

# UNIFORM PARENTAGE ACT

*Drafted by the*

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

*and by it*

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

*at its*

ANNUAL CONFERENCE  
MEETING IN ITS EIGHTY-SECOND YEAR  
AT HYANNIS, MASSACHUSETTS  
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WITH PREFATORY NOTE AND COMMENTS

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## UNIFORM PARENTAGE ACT

### PREFATORY NOTE

On a variety of occasions, the National Conference of Commissioners on Uniform State Laws has concerned itself with the law relating to the child born out of wedlock. Significant efforts of the Conference were the development of the "Uniform Illegitimacy Act" in 1922, the "Blood Tests to Determine Paternity Act" of 1952, the "Uniform Paternity Act" of 1960 and certain provisions in the "Uniform Probate Code, of 1969. For a variety of reasons, the "Uniform Illegitimacy Act" was withdrawn by the Conference and none of the other Acts was adopted widely. As of June 1973, the "Blood Tests to Determine Paternity Act" had been enacted in 9, the "Uniform Paternity Act" in 4 and the "Uniform Probate Code" in 5 states.

The present Act had its genesis in an article entitled "A Proposed Uniform Act on Legitimacy" published in the April 1966 issue of the Texas Law Review and written by Professor Harry D. Krause, College of Law, University of Illinois. The Conference appointed a committee to study this subject in 1969, Lewis C. Green of St. Louis, Missouri, became chairman and Professor Krause agreed to serve as reporter to the committee. The present draft is the result of extensive research and redrafting. It has profited from consultation with appropriate American Bar Association authorities as well as with professionals in other fields, notably the field of social work. As a member of the Council of the Section on Family Law of the American Bar Association, Professor Krause also served as liaison between the Family Law Section and the Conference's committee on this Act. Special thanks are due to Judge Eugene A. Burdick, of Williston, North Dakota, the President of the Conference, and to Professor William J. Pierce, its Executive Director, for their interest and counsel.

When work on this Act began, the notion of substantive legal equality of children regardless of the marital status of their parents seemed revolutionary if one considered existing state law on this subject. See Krause, Equal Protection for the Illegitimate, 65 Mich. L.Rev. 477 (1967). Even though the Conference had put itself on record in favor of equal rights of support and inheritance in the Paternity Act and the Probate Code, the law of many states continued to differentiate very significantly in the legal treatment of legitimate and illegitimate children.

This Act is promulgated at a time when the states need new legislation on this subject because the bulk of current law on the subject of children born out of wedlock is either unconstitutional or subject to grave constitutional doubt.

Since 1968, a series of decisions rendered by the United States Supreme Court under the Equal Protection Clause of the 14th Amendment of the U.S. Constitution has mandated equal legal treatment of legitimate and illegitimate children in a broad range of substantive areas, one exception being the right of intestate succession. Quotations from two recent decisions illustrate the Supreme Court's views on this subject:

"The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is

contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual – as well as an unjust – way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where – as in this case – the classification is justified by no legitimate state interest, compelling or otherwise” *Weber v. Aetna Casualty & Surety Company*, 92 S.Ct. 1400, 1406-07 (1972).

“We have held that under the Equal Protection Clause of the Fourteenth Amendment a State may not create a right of action in favor of children for the wrongful death of a parent and exclude illegitimate children from the benefit of such a right. Similarly, we have held that illegitimate children may not be excluded from sharing equally with other children in the recovery of workmen’s compensation benefits for the death of their parent. Under these decisions, a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. We therefore hold that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because her natural father has not married her mother. For a State to do so is ‘illogical and unjust.’ We recognize the lurking problems with respect to proof of paternity. Those problems are not to be lightly brushed aside, but neither can they be made into an impenetrable barrier that works to shield otherwise invidious discrimination.” (Citations omitted.) *Gomez v. Perez*, 93 S.Ct. 872, 874-75 (1973).

Accordingly, in providing substantive legal equality for all children regardless of the marital status of their parents, the present Act merely fulfills the mandate of the Constitution. With the exception of the child’s right to inherit from his intestate father, which a growing number of states has provided without constitutional compulsion, the equal treatment provided by the Act is not the Conference’s “wishful thinking.” It is the law of the land.

Although earlier drafts of this Act contained detailed substantive provisions, the Supreme Court cases equalizing the substantive legal position of the illegitimate child with that of the legitimate child have obviated the need for those provisions. For that reason the substance of the Act now is expressed in the first two sections. The remainder of the Act is largely concerned with the sine qua non of equal legal rights—the identification of the person against whom these rights may be asserted. In the context of the child born out of wedlock that person is the father. (To cover the rare case in which there may be uncertainty as to the mother, the present Act permits a declaratory action on the question of maternal descent.)

In order to identify the father, the Act first sets up a network of presumptions which cover cases in which proof of external circumstances (in the simplest case, marriage between the mother and a man) indicate a particular man to be the probable father. While perhaps no one state now includes all these presumptions in its law, the presumptions are based on existing presumptions of “legitimacy” in state laws and do not represent a serious departure. Novel is that they have been collected under one roof. All presumptions of paternity are rebuttable in appropriate circumstances.

The ascertainment of paternity when no external circumstances presumptively point to a particular man as the father are the next major function of the Act. Noteworthy is the pre-trial procedure envisaged by the Act which, the Committee expects, will greatly reduce the current high cost and inefficiency of paternity litigation.

The Act also contains appropriate provisions for setting the level of support, the enforcement of judgments, and deals with related issues such as custody. The custody problem has been complicated by the U.S. Supreme Court's decision in *Stanley v. Illinois*, 92 S.Ct. 1208 (1972). In that case, the unmarried father was given substantial, but not carefully delineated rights to the custody of his child. Many state courts have interpreted the *Stanley* case very broadly, probably overly broadly, and the adoption process has become cumbersome and insecure. The Act provides an efficient procedure by which the rights of the disinterested unmarried father may be terminated. Delay and interference with the adoption process is kept to the minimum the Committee believed to be consistent with a reasonable interpretation of the *Stanley* case.

A review of the Act will indicate that it is one interlocking and interdependent piece of legislation that does not lend itself to being enacted in part.

Aside from the need for new state law to replace those rendered unconstitutional by the U.S. Supreme Court decisions referred to above, it is expected that this Act will fulfill an important social need in terms of improving the states' systems of support enforcement. Federal legislation encouraging the states to develop effective support enforcement procedures in connection with the Aid to Families with Dependent Children Program under the Social Security Act currently is pending and may be enacted soon. See S.2081, 93rd Cong., 1st. Sess., June 27, 1973.

## UNIFORM PARENTAGE ACT

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Be it enacted .....

### § 1. [Parent and Child Relationship Defined]

As used in this Act, “parent and child relationship” means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

## COMMENT

See Comment under section 2, *infra*.

### § 2. [Relationship Not Dependent on Marriage]

The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

## COMMENT

Sections 1 and 2, the major substantive sections of the Act, establish the principle that regardless of the marital status of the parents, all children and all parents have equal rights with respect to each other. As indicated in the Prefatory Note, recent U.S. Supreme Court decisions and lower federal and state court decisions require equality of treatment in most areas of substantive law. See, generally, H. Krause, *Illegitimacy: Law and Social Policy* 59-104 (1971).

The first two cases to reach the U.S. Supreme Court concerned Louisiana's wrongful death statute and held that statute unconstitutional insofar as it (1) discriminated against illegitimate children, holding them ineligible to recover for the wrongful death of their mother (Levy v. Louisiana, 88 S.Ct. 1509, 391 U.S. 68 (1968)) and (2) denied a mother recovery for the wrongful death of her child (Glonn v. American Guarantee & Liability Insurance Co., 88 S.Ct. 1515, 391 U.S. 73 (1968)).

It was a surprise when, within three years of deciding Levy and Glonn, the U.S. Supreme Court reached a conclusion seemingly at odds with Levy and Glonn. The Court had occasion to reconsider the question of the illegitimate child's legal position in a case involving inheritance, and refused to extend Levy or Glonn to permit an acknowledged illegitimate child to inherit from his intestate father under Louisiana law. (Labine v. Vincent, 91 S.Ct. 1017, 401 U.S. 532 (1971).)

The surprise engendered by the Labine decision was surpassed when the Supreme Court again reversed its position on this subject in 1972. In a dramatic departure from Labine, the U.S. Supreme Court held that workmen's compensation benefits related to the death of their father are due dependent, unacknowledged, illegitimate children. (Weber v. Aetna Casualty & Surety Co., 92 S.Ct. 1400, 406 U.S. 164 (1972).) In January, 1973, the U.S. Supreme Court, finally substituting consistency for vacillation on this subject, decided that the illegitimate child is guaranteed a right of support from his father. (Gomez v. Perez, 93 S.Ct. 872 (1973).)

These decisions engendered a large number of decisions by lower federal courts and state courts at all levels which have broadly extended the legal relationship between the father and his child born out of wedlock. It should be noted, however, that several states had previously provided full (or nearly full) legal equality to illegitimates. To illustrate, Ore.Rev.Stat. § 109.060 (1969) provides:

“[t]he legal status and legal relationships and the rights and obligations between a

person and his descendants, and between a person and his parents, their descendants and kindred, are the same for all persons, whether or not the parents have been married.”

See, also, N.D.Cent.Code § 56-01-05 (Supp.1969); Ariz.Rev.Stat.Ann. § 14-206 (1956); Alaska Stat. 25.20.050(a) (1962).

### § 3. [How Parent and Child Relationship Established]

The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this Act;

(2) the natural father may be established under this Act;

(3) an adoptive parent may be established by proof of adoption or under the [Revised Uniform Adoption Act].

### COMMENT

This section introduces the portion of the Act which deals with the ascertainment of parentage.

### § 4. [Presumption of Paternity]

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

(1) he and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;

(2) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(3) after the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) he has acknowledged his paternity of the child in writing filed with the [appropriate court or Vital Statistics Bureau].

(ii) with his consent, he is named as the child's father on the child's birth certificate, or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(4) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(5) he acknowledges his paternity of the child in a writing filed with the [appropriate court or Vital Statistics Bureau], which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the [appropriate court or Vital Statistics Bureau]. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(b) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

#### COMMENT

In the situations described in subsection (a), substantial evidence points to a particular man as being the father of the child and formal proceedings to establish paternity are not necessary. A presumption of paternity arises in the described circumstances. Most of the situations correspond to instances in which current state law imposes a presumption of legitimacy.

Subsection (b) contemplates that a presumption raised under subsection (a) may be rebutted in appropriate circumstances. In accordance with current law in most states relating to the rebuttal of a presumption of "legitimacy", the presumption is difficult to rebut in that proof must be made by "clear and convincing evidence." Other details are covered in Sections 6(a) and (b).

§ 5. [Artificial Insemination]

(a) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the [State Department of Health], where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(b) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

COMMENT

This Act does not deal with many complex and serious legal problems raised by the practice of artificial insemination. It was though useful, however, to single out and cover in this Act at least one fact situation that occurs frequently. Further consideration of other legal aspects of artificial insemination has been urged on the National Conference of Commissioners on Uniform State Laws and is recommended to state legislators. A useful reference is Wadlington, Artificial Insemination: The Danger of a Poorly Kept Secret, 64 N.W.U.L.Rev. 777 (1970).

§ 6. [Determination of Father and Child Relationship; Who May Bring Action; When Action May Be Brought]

(a) A child, his natural mother, or a man presumed to be his father under Paragraph (1), (2), or (3) of Section 4(a), may bring an action

(1) at any time for the purpose of declaring the existence of the father and child relationship presumed under Paragraph (1), (2), or (3) of Section 4(a); or

(2) for the purpose of declaring the non-existence of the father and child relationship presumed under Paragraph (1), (2), or (3) of Section 4(a) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than [five] years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or non-existence of the father and child relationship presumed under Paragraph (4) or (5) of Section 4(a).

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 4 may be brought by the child, the mother or personal representative of the child, the [appropriate state agency], the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with Section 13(b), between an alleged or presumed father and the mother or child, does not bar an action under this section.

(e) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

#### COMMENT

This section consists of two major parts. Subsections (a) and (b) deal with the action to declare or dispute the existence of the father and child relationship presumed under Section 4(a). Attack on the presumptions based on marriage or on a relationship between the parents that resembles marriage is restricted to a limited circle of potential contestants and in point of time. Presumptions created in other circumstances may be attacked more freely.

Subsection (c) defines who may bring the action to ascertain paternity when no presumption applies. It is made clear that the child may bring the action. Moreover, since the Act contemplates that the principal interest involved in the action is that of the child, Subsection (d) does not permit an agreement between the mother and an alleged or presumed father to bar an action to ascertain paternity. Cf. Comment on Section 9.

#### § 7. [Statute of Limitations]

An action to determine the existence of the father and child relationship as to a child who has no presumed father under Section 4 may not be brought later than [three] years after the birth of the child, or later than [three] years after the effective date of this Act, whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until [three] years after the child reaches the age of majority. Sections 6 and 7 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

#### COMMENT

The three year provision stated in the first sentence of this Section will serve as an admonition that paternity actions should be brought promptly. In effect, however, this Section provides for a twenty-one-year statute of limitations, except that a late paternity action does not affect laws relating to distribution and closing of decedents' estates or to the determination of

heirship. Since the U.S. Supreme Court decisions speak in terms of the child's substantive right to a legal relationship with his father, it was considered unreasonable to bar the child's action by reason of another person's failure to bring a paternity action at an earlier time. On the other hand, it is fully understood that such an extended statute of limitations will cause problems of proof in many cases. In part for that reason and also to provide every infant with the means to exercise his rights, rather than leave his fortunes to the whim of his mother or the views of the social worker, an earlier draft of the Act contained a provision in Section 6(c) which read as follows:

“If a child has no presumed father under Section 4 and the action to determine the existence of the father and child relationship has not been brought and proceedings to adopt the child have not been instituted within [1] year after the child's birth, an action to determine the existence of the relationship shall be brought promptly on behalf of the child by the [appropriate state agency].”

While this provision was stricken from the final draft, state legislators may wish to consider such a procedure, especially if S. 2081, 93d Cong., 1st Sess., or a similar bill should be enacted. (See summary of S.2081 in Prefatory Note.)

#### § 8. [Jurisdiction; Venue]

(a) [Without limiting the jurisdiction of any other court,] [The] [appropriate] court has jurisdiction of an action brought under this Act. [The action may be joined with an action for divorce, annulment, separate maintenance or support.]

(b) A person who has sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this Act with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by [rule or] statute, including [cross reference to “long arm statute”], personal jurisdiction may be acquired by [personal service of summons outside this State or by registered mail with proof of actual receipt] [service in accordance with (citation to “long arm statute”) ].

(c) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

#### COMMENT

The court having jurisdiction over actions under this Act should be identified here. To avoid multiplicity of actions, the bracketed clause would allow joinder of the action to ascertain paternity with an action for divorce, annulment, separate maintenance, or support. This might be considered in choosing the court which is given jurisdiction over actions under this Act.

Subsection (b) provides a novel, but not unheard of, extension of the “long arm” concept. Cf. Poindexter v. Willis, 87 Ill.App.2d 213, 23 N.E.2d 1 (5th Dist.1967). The venue provision in Subsection (c) provides choices considered reasonable and convenient.

§ 9. [Parties]

The child shall be made a party to the action. If he is a minor he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the [appropriate state agency] as guardian ad litem for the child. The natural mother, each man presumed to be the father under Section 4, and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

COMMENT

This Section emphasizes that the child is a party to the action. While this is a departure from the law of a number of states which have viewed the mother as the sole party in interest, this provision is considered a necessary consequence of the U. S. Supreme Court decisions establishing the child's substantive rights vis-a-vis his father. The mother or father may not represent the child in the action, since their interests may conflict with those of the child.

§ 10. [Pre-Trial Proceedings]

(a) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. [The court may order that the hearing be held before a referee.] The public shall be barred from the hearing. A record of the proceeding or any portion thereof shall be kept if any party requests, or the court orders. Rules of evidence need not be observed.

(b) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.

(c) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

COMMENT

Sections 10 through 13 provide details concerning the pre-trial hearing. The purpose of the pre-trial hearing is to minimize inconvenience and embarrassment in the many cases which the Committee expects will be resolved on the basis of the voluntary compromise contemplated by Section 13.

§ 11. [Blood Tests]

(a) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(b) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiner of blood types.

(c) In all cases, the court shall determine the number and qualifications of the experts.

§ 12. [Evidence Relating to Paternity]

Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

COMMENT

It is expected that blood test evidence will go far toward stimulating voluntary settlements of actions to determine paternity. In this connection, proposed legislation currently pending in the U.S. Senate should be considered. Senate Bill 2081, 93d Congress, 1st Sess. (June 27, 1973), looks toward the establishment of a national system of federally assisted child support enforcement and provides for an efficient system of blood typing:

“REGIONAL LABORATORIES TO ESTABLISH PATERNITY THROUGH  
ANALYSIS AND CLASSIFICATION OF BLOOD

“Sec. 458. (a) The Secretary shall, after appropriate consultation and study of the use of blood typing as evidence in judicial proceedings to determine paternity, establish, or arrange for

the establishment or designation of, in each region of the United States, a laboratory which he determines to be qualified to provide services in analyzing and classifying blood for the purpose of determining paternity, and which is prepared to provide such services to courts and public agencies in the region to be served by it.

“(b) Whenever a laboratory is established or designated for any region by the Secretary under this section, he shall take such measures as may be appropriate to notify appropriate courts and public agencies (including agencies administering any public welfare program within such region) that such laboratory has been so established or designated to provide services, in analyzing and classifying blood for the purpose of determining paternity, for courts and public agencies in such region.

“(c) The facilities of any such laboratory shall be made available without cost to courts and public agencies in the region to be served by it.

“(d) There is hereby authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

#### “SUPPORT COLLECTION SERVICES FOR OTHER INDIVIDUALS

“Sec. 459. The child support collection or paternity determination services established under this part shall be made available to any individual not otherwise eligible for such services under the preceding sections of this part upon application filed by such individual with the Attorney General or, if a State or political subdivision has a program approved under section 454, with such State or political subdivision as may be appropriate. The Attorney General (or a State or political subdivision) shall impose an application fee for furnishing such services. Any costs in excess of the fee so imposed shall be paid by such individual by deducting such costs from the amount of any recovery made.”

Centralized blood typing facilities already exist in Oslo, Copenhagen and Stockholm and serve the whole of their respective countries. Over several decades, great expertise has been developed. (See generally, Henningsen, Some Aspects of Blood Grouping in Cases of Disputed Paternity in Denmark, 2 *Methods of Forensic Science* 209 (1963); Henningsen, On the Application of Bloodtests to Legal Cases of Disputed Paternity, 12 *Revue de Transfusion* 137 (1969); P. Andresen, *The Human Blood Groups* 73 (1952).) The Scandinavian laboratories are distinguished not only in terms of their use of complex and advanced blood typing systems, but also in terms of highly developed safety procedures which assure accuracy of the results they report. This latter point may be the most important element of blood typing. There can be little doubt that it would be better not to admit blood tests into evidence at all than to admit unreliable evidence under the halo of scientific truth-as has too often been done in the United States where a recheck of even relatively simple tests revealed about one-third of them to have been in error! (See Wiener, Foreword, L. Sussman, *Blood Grouping Tests-Medicolegal Uses*, ix (1968); See also Wiener, Problems and Pitfalls in Blood Grouping Tests for Non-Parentage, 15 *Journal of Forensic Medicine* 106, 126 (1968).) The Copenhagen laboratory (and the practice in Stockholm and Oslo is similar) employs two sets of systems in “layers”, the routine blood group determination resulting in exclusion of paternity for about 70 per cent of non-fathers and an

extended blood group determination which increases paternity exclusions to about 90 per cent of non-fathers. While an exclusion figure approximating 90 per cent of men falsely named as fathers is impressive, cases which do not produce an exclusion are pursued further on the basis of a "blood group paternity index" by means of which the "probability" of the named man's paternity is estimated. (See Gl20urtler, Principles of Blood Group Statistical Evaluation of Paternity Cases at the University Institute of Forensic Medicine, Copenhagen, 9 Acta Medicinæ et Socialis 83 (1956).) That index compares the frequency of a given father-mother-child blood constellation in a sample of actual fathers with the blood constellation in a sample of non-fathers and is related to the constellation obtained in the case in question. If the resemblance exceeds 95 per cent or falls below 5 per cent, the result is reported to the court. At the outer limits, this approach produces de facto inclusions or exclusions. In less extreme cases, it produces interesting circumstantial evidence. It is of particular value, of course, when the relative likelihood of paternity of several possible fathers is to be compared. See generally, Krause, Illegitimacy: Law and Social Policy, 123-44 (1971).

§ 13. [Pre-Trial Recommendations]

(a) On the basis of the information produced at the pre-trial hearing, the judge [or referee] conducting the hearing shall evaluate the probability of determining the existence or non-existence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(1) that the action be dismissed with or without prejudice;

(2) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge [or referee] conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge [or referee] conducting the hearing shall consider the best interest of the child, in the light of the factors enumerated in Section 15(e), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(3) that the alleged father voluntarily acknowledge his paternity of the child.

(b) If the parties accept a recommendation made in accordance with Subsection (a), judgment shall be entered accordingly.

(c) If a party refuses to accept a recommendation made under Subsection (a) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge [or referee] shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(d) The guardian ad litem may accept or refuse to accept a recommendation under this Section.

(e) The informal hearing may be terminated and the action set for trial if the judge [or referee] conducting the hearing finds unlikely that all parties would accept a recommendation he might make under Subsection (a) or (c).

#### COMMENT

The settlement procedures contemplated by this Section are voluntary. If any party refuses to accept a settlement recommendation, the action will be set for trial. It is expected, however, that, as soon as reliable blood test evidence becomes available on a large scale, the great majority of cases will be settled consensually in the light of such evidence.

#### § 14. [Civil Action; Jury]

(a) An action under this Act is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Subsections (b) and (c) of Section 10 and Sections 11 and 12 apply.

(b) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(c) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if he has undergone and made available to the court blood tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

[ (d) The trial shall be by the court without a jury.]

#### COMMENT

Subsection (a) makes it clear that the action to establish paternity is a civil action. A number of states have continued to view the action as criminal or quasi-criminal, although a majority of states now treats the paternity action as a civil proceeding.

Subsections (b) and (c) deal with the problem of the exceptio plurium concubentium and, more specifically, the problem of perjured testimony concerning alleged sexual access to the

mother offered by other men on behalf of the alleged father. It is recognized that in rare cases, these provisions may result in the exclusion of “honest” evidence. However, the Committee concluded that this is outweighed by the need for closing the door to the wanton attacks on the mother’s character that characterize too many paternity suits under present laws.

The use of a jury is not desirable in the emotional atmosphere of cases of this nature. The clause eliminating the jury is bracketed only because in some states constitutions may prevent elimination of a jury trial in this context.

§ 15. [Judgment or Order]

(a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(b) If the judgment or order of the court is at variance with the child’s birth certificate, the court shall order that [an amended birth registration be made] [a new birth certificate be issued] under Section 23.

(c) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother’s pregnancy and confinement.

(d) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father’s liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(e) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts including

- (1) the needs of the child;
- (2) the standard of living and circumstances of the parents;
- (3) the relative financial means of the parents;
- (4) the earning ability of the parents;
- (5) the need and capacity of the child for education, including higher education;

- (6) the age of the child;
- (7) the financial resources and the earning ability of the child;
- (8) the responsibility of the parents for the support of others; and
- (9) the value of services contributed by the custodial parent.

#### COMMENT

This section allows a wide range of court orders to be made relating to the child's support, custody, guardianship, visitation privileges, as well as to the payment by the father of the mother's expenses of pregnancy and confinement. Since current state law often does not provide guidelines to help the judge in setting support obligations, Subsections (d) and (e) provide flexible standards based on criteria now generally accepted.

#### § 16. [Costs]

The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pre-trial proceedings, including blood tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by [appropriate public authority].

#### COMMENT

This allows the court to apportion the cost of litigation among the parties or, if a party is indigent, charge it to the appropriate public authority.

#### § 17. [Enforcement of Judgment or Order]

(a) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this Act or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

(b) The court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(c) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

## COMMENT

This Section provides suitable enforcement remedies.

### § 18. [Modification of Judgment or Order]

The court has continuing jurisdiction to modify or revoke a judgment or order

(1) for future education and support, and

(2) with respect to matters listed in Subsections (c) and (d) of Section 15 and Section 17(b), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under Section 15(d) may specify that the judgment or order may not be modified or revoked.

## COMMENT

In accordance with current state law on this subject, the court is given continuing jurisdiction to modify or revoke judgments relating to support, custody and related matters.

### § 19. [Right to Counsel; Free Transcript on Appeal]

(a) At the pre-trial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(b) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

## COMMENT

This permits each party to be represented by counsel regardless of financial circumstances.

### § 20. [Hearings and Records; Confidentiality]

Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this Act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the [appropriate state agency] or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

## COMMENT

In view of the sensitive nature of paternity proceedings, the Committee considered it

essential that such proceedings be kept in confidence.

§ 21. [Action to Declare Mother and Child Relationship]

Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this Act applicable to the father and child relationship apply.

COMMENT

This Section permits the declaration of the mother and child relationship where that is in dispute. Since it is not believed that cases of this nature will arise frequently, Sections 4 to 20 are written principally in terms of the ascertainment of paternity. While it is obvious that certain provisions in these Sections would not apply in an action to establish the mother and child relationship, the Committee decided not to burden these-already complex-provisions with references to the ascertainment of maternity. In any given case, a judge facing a claim for the determination of the mother and child relationship should have little difficulty deciding which portions of Sections 4 to 20 should be applied.

§ 22. [Promise to Render Support]

(a) Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to Section 6(d).

(b) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

COMMENT

This permits any written promise to furnish support for a child based on a supposed or alleged father and child relationship to be enforced in accordance with its terms, with the exception of stipulations that seek to bar a paternity action. Since existing law adequately covers this area, it was considered unnecessary to spell out that the agreement may be avoided if it is shown that the agreement was based on a mutual mistake or fraud relating to the existence of the father and the child relationship. In view of the possibly sensitive nature of such a promise, the provision relating to confidentiality is considered useful.

§ 23. [Birth Records]

(a) Upon order of a court of this State or upon request of a court of another state, the [registrar of births] shall prepare [an amended birth registration] [a new certificate of birth] consistent with the findings of the court [and shall substitute the new certificate for the original certificate of birth].

(b) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the [amended birth registration] [new certificate] but the actual place and date of birth shall be shown.

(c) The evidence upon which the [amended birth registration] [new certificate] was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

#### COMMENT

This provision permits the issuance of an amended or new birth certificate to assure confidentiality. It resembles provisions in many adoption acts which permit the issuance of a new or amended birth certificate after an adoption has been completed.

#### § 24. [When Notice of Adoption Proceeding Required]

If a mother relinquishes or proposes to relinquish for adoption a child who has (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under [the appropriate State statute] [the Revised Uniform Adoption Act], unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

#### COMMENT

This section provides that a father whose identity is presumed under Section 4 or whose paternity has been formally ascertained, must be given notice of an adoption proceeding relating to his child.

#### § 25. [Proceeding to Terminate Parental Rights]

(a) If a mother relinquishes or proposes to relinquish for adoption a child who does not have (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the [\_\_\_\_\_] court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

(b) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the

mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(c) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with Subsection (e). If any of them fails to appear or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.

(d) If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of an appeal upon the expiration of [6 months] after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

(e) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father [in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state, or] in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. [If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.]

#### COMMENT

Subsection (a) deals with the case in which the father has not been formally ascertained and the mother seeks to surrender the child for adoption. In the light of the U.S. Supreme Court's decisions in Stanley v. Illinois, 92 S.Ct. 1208 (1972); Rothstein v. Lutheran Social Services of Wisconsin and Upper Michigan, 92 S.Ct. 1488 (1972) and Vanderlaan v. Vanderlaan, 92 S.Ct. 1488 (1972) and related state court decisions, it is considered essential that the unknown or unascertained father's potential rights be terminated formally in order to safeguard the subsequent adoption.

Subsections (b) through (e) provide a procedure by which the court may ascertain the identity of the father and permit speedy termination of his potential rights if he shows no interest in the child. If, on the other hand, the natural father or a man representing himself to be the natural father claims custodial rights, the court is given authority to determine custodial rights. It is contemplated that there may be cases in which the man alleging himself to be the father is so clearly unfit to take custody of the child that the court would proceed to terminate his potential parental rights without deciding whether the man actually is the father of the child. If, on the

other hand, the man alleging himself to be the father and claiming custody is prima facie fit to have custody of the child, an action to ascertain paternity is indicated, unless a voluntary acknowledgment can be obtained in accordance with Section 4(a)(5) of this Act.

Subsection (d) raises serious constitutional questions in that it attempts to cut off after a given period any claim seeking to reopen a judgment terminating parental rights. While of questionable constitutionality, such a provision is not without precedent. A similar provision is contained in Section 15(b) of the revised Uniform Adoption Act, approved by the Commissioners on Uniform State Laws in 1969, and other similar provisions are contained in the adoption acts of a number of states. Moreover, it must be considered that the case of adoption differs from other situations. The parent's claim to his child can hardly be compared to a person's claim to property. The Supreme Court itself recognized that the interest of the child is heavily involved in these cases when remanding the Rothstein case to the Wisconsin Supreme Court, requiring that the court give "due consideration [to] the completion of the adoption proceedings and the fact that the child has apparently lived with the adoptive family for the intervening period of time." Cf. Armstrong v. Manzo, 380 U.S. 545 (1965).

Subsection (e) seeks to conform to the following footnote in Stanley v. Illinois:

"We note in passing that the incremental cost of offering unwed fathers an opportunity for individualized hearings on fitness appears to be minimal. If unwed fathers, in the main, do not care about the disposition of their children, they will not appear to demand hearings. If they do care, under the scheme here held invalid, Illinois would admittedly at some later time have to afford them a properly focused hearing in a custody or adoption proceeding.

"Extending opportunity for hearing to unwed fathers who desire and claim competence to care for their children creates no constitutional or procedural obstacle to foreclosing those unwed fathers who are not so inclined. The Illinois law governing procedure in juvenile cases . . . provides for personal service, notice by certified mail or for notice by publication when personal or certified mail service cannot be had or when notice is directed to unknown respondents under the style of 'all whom it may concern.' Unwed fathers who do not promptly respond cannot complain if their children are declared wards of the State. Those who do respond retain the burden of proving their fatherhood."

This footnote might be interpreted to require publication in all cases in which a child with unascertained paternity is surrendered for adoption. The Committee considered, however, that there will be many such cases in which it will be highly probable that publication will not lead to the identification of the father. In view of that and the fact that in nearly all cases publication will lead to substantial embarrassment for the mother, the Committee thought it appropriate to allow the court to determine whether, in the particular circumstances of each case, publication would be likely to lead to the identification of the father. One serious consequence that might result from an indiscriminate publication requirement is that some mothers may be caused to withhold their children from adoption even where adoption would be in the child's best interest.

1990 Note: Subsections (b)--(e) of this Section are no longer recommended by the Conference. Compare the 1988 Uniform Putative and Unknown Fathers Act (especially Sections 3 and 4).

§ 26. [Uniformity of Application and Construction]

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

§ 27. [Short Title]

This Act may be cited as the Uniform Parentage Act.

§ 28. [Severability]

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

§ 29. [Repeal]

The following acts and parts of acts are repealed:

(1) [Paternity Act]

(2)

(3)

§ 30. [Time of Taking Effect]

This Act shall take effect on \_\_\_\_\_.

COMMENT

Sections 26-30 are the customary clauses which may be placed in such order in the bill for enactment as the legislative practice of the state prescribes. A specific listing of statutes which are repealed by the enactment of this Act should be listed in section 29.