603. PARTIES TO PROCEEDING.**

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

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

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

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

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

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

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

22 **Reporter's Comment**

23  
24 This provision is intended to ensure that steps are taken to join all persons with a claim to  
25 parentage regarding a particular child in a single action. Without the requirement of joinder, the

1 rights of any absent individual with a claim to parentage could be indirectly affected. Take, for  
2 example, a situation where two men are presumed parents, one because he was married to the  
3 child's mother and one because he had held the child out as his own for the first two years of the  
4 child's life. If the UPA did not require the court to join all parties with a claim to parentage, the  
5 husband may not have a right to be notified of the action and his rights could be negatively  
6 affected even though he did not have an opportunity to present his claims to the court. Indeed,  
7 Section 621(d) provides that, "[e]xcept as otherwise provided in subsection (b), a determination  
8 of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an  
9 individual who was not a party to the earlier proceeding." (This subsection was taken verbatim  
10 from former Section 637(d)).  
11

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

20 **SECTION 604. PERSONAL JURISDICTION.**

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

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

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

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

31 (1) the child resides or is found;

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

33 (3) a proceeding for probate or administration of the presumed parent or alleged father's

1 estate has been commenced.

2 **PART 2**

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

4 **SECTION 606. NO STATUTE OF LIMITATION: CHILD HAVING NO**

5 **PRESUMED, ACKNOWLEDGED, OR ADJUDICATED PARENT OTHER THAN THE**

6 **WOMAN WHO GAVE BIRTH.** A proceeding to adjudicate the parentage of a child having no

7 presumed, acknowledged, or adjudicated parent other than the woman who gave birth may be

8 commenced at any time. Such a proceeding may be commenced even after the child becomes an

9 adult, but only if the child initiates the proceeding.

10 **Reporter's Comment**

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

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

21 **PARENT.**

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

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

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

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

1 child as his or her own.

2 **Reporter's Comment**

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

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

10 **ACKNOWLEDGED FATHER OR ADJUDICATED PARENT.**

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

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

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

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

24 **Reporter's Comment**

25 1. VOID ACKNOWLEDGMENTS OF PATERNITY

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29

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

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2. THE CHILD

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

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

(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 by the objecting party 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 offering the testimony bears the expense for the expert testifying.

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

- (1) disestablishing the parentage of an individual who is a parent under [Article] 7[ or [Article] 8]; or
- (2) establishing the parentage of an individual who is a donor.

1 **Reporter’s Comment**

2  
3 1. PLACEMENT OF THE PROVISION

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

9  
10 Former Section 621(d) has been moved into new Section 619/former Section 636 (Order  
11 Adjudicating Parentage). Section 619/former Section 636 addresses other costs and expenses,  
12 including “fees for genetic testing, other costs, and necessary travel and other reasonable  
13 expenses incurred in a proceeding under this [article].” Thus, it seems like a better placement for  
14 this content.

15  
16 2. GENETIC TESTING AND INTENDED PARENTS

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

21  
22 **SECTION 610. ADJUDICATING PARENTAGE FOR AN INDIVIDUAL WHO IS**  
23 **A PARENT UNDER [ARTICLE] 7.** An individual who is a parent under [Article] 7 can bring  
24 a proceeding to adjudicate parentage. Upon a finding that the individual is a parent under  
25 [Article] 7, the court shall issue an order declaring that individual to be a parent to the child.

26 **Reporter’s Comment**

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

32  
33 **SECTION 611. ADJUDICATING PARENTAGE OF A CHILD WITH NO**  
34 **PRESUMED PARENT.** The following rules apply in a proceeding to adjudicate the parentage  
35 of an individual who is alleged to be a child’s genetic parent and who is not a donor, where the  
36 child has no presumed, acknowledged, or adjudicated parent and no parent under [Article] 7 [or  
37 [Article] 8], other than the woman who gave birth.



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

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

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

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

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

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

16 **Reporter’s Comment**  
17

18 While this is a new Section, most of the content is taken from various provisions of the  
19 2002 UPA. For example, the content of subsection (1)(A) is taken from former Section 631; the  
20 content of subsection (1)(B) is taken from former Section 623; the content of subsection (2) is  
21 taken from former Section 622; the content of subsection (3) is taken from former Section 634;  
22 and the content of subsection (4) is taken from former Section 631.  
23

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

1           **SECTION 612. ADJUDICATING PARENTAGE OF A CHILD WITH ONE OR**  
2 **MORE PRESUMED PARENTS.** The following rules apply in a proceeding to adjudicate the  
3 parentage of a child where there is one or more presumed parents and where the child has no  
4 adjudicated or acknowledged parent and no parent under [Article] 7 [or [Article] 8], other than  
5 the woman who gave birth.

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

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

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

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

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

21                 (A) the age of the child;

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

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

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

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

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

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

11 **Reporter’s Comment**

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

16  
17 This new section uses the phrase “individual with a claim to parentage.” This phrase is  
18 now included in the definition section (Section 102).

19  
20 **Official Comment**

21  
22 In a proceeding involving application of subsection (3), the court may want to consider  
23 appointing an attorney or guardian ad litem to represent the child.

24  
25 **PART 3**

26 **HEARINGS AND ADJUDICATION**

27 **SECTION 613. TEMPORARY ORDER.**

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

30 (1) a presumed parent of the child;

- 1 (2) petitioning to have his or her parentage adjudicated;
- 2 (3) identified as the genetic father through genetic testing under Section 505;
- 3 (4) an alleged father who has declined to submit to genetic testing;
- 4 (5) shown by clear and convincing evidence to be the parent of the child;
- 5 (6) the woman who gave birth to the child, unless her parental rights have been
- 6 terminated[ or she is a surrogate under [Article] 8]; or
- 7 (7) a parent to the child under this act.

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

10 **SECTION 614. JOINDER OF PROCEEDINGS.**

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

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

17 **SECTION 615. PROCEEDING BEFORE BIRTH.** [Except as otherwise provided in  
18 Section 809 with regard to surrogacy,] a proceeding to determine parentage may be commenced  
19 before the birth of the child, but may not be concluded until after the birth of the child. The  
20 following actions may be taken before the birth of the child:

- 21 (1) service of process;
- 22 (2) discovery; and
- 23 (3) except as prohibited by Section 502, collection of specimens for genetic testing.

1 **Reporter’s Comment**

2 The content of this Section is taken from former Section 611. Having an order  
3 determining parentage prior to birth can be helpful for the parties. Concern was expressed,  
4 however, about having a broad provision authorizing the court to issue a determination of  
5 parentage prior to the birth of the child. A compromise position could be to adopt a provision  
6 that is similar to the approach taken by California. Cal. Fam. Code § 7633 provides that “[a]n  
7 action under this chapter may be brought, an order or judgment may be entered before the birth  
8 of the child, and enforcement of that order or judgment shall be stayed until the birth of the  
9 child.”

10  
11 At the in-person drafting meeting, the Drafting Committee tabled a discussion about  
12 whether final pre-birth orders should be authorized under Article 7 with respect to children born  
13 through non-surrogacy forms of assisted reproduction. The Drafting Committee never returned to  
14 the issue, and therefore we never made a decision about it. If the Drafting Committee decides to  
15 permit pre-birth orders under Article 7, this provision will need to be amended accordingly.  
16

17 **SECTION 616. CHILD AS PARTY; REPRESENTATION.**

18 (a) A minor child is a permissible party, but is not a necessary party to a proceeding  
19 under this [article].

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

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

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

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

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

31 **SECTION 619. DISMISSAL FOR WANT OF PROSECUTION.** The court may

1 issue an order dismissing a proceeding commenced under this [act] for want of prosecution only  
2 without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is  
3 void and has only the effect of a dismissal without prejudice.

4 **SECTION 620. ORDER ADJUDICATING PARENTAGE.**

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

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

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

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

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

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

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

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

1 **Reporter’s Comment**

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

5  
6 **SECTION 621. BINDING EFFECT OF DETERMINATION OF PARENTAGE.**

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

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

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

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

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

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

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

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

25 (1) expressly identifies a child as a “child of the marriage,” “issue of the

1 marriage,” or similar words indicating that both spouses are parents of the child; or

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

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

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

9 **Reporter’s Comment**

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

12  
13

**ARTICLE 7**

14 **Reporter’s Comment**

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

19  
20

**ASSISTED REPRODUCTION OTHER THAN SURROGACY**

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

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

26 **SECTION 703. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION.** An  
27 individual who provides a gamete for, or who consents to, assisted reproduction by a woman as



1 provided in Section 704 with the intent to be the parent of the resulting child, is a parent of the  
2 resulting child.

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

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

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

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

11 (a) Except as otherwise provided in subsection (b), an individual who, at the time of the  
12 child's birth, is the spouse of the woman who gave birth to a child by means of assisted  
13 reproduction may not challenge his or her parentage of the child unless:

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

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

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

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

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

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

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

4 **SECTION 706. EFFECT OF DISSOLUTION OF MARRIAGE OR**  
5 **WITHDRAWAL OF CONSENT.**

6 (a) If a marriage is dissolved before transfer of eggs, sperm, or embryos, the former  
7 spouse is not a parent of the resulting child unless the former spouse consented in a record that if  
8 assisted reproduction were to occur after a divorce, the former spouse would be a parent of the  
9 child.

10 (b) The consent of an individual to assisted reproduction under Section 704 may be  
11 withdrawn by that individual in a record with notice to the woman giving birth any time before  
12 transfer of eggs, sperm, or embryos that results in a pregnancy. An individual who withdraws  
13 consent as provided under this section is not a parent of the resulting child.

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

19 **ARTICLE 8**

20 **SURROGACY AGREEMENTS**

21 **Reporter's Comment**  
22

23 The 2017 UPA updates the surrogacy provisions to reflect developments in that area. The  
24 2002 UPA includes a bracketed Article 8 that authorized surrogacy agreements. States have been  
25 particularly slow to enact Article 8 of the 2002 UPA. Eleven (11) states adopted versions of the  
26 2002 UPA. Of these eleven (11) states, however, only two (2) – Texas and Utah – enacted the

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

6  
7 The fact that very few states enacted Article 8 is likely the result of a confluence of  
8 factors. One likely factor is the controversial nature of surrogacy itself. But given that four of the  
9 states that enacted the 2002 UPA enacted provisions permitting surrogacy, *but did not adopt*  
10 *Article 8* of the UPA, another factor appears to be a lack of enthusiasm for the substance of the  
11 provisions themselves. Accordingly, the 2017 UPA updates the surrogacy provisions to make  
12 them more consistent with current surrogacy practice.

13  
14 As was true of the 2002 UPA, Article 8 of the 2017 UPA regulates and permits both  
15 genetic (often referred to as “traditional”) and gestational surrogacy agreements. But the 2017  
16 UPA differs in the way that it regulates these two types of surrogacy agreements. The 2002 UPA  
17 set forth a single set of requirements that applied equally to genetic and gestational surrogacy  
18 agreements. While the 2017 UPA continues to permit both types of surrogacy, the 2017 UPA  
19 imposes additional safeguards or requirements on genetic surrogacy agreements. This  
20 differentiation between genetic and gestational surrogacy is intended to reflect both the factual  
21 differences between the two types of surrogacy as well as the reality that policy makers view  
22 these two forms of surrogacy as being quite different. Of the states that permit surrogacy, almost  
23 all of them permit *only* gestational surrogacy agreements.

24  
25 While the 2017 UPA adds additional requirements that apply only to genetic surrogacy  
26 agreements, it simultaneously liberalizes the rules governing gestational surrogacy agreements.  
27 The changes to the rules governing gestational surrogacy agreements is intended to make these  
28 rules more consistent with current practice and law.

29  
30 Sections 801 – 806 establish the rules that apply to both types of surrogacy agreements.  
31 Sections 807 – 810 include rules that apply only to gestational surrogacy agreements. Sections  
32 811 – 814 include rules that apply only to genetic surrogacy agreements.

33  
34 Because Article 8 of the 2017 UPA is not based on the 2002 UPA, the Drafting  
35 Committee decided to present Article 8 in revision form. The full text of Article 8 of the 2002  
36 UPA is available in the supporting documents.

## 37 38 **PART 1**

### 39 **GENERAL REQUIREMENTS**

#### 40 **SECTION 801. ELIGIBILITY TO ENTER A GESTATIONAL OR GENETIC** 41 **SURROGACY AGREEMENT.**

42 (a) In order to execute an agreement to act as a gestational or a genetic surrogate, a

1 woman must:

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

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

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

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

6 intended parent or parents regarding the terms of the surrogacy agreement and the potential legal

7 consequences of the surrogacy agreement.

8 (b) In order to execute a surrogacy agreement, the intended parent or parents, whether

9 genetically related to the child or not, must:

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

11 (2) complete a mental health consultation; and

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

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

14 **Reporter's Comment**

15 There was a discussion at the in-person drafting meeting about whether the intended  
16 parents should be required to pay for the surrogate's counsel. A number of states, including  
17 Maine, require the intended parents to pay for the surrogate's counsel. *See, e.g.*, ME. STAT., tit. §  
18 1931(1)(D) (requiring the surrogate to have "had independent legal representation of her own  
19 choosing and paid for by the intended parent or parents regarding the terms of the gestational  
20 carrier agreement and have been advised of the potential legal consequences of the gestational  
21 carrier agreement"). A number of other states do not require the intended parents to pay for the  
22 surrogate's counsel. *See, e.g.*, CAL. FAM. CODE § 7962(b) ("Prior to executing the written  
23 assisted reproduction agreement for gestational carriers, a surrogate and the intended parent or  
24 intended parents shall be represented by separate independent licensed attorneys of their  
25 choosing.").

26

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

2   **SURROGACY AGREEMENT: PROCESS.** The surrogacy agreement must be executed  
3 consistent with all of the following conditions:

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

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

9           (3) The intended parent or parents, the surrogate, and the surrogate's spouse if any, must  
10 be parties to the surrogacy agreement.

11           (4) The agreement must be in writing and signed by all parties.

12           (5) The surrogate and each intended parent must sign a written acknowledgment of  
13 having received a copy of the agreement.

14           (6) The signature of each party to the agreement must be notarized, acknowledged or  
15 attested by a person authorized to take oaths in accordance with the laws of the jurisdiction  
16 where it is executed.

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

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

1           **SECTION 803. REQUIREMENTS OF A GESTATIONAL OR GENETIC**  
2 **SURROGACY AGREEMENT: CONTENT.**

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

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

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

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

11                   (4) The intended parent or parents will be the exclusive parent or parents of any  
12 resulting child immediately upon birth regardless of the number, gender, or mental or physical  
13 condition of the resulting child; and

14                   (5) The intended parents will assume responsibility for the financial support of  
15 any resulting child immediately upon the birth regardless of the number, gender, or mental or  
16 physical condition of the resulting child.

17                   (6) The agreement must include information disclosing how the intended parents  
18 will cover the medical expenses of the surrogate and the newborn or newborns. If health-care  
19 coverage is used to cover the medical expenses, the disclosure shall include a review of the  
20 health care policy provisions related to coverage for surrogate pregnancy, including any  
21 possibility liability of the surrogate, third-party liability liens or other insurance coverage, and  
22 any notice requirements that could affect coverage or liability of the surrogate.

23                   (7) The agreement must permit the surrogate to use the services of a health-care

1 provider of her choosing to provide her care during her pregnancy [subject to the intended parent  
2 or parents' desired level of care].

3 (8) The agreement may not limit the right of the surrogate to make decisions to  
4 safeguard her health or that of any fetus or embryo she is carrying.

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

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

8 **SECTION 804. SURROGACY AGREEMENT: EFFECT OF SUBSEQUENT**  
9 **CHANGE OF MARITAL STATUS.**

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

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

14 (2) the divorce of the surrogate after the signing of the surrogacy agreement does  
15 not affect the validity of the surrogacy agreement.

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

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

21 (2) The divorce of the intended parents after the signing of the surrogacy  
22 agreement does not affect the validity of a surrogacy agreement, and the intended parents are the  
23 parents of the resulting child or children.





1 parent or parents remain responsible for all expenses that are reimbursable under the agreement  
2 incurred by the gestational surrogate through the date of termination. Unless the agreement  
3 provides otherwise, the gestational surrogate is entitled to keep all payments she has received  
4 and obtain all payments to which she is entitled. Neither a prospective gestational surrogate nor  
5 her spouse, if any, is liable to the intended parent or parents for terminating a surrogacy  
6 agreement as provided in this Section.

7  
8 **SECTION 808. PARENTAGE UNDER GESTATIONAL SURROGACY**  
9 **AGREEMENT.**

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

13 (b) Neither the gestational surrogate, nor her spouse, if any, nor her former spouse, if any,  
14 is the parent of the resulting child born through an enforceable gestational surrogacy agreement.

15 (c) If due to a laboratory error any resulting child is not genetically related to the intended  
16 parent or parents, or if due to a laboratory error any resulting child is not genetically related to a  
17 donor who donated to the intended parent or parents, the intended parent or parents are  
18 considered the parent or parents of any resulting child born through an enforceable surrogacy  
19 agreement, subject to other claims of parentage.

20 **SECTION 809. GESTATIONAL SURROGACY AGREEMENT: ORDER OF**  
21 **PARENTAGE.**

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

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

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

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

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

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

12 (b) An order or judgment issued pursuant to subsection (a) may be entered before the  
13 birth of the child, and enforcement of that order or judgment shall be stayed until the birth of the  
14 child.

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

17 **SECTION 810. EFFECT OF UNENFORCEABLE GESTATIONAL**  
18 **SURROGACY AGREEMENT.**

19 (a) A gestational surrogacy agreement that does not substantially comply with the  
20 requirements for a gestational surrogacy agreement as provided in this [article] is not  
21 enforceable.

22 (b) If a birth results under a gestational surrogacy agreement that is not enforceable as  
23 provided in this [part], the parent-child relationship is determined as provided in the other

1 [articles] of this [act].

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

5 (d) Except as expressly provided in a gestational surrogacy agreement and in subsection  
6 (e), in the event of a breach of the gestational surrogacy agreement by the gestational surrogate  
7 or the intended parent or parents, the gestational surrogate or the intended parent or parents are  
8 entitled to all remedies available at law or in equity.

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

14 **PART 3**

15 **SPECIAL RULES FOR GENETIC SURROGACY AGREEMENTS**

16 **SECTION 811. REQUIREMENTS OF PETITION TO VALIDATE A GENETIC**  
17 **SURROGACY AGREEMENT.**

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

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

1 (1) all of the requirements of Sections 801, 802, and 803 have been satisfied; and  
2 (2) all parties have voluntarily entered into the agreement and understand its  
3 terms.

4 (c) An individual who terminates a genetic surrogacy agreement pursuant to Section 812  
5 shall file notice of the termination with the court. On receipt of the notice, the court shall vacate  
6 the order issued under subsection (b). An individual who does not notify the court of the  
7 termination of the agreement is subject to appropriate sanctions.

8 **SECTION 812. TERMINATION OF GENETIC SURROGACY AGREEMENT.**

9 (a) A party to a surrogacy agreement may terminate the surrogacy agreement as follows:

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

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

23 (b) Upon proper termination of the surrogacy agreement under subsection (a), the parties

1 are released from all obligations recited in the agreement except that the intended parent or  
2 parents remain responsible for all expenses that are reimbursable under the agreement incurred  
3 by the genetic surrogate through the date of termination. Unless the agreement provides  
4 otherwise, the genetic surrogate is entitled to keep all payments she has received and obtain all  
5 payments to which she is entitled. Neither a prospective genetic surrogate nor her spouse, if any,  
6 is liable to the intended parent or parents for terminating a surrogacy agreement as provided in  
7 this Section.

8 **SECTION 813. PARENTAGE UNDER VALIDATED GENETIC SURROGACY**  
9 **AGREEMENT.**

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

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

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

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

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

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

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

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

6 (d) Unless the genetic surrogate exercises her right to terminate the agreement under  
7 Section 811, if the intended parent or parents fail to file notice required under subsection (a), the  
8 genetic surrogate or [the appropriate state agency] may file notice with the court that a child has  
9 been born to the genetic surrogate within 300 days after assisted reproduction. Unless the genetic  
10 surrogate has properly exercised her right to withdrawn consent to the genetic surrogacy  
11 agreement pursuant to Section 811, upon proof of a court order issued pursuant to Section 810  
12 validating the genetic surrogacy agreement, the court shall order that the intended parent or  
13 parents are the parents of the child and are financially responsible for the child.

14 **SECTION 814. EFFECT OF NONVALIDATED GENETIC SURROGACY**  
15 **AGREEMENT.**

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

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

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

1 (d) Except as expressly provided in a genetic surrogacy agreement, in the event of a  
2 breach of the genetic surrogacy agreement by the genetic surrogate or the intended parent or  
3 parents, the genetic surrogate or the intended parent or parents are entitled to all remedies  
4 available at law or in equity.

## 5 **ARTICLE 9**

### 6 **Reporter's Comment**

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

### 12 **IDENTIFYING INFORMATION ABOUT DONORS**

13  
14 **SECTION 901. PROSPECTIVE EFFECT ONLY.** This [article] applies only to  
15 gametes that are collected after the effective date of this [act].

16 **SECTION 902. COLLECTION OF IDENTIFYING INFORMATION.** Any gamete  
17 bank or fertility clinic licensed in [this state] shall collect from any donor the individual's  
18 identifying information and medical history. If the gametes are thereafter transferred to another  
19 gamete bank or fertility clinic licensed in [this state], the receiving entity must collect and retain  
20 information about the gamete bank or fertility clinic from which it received the gametes. All  
21 gamete banks or fertility clinics licensed in [this state] shall disclose the information as provided  
22 under Section 904.

### 23 **SECTION 903. AFFIDAVITS REGARDING DISCLOSURE.**

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

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

1 shall require any donor to sign an affidavit regarding identity disclosure. The individual must be  
2 given the choice to sign either:

3 (1) an affidavit agreeing to disclose his or her identity to the resulting child upon  
4 request once the child is at least eighteen years of age; or

5 (2) an affidavit that he or she does not presently agree to disclose his or her  
6 identity to the resulting child.

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

10 **SECTION 904. DISCLOSURE OF IDENTIFYING INFORMATION.**

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

18 (b) Regardless of whether the donor signed an affidavit of nondisclosure, upon request by  
19 a child conceived through assisted reproduction who is at least eighteen years old, the gamete  
20 bank or fertility clinic licensed in [this state] that collected the gametes shall provide to the  
21 resulting child access to the nonidentifying medical history of the donor.

22 **SECTION 905. RECORD KEEPING.** A gamete bank or fertility clinic licensed in  
23 [this state] that collects gametes for use in assisted reproduction shall collect and maintain



1 medical history and identifying information about all gamete donors, and records of all gamete  
2 screening and testing, in accordance with federal and applicable state law.

3 **ARTICLE 10**

4 **MISCELLANEOUS PROVISIONS**

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

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

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

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

17 **SECTION 1004. REPEAL.** The following [acts] and parts of [acts] are repealed:

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

19 (2) [Uniform Parentage Act, 1973]

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

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

22 (5) [Uniform Parentage Act, 2002]

23 (6) [other inconsistent statutes]

24 **SECTION 1005. TIME OF TAKING EFFECT.** This [act] takes effect . . . .

1 **APPENDIX**

2 **FEDERAL IV-D STATUTE RELATING TO PARENTAGE**

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

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

9 \* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (iii) Paternity establishment services.

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

4 (II) Regulations.

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

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

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

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

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

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

24 or

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

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

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

35 (I) 60 days; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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