

D R A F T

FOR DISCUSSION ONLY

# NON-PARENTAL CHILD CUSTODY AND VISITATION ACT

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAW

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~~November 20-21, 2015~~ April 1-2, 2016 Drafting Committee Meeting

*With Prefatory Note, Reporter's Notes, and Comments*

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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~~October 12, 2015~~  
February 29, 2016

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

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

This draft includes preliminary “Comments” ~~for “Drafters’ Notes”~~ that, in final form, will be published with the act.

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

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

Jeff Atkinson  
Reporter  
Email: Jeff Atkinson747@gmail.com

1 **PREFATORY NOTE**

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

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

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

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

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

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

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

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

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

45 \* \* \* \* \*

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

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

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

15 Source: Generations United, “The State of Grandfamilies in America: 2014<sup>22</sup>” –  
16 <http://www.grandfamilies.org/Portals/0/14-State-of-Grandfamilies-Report-Final.pdf>

17  
18 ~~*[Additional data regarding foster care and kinship care may be provided by Howard*~~  
19 ~~*Davidson, Former Director*~~ \* \* \* \* \*

20  
21 ~~*[A summary of key features of the ABA Center and act will be inserted to the Law, and Heidi*~~  
22 ~~*Epstein, Director of the ABA Center’s Kinship Policy and Assistant Director of State Projects.]*~~  
23 ~~*Prefatory Note.]*~~

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

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

4                   **Reporter’s Note:** Our liaison to the ULC Style Committee, Debra Behr, advised me that  
5 the Style Committee may prefer the word “Non-Parental” without a hyphen. She notes  
6 that Washington State statutes do not use a hyphen for “Nonparental.” Wash. Code 26.10  
7 (2016) (chapter entitled “Nonparental actions for child custody.” See also 23 Pa. Stat.

8                   **Reporter’s Note**

9                   and Cons. Stat. Ann. § 5327 (West 2016) (making reference to presumptions in cases  
10 involving a “nonparent”). My preference is to keep the hyphen. I think it makes the  
11 word easier to read and understand. Illinois’ Family Law statute uses hyphens for some  
12 of its Family Law terms – e.g., “non-marital property.” 750 Ill. Comp. Stat. 5/503(a)  
13 (2016). Changes to titles of acts (apparently including on issues related to hyphen) need  
14 to be approved by the Executive Committee.

15  
16                   While the subject matter of this ~~topic~~act was under review by a ULC ~~the~~ Study  
17 Committee, the subject ~~matter~~ was referred to as “Third Party Custody and Visitation.” The term  
18 “Non-Parental Rights” seems more precise.

19  
20                   At the ~~March 2015~~first two Drafting Committee ~~meeting~~meetings, some participants  
21 favored utilizing a term other than “Non-Parental,” although there was not a consensus on  
22 what that term would be.

23  
24                   **SECTION 2. DEFINITIONS.** In this act:

25                   (1) -“Child” means ~~an unemancipated individual who is less than the age of majority.;~~

26 ~~[Reporter’s Note: The Uniform Deployed Parents Custody and Visitation Act, § 102(3) (2012)~~  
27 ~~defines “child” as follows:~~

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

29                   (B)- an adult son or daughter by birth or adoption, or under law of this state other  
30 than this [act], who is the subject of a court order concerning custodial responsibility.²].

31  
32                   (2) -“Custody” means physical custody, legal custody, or both. The term includes joint  
33 custody or shared custody as defined by the law of this state other than this [act].

34                   (3) -“De facto parent ~~of the child~~” means ~~an individual who [;~~

1           (A) that, within the last two years~~+-~~, the petitioner has completely undertaken  
2 permanent, unequivocal, committed parental responsibility in the child's life. Such a finding  
3 requires a determination by the court that:

4           ~~(A)(i) the petitioner (i) has had the support and consent of the child's parent or~~  
5 parents, if the child has more than one parent, to foster the formation and establishment of a  
6 parent-like relationship between the child and individual;

7           ~~(ii) has exercised parental responsibility for reasons primarily other than financial~~  
8 compensation; and

9           ~~(iii) has acted in a parental role for a length~~ has resided with the child for a  
10 significant period of time ~~sufficient to have;~~

11                   (ii) the petitioner has engaged in consistent caretaking of the child;

12                   (iii) the petitioner has established a bonded and dependent relationship  
13 with the child ~~that,~~ the relationship was supported by another parent of the child, and the  
14 petitioner and the other parent have accepted that relationship or behaved as though the petitioner  
15 is parental in nature; ~~or~~ a parent of the child;

16                   ~~(B) has exercised~~ (iv) the petitioner has accepted full and permanent  
17 parental responsibility without expectation of a financial compensation; and

18                   (v) the continuing relationship between the petitioner and the child  
19 pursuant is in the best interests of the child; or

20           (B) that before or after the child's birth, the petitioner entered into an agreement  
21 in a record or orally with each parent of the child to accept full and permanent parental  
22 responsibility and to raise the child together, except that if a parent has completely failed to a  
23 court order; exercise parental responsibility, the consent of the parent who failed to exercise

1 parental responsibility is not required.

2 **Reporter's Note:** At the November 2015 Drafting Committee meeting, we decided to  
3 move the definition of "de facto parent" to Section 5. After review of the act for style,  
4 however, the definition will stay in this section since the term is used in multiple sections.  
5 As agreed at the November 2015 Drafting Committee meeting, the definition of "de facto  
6 parent" is now based on the Maine statutory definition. The definition reduces some of  
7 the redundant words in the Maine statute – i.e., the phrases "fully and completely,"  
8 "fostered or supported," and "understood, acknowledged or accepted that or behaved as  
9 though the individual is a parent of the child." Ms. Behr also noted the issue of  
10 redundant words. See Appendix B of ULC Drafting Rules which is entitled "Do Not Use  
11 Redundant Couplets." The definition in this act uses the term "parental responsibility"  
12 (which we have been using and have separately defined in our act) rather than the Maine  
13 act's term of "parental role."

14  
15 (4) "Detriment to the child" means adverse effect ~~harm~~ to the child's physical or  
16 psychological well-being, including ~~adverse~~the effects resulting from interruption of a  
17 substantial beneficial relationship with the child or removal of the child from a stable placement  
18 of a child with a non-parent.

19 (5) "Domestic violence" means domestic violence as defined in [cite to definition of  
20 "domestic violence" in law of this state other than this [act]].

21 (6) "Electronic" means relating to technology having electrical, digital, magnetic,  
22 wireless, optical, electromagnetic, or similar capabilities.

23 (7) "Legal custody" means the power to make important decisions regarding a child.

24 **Reporter's Note:** Deborah Behr comments: "Definition of "Legal custody" is quite  
25 broad. Covers teachers, judges, etc." Our earlier definition was more specific, although  
26 the opening phrase is broad: "'Legal custody' means the power to make important  
27 decisions regarding a child, including decisions regarding the child's education, health  
28 care, and extracurricular activities.—.") Such a definition of "legal custody" is used in  
29 many states.

30  
31 ~~(6)~~

32  
33 (8) "Non-parent" mean an individual other than a parent, including a child's  
34 grandparents, great-grandparents, step-parents, and siblings.

1 (7)

2  
3 **Reporter's Note:** Ms. Behr raises the questions of whether we wish to include domestic  
4 partners in the definition. That seems reasonable to me. (I note that now that same-sex  
5 couples can marry, there are likely to be fewer people seeking domestic partnerships (or  
6 civil unions). She also notes that the definition is broad – “[i]ncludes any person in the  
7 world.” The definition is broad, in part, out of necessity to meet a variety of  
8 circumstances that may arise, and, in any case, before “non-parents” can obtain custody  
9 or visitation under this act, they must meet many criteria besides being a non-parent.

10  
11 (9) “Parent” means a person ~~defined~~recognized as a parent under ~~[insert reference to~~  
12 ~~other law in the~~of this state ~~that defines “parent.”]~~other than this [act].

13 (8)

14  
15 **Report's Note:** At the November 2015 Drafting Committee meeting, the committee  
16 asked that two alternative definitions of the following term -- “parental responsibility” --  
17 be placed in brackets. The committee will choose between them, and perhaps fine-tune  
18 the selection at the April 2016 meeting. I lean toward the second option, which is more  
19 precise, although I do not think we need the word “mental” as part of the definition.  
20 From my view, “mental needs” is an awkward phrase and is probably encompassed by  
21 “emotional, developmental, and educational needs.”

22  
23 (10) “Parental responsibility” means ~~the~~

24 **Alternative A**

25 [exercising care and control to provide for the health and welfare of the child~~in a manner~~  
26 ~~that provides.]~~

27 **Alternative B**

28 [providing for a child's well being, including the child's~~necessary~~ physical ~~needs, including~~  
29 ~~food, clothing and shelter, and provides for the mental and emotional health and development of~~  
30 ~~the child,~~ mental, emotional, developmental, and educational needs].

31 **(9) End of Alternatives**

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

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

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

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

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

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

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

16  
17 ~~(10)~~

18  
19 (16) “Visitation” means

20 **Alternative A**

21 [access to ~~the~~a child~~-.]~~

22 **Alternative B**

23 **Reporter’s Note**

24 —————*Depending on scope of the act, the following additional terms may need to be defined:*

25  
26 —————“Foster parent”

27 —————“Kinship care provider”

28  
29 —————The federal government’s definitions of these terms are provided in a memo from the  
30 reporter to the Drafting Committee entitled “Additional Issues for the Drafting Committee.”  
31 [End “Reporter’s note”]

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

33 **End of Alternatives**

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

8 **Comment**

9 The definition of “child” is ~~“an unemancipated individual who is less than the age of~~  
10 ~~majority.”~~same as that used in the Uniform Deployed Parents Custody and Visitation Act, §  
11 102(3) (2012). The age of majority in most states is 18, although some states set the age of  
12 majority at ~~18 or~~ graduation from high school, and a few states set the age higher than 18. The  
13 (B) portion of the definition includes adult children who are the subject of a court order  
14 concerning custodial responsibility, such as persons with a developmental disability. The  
15 Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) defines “Child” as “an  
16 individual who has not attained 18 years of age.” UCCJEA, § 102(2). ~~The definition in this act~~  
17 ~~adds the word “unemancipated” in order to make the definition more precise. [The first~~  
18 ~~definition of “child” does not include an adult child with a developmental disability. Rights to~~  
19 ~~custody of and visitation with adult children may be governed by a state’s guardianship laws.]~~  
20

21 **Reporter’s Note regarding definition of “child”**

22  
23 ~~\_\_\_\_\_ The committee should decide whether the definition of “child” will include adult disabled~~  
24 ~~children (like the Uniform Deployed Parents Custody and Visitation Act) or not include adult~~  
25 ~~disabled children (like the UCCJEA).~~  
26 ~~[End “Reporter’s Note”]~~  
27

28 ~~\_\_\_\_\_ The definition of “De facto parent of the child” is based on 13 Del.~~  
29 ~~Code § 8-201(e) (2015). This~~ In Family Law, the terms “custody” and “visitation” are flexible  
30 concepts. In most states, there is not a fixed amount of time the child spends with a parent who  
31 has “custody” or “visitation,” although some states utilize guidelines to specify the time the child  
32 spends with the noncustodial parent. Nonetheless, a person with “custody” provides the child  
33 with a home or primary home. The drafters anticipate that visitation granted to non-parents will  
34 be decided on the facts of each case rather than by guidelines. The definition of “custody”  
35 includes joint custody or shared custody as defined by other state law. Thus, under this act,  
36 courts have the option of granting a non-parent joint custody or shared custody (as well as sole  
37 custody).  
38

39 The definition of “de facto parent” is based on Maine Rev. Stat. tit. 19-A, § 1891 (2015),  
40 which also is similar to the definition in Delaware -- 13 Del. Code § 8-201(c) (2015). The  
41 Delaware definition includes the element that the person seeking status as a de facto parent “has  
42 acted in a parental role for a length of time sufficient to have established a bonded and dependent  
43 relationship with the child that is parental in nature.” Some states set specific time periods  
44 before a person may obtain custody as a de ~~factor~~facto custodian – e.g., six months or more if the  
45 child is under three years old, and one year or more if the child is three years of age or older.

1 See, e.g., Ky. Rev. Stat. 403.270 (2012); S.C. Code § 63-15-60 (2012). At least eleven states  
2 allow a non-parent to seek visitation if the child has lived with a person for a certain period of  
3 time, such as six or 12 months.  
4

5 The Washington Supreme Court in the case of *In re Parentage of L.B.*, 122 P.3d 161, 163  
6 (Wash. 2005) held that the state’s “common law recognizes the status of de facto parents and  
7 grants them standing to petition for a determination of the rights and responsibilities that  
8 accompany legal parentage in this state.” To establish standing as a de facto parent, the  
9 Washington Supreme Court adopted the following criteria:

- 10  
11        (1)        the natural or legal parent consented to and fostered the parent-like relationship,  
12        (2)        the petitioner and the child lived together in the same household,  
13        (3)        the petitioner assumed obligations of parenthood without expectation of financial  
14            compensation, and  
15        (4)        the petitioner has been in a parental role for a length of time sufficient to have  
16            established with the child a bonded, dependent relationship, parental in nature.  
17

18 *Id.* at 176 (citations omitted).  
19

20 The American Law Institute Principles of the Law of Family Dissolution § 2.03(1)(c)  
21 (2002) defines a de facto parent as “an individual other than a legal parent or a parent by estoppel  
22 who, for a significant period of time not less than two years, (i) lived with the child and, (ii) for  
23 reasons primarily other than financial compensation, and with the agreement of a legal parent to  
24 form a parent-child relationship, or as a result of a complete failure or inability of any legal  
25 parent to perform caretaking functions, (A) regularly performed a majority of the caretaking  
26 functions for the child, or (B) regularly performed a share of caretaking functions at least as great  
27 as that of the parent with whom the child primarily lived.”  
28

### 29 **Reporter’s Note regarding definition of “De facto parent of the child”**

30  
31 ~~At the last Drafting Committee meeting, we decided to move the definition of “de facto~~  
32 ~~parent” to the section on “Standing.” However, since the term is now used in more than one~~  
33 ~~section, the definition should remain in the “Definitions” section. [End “Reporter’s Note”]~~  
34

35 ~~In Family Law, the terms “custody” and “visitation” are flexible concepts. In~~  
36 ~~most states, there is not a fixed amount of time the child spends with a parent who has “custody”~~  
37 ~~or “visitation,” although some states utilize guidelines to specify the time the child spends with~~  
38 ~~the noncustodial parent. Nonetheless, a person with “custody” provides the child with a home or~~  
39 ~~primary home. The drafters anticipate that visitation granted to non-parents will be decided on~~  
40 ~~the facts of each case rather than by guidelines.~~ Some of the phrasing in the definition of “de  
41 facto parent” also is drawn from the American Law Institute’s Principles of the Law of Family  
42 Dissolution, § 2.03(1)(b) (2002). That section provides, as one of the alternative definitions of  
43 “parent by estoppel”: “an individual who, though not a legal parent, . . . (iii) lived with the child  
44 since the child’s birth, holding out and accepting full and permanent responsibilities as parent, as  
45 part of a prior co-parenting agreement with the child’s legal parent (or, if there are two legal  
46 parents, both parents) to raise a child together each with full parental rights and responsibilities.

1 when the court finds that recognition of the individual as a parent is in the child’s best interests.”  
2

3 This section provides two alternate bases by which a petitioner can be determined by the  
4 court to be a de facto parent. There is overlap between the bases, as well as a difference between  
5 the bases. The first basis [subsection (a)] requires that “the petitioner has completely undertaken  
6 permanent, unequivocal, committed parental responsibility in the child’s life,” and requires that  
7 the court make five findings. The second basis [subsection (b)] requires that there be “an  
8 agreement . . . to accept full and permanent parental responsibility and to raise the child  
9 together.” Both bases require agreement or consent of the parents for the petitioner to become a  
10 de facto parent (except consent of a parent is not necessary under the second basis if a parent has  
11 completely failed to exercise parental responsibility). The first basis focuses the quality and  
12 duration of the petitioner’s relationship with the child. The second basis focuses on the existence  
13 of an agreement, and the agreement could be enforced soon after the child’s birth even if the  
14 child and petitioner have not had a long-term relationship.  
15

16 The definition of “Detriment to the child” is based on Cal. Fam.  
17

18 Code § 3041(c) (2016) (a section entitled “Custody award to nonparent; findings of court;  
19 hearing”). That section provides: “As used in this section, ‘detriment to the child’ includes the  
20 harm of removal from a stable placement of a child with a person who has assumed, on a day-to-  
21 day basis, the role of his or her parent, fulfilling both the child’s physical needs and the child’s  
22 psychological needs for care and affection, and who has assumed that role for a substantial  
23 period of time. A finding of detriment does not require any finding of unfitness of the parents.”  
24

25 The definitions of “electronic” and “record” are the definitions provided by the Uniform  
26 Law Commission “Drafting Rules,” Rule 304 (2012).  
27

28 The definition of “legal custody” is “the power to make important decisions regarding a  
29 child, ~~including.” Such decisions regarding include~~ the child’s education, health care, and  
30 extracurricular activities.” ~~The list is non-exclusive, but it does not explicitly.~~ “Legal custody”  
31 ~~might~~ include the power to enroll a child in a religious training, school, but it normally should not  
32 include selection of a child’s religion since most courts have held both parents have a right to  
33 expose their child to his or her religious beliefs (or lack of religious beliefs). *See, e.g., Felton v.*  
34 *Felton*, 383 Mass. 232, 418 N.E.2d 606 (1981); *In re Marriage of Mentry*, 142 Cal. App 260,  
35 190 Cal. Rptr. 843 (1983); *Hansen v. Hansen*, 404 N.W.2d 460 (N.D. 1987).  
36

37 ~~———— The definition of “Detriment to the child” is based, in part, on Cal. Fam. Code~~  
38 ~~§ 3041(c) (2012) (a section entitled “Custody award to nonparent; findings of court; hearing”).~~  
39

40 The definition of “parent” is “a person ~~defined~~ recognized as a parent under ~~the~~ law of  
41 this state.” other than this [act].” The sources of the definition of “parent” may include the  
42 state’s parentage statutes, divorce statutes, and case law. In most states, “parent” would include  
43 biological parents, adoptive parents, and men who have acknowledged paternity (even though  
44 they are not biologically related to the child). “Parent” also might include persons who agree to  
45 conceive a child through assisted reproductive technology or by use of surrogates. Generally, a  
46 person ceases to be a parent if his or her rights have been terminated. In addition, a man who

1 donates sperm or a woman who donates an egg usually are not considered to be parents.

2  
3 The definition of “parental responsibility” is based, in part, on Del. Code Ann. tit. 13  
4 Del. Code § 1101(10) (2015)-13, § 1101(10) (2016), which provides: “Parental responsibilities’  
5 means the care, support and control of the child in a manner that provides for the child’s  
6 necessary physical needs, including adequate food, clothing and shelter, and that also provides  
7 for the mental and emotional health and development of such child.” Payment for the child’s  
8 food, clothing, shelter, and other physical needs is not enough, by itself, to constitute exercise of  
9 parental responsibility.

### 10 **Reporter’s Note about definition of “parent” and other terms**

11  
12  
13 ~~—— The Drafting Committee has been directed not to modify the Uniform Parentage Act~~  
14 ~~(UPA) (2002) regarding the definition of “parent.” The UPA— which has been enacted in nine~~  
15 ~~states— provides the following provisions regarding the definition of “parent”:~~

16  
17 ~~—— § 102(13) provides: “Parent” means an individual who has established a parent-child~~  
18 ~~relationship under Section 201.”~~

19  
20 ~~—— § 201 regarding “Establishment of Parent-Child Relationship,” provides:~~

21  
22 ~~—— (a) The mother-child relationship is established between a woman and a child by:~~

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

25 ~~(2) an adjudication of the woman’s maternity; [or]~~

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

27 ~~(4) an adjudication confirming the woman as a parent of a child born to a~~  
28 ~~gestational mother if the agreement was validated under [Article] 8 or is~~  
29 ~~enforceable under other law].~~

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

31 ~~(1) an un rebutted presumption of the man’s paternity of the child under~~  
32 ~~Section 204;~~

33 ~~(2) an effective acknowledgment of paternity by the man under [Article] 3,~~  
34 ~~unless the acknowledgment has been rescinded or successfully challenged;~~

35 ~~(3) an adjudication of the man’s paternity;~~

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

37 ~~(5) the man’s having consented to assisted reproduction by a woman under~~  
38 ~~[Article] 7 which resulted in the birth of the child [; or~~

39 ~~(6) an adjudication confirming the man as a parent of a child born to a~~  
40 ~~gestational mother if the agreement was validated under [Article] 8 or is~~  
41 ~~enforceable under other law].~~

42  
43 ~~—— Delaware amended the state’s Uniform Parentage Act to add to the list of bases for~~  
44 ~~establishing a parent-child relationship “[a] determination by the court that the woman [or the~~  
45 ~~man] is a de facto parent of the child.” Del. Code— The definition of “parenting time” is made  
46 with reference to law of the state other than this act. The term is a comparatively modern term~~

1 designed to supplement or replace the terms “custody” and “visitation,” particularly in disputes  
2 between parents. The term is used to focus on parenting of the child and allocation of time with  
3 the child rather than which parent has “custody.” The Illinois definition of “parenting time” is:  
4 “the time during which a parent is responsible for exercising caretaking functions and non-  
5 significant decision-making responsibilities with respect to the child.” 750 Ill. Comp. Stat. 5/600  
6 (e) (2016).

7  
8 **Reporter’s Note:** Regarding the section on “Pleadings,” the Drafting Committee agreed  
9 that pleadings should include information required by the Uniform Child Custody  
10 Jurisdiction and Enforcement Act (UCCJEA). The committee also asked that the reporter  
11 prepare an alternate “Pleadings” section, which would include an “ideal” list of specific  
12 items to be included in pleadings, taking into consideration the suggestions of the  
13 National Organization for Women Foundation. Below are two alternatives: Alternative  
14 A, which is the original pleadings section with the addition of reference to the UCCJEA,  
15 and Alternative B, which includes a more detailed list specific items to be included in the  
16 pleadings.

17 ~~tit. 13, § 8-201 (2015).~~

18  
19 ~~—————The earlier version of the Uniform Parentage Act, § 1 Act (1973) — which was adopted in~~  
20 ~~14 states and portions of it adopted in other states — provides: “As used in this Act, ‘parent and~~  
21 ~~child relationship’ means the legal relationship existing between a child and his natural or~~  
22 ~~adoptive parents incident to which the law confers or imposes rights, privileges, duties, and~~  
23 ~~obligations. It includes the mother and child relationship and the father and child relationship.”~~  
24

25 ~~—————The Drafting Committee discussed using the term, and having a definition of, “legal~~  
26 ~~parent.” If the definition of “parent” is “a person defined as a parent under the law of this state,”~~  
27 ~~we probably do not need the term “legal parent.”~~  
28

29 ~~—————For the committee’s reference, here are related definitions and commentary from other~~  
30 ~~uniform acts and from Black’s Law Dictionary:~~

31  
32 ~~The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), § 2(14)~~  
33 ~~(1997) provides: “Physical custody” means the physical care and supervision of a child.”~~  
34

35 ~~The Uniform Deployed Parents Custody and Visitation Act (UDPCVA), § 102 (2012)~~  
36 ~~provides the following definitions:~~

37  
38 ~~(2) “Caretaking authority” means the right to live with and care for a child on a day-to-~~  
39 ~~day basis. The term includes physical custody, parenting time, right to access, and~~  
40 ~~visitation.~~

41  
42 ~~(5) “Custodial responsibility” includes all powers and duties relating to caretaking~~  
43 ~~authority and decision-making authority for a child. The term includes physical custody,~~  
44 ~~legal custody, parenting time, right to access, visitation, and authority to grant limited~~  
45 ~~contact with a child.~~

1 (6) “Decision-making authority” means the power to make important decisions regarding  
2 a child, including decisions regarding the child’s education, religious training, health  
3 care, extracurricular activities, and travel. The term does not include the power to make  
4 decisions that necessarily accompany a grant of caretaking authority.  
5

6 A **Comment** to the definition section of the UDPCVA states:  
7

8 “The UDPCVA establishes one umbrella term, “custodial responsibility,” for all issues  
9 relating to custody, including the responsibility often referred to in other state custody  
10 law as physical custody, visitation, and legal custody. The Act also establishes three sub-  
11 categories of custodial responsibility that can be transferred to others during deployment:  
12 “caretaking authority,” “decision-making authority,” and “limited contact.” The  
13 terminology used for each of these sub-categories is original to the UDPCVA. The term  
14 “caretaking authority” is meant to encompass the authority to live with, spend time with,  
15 or visit with a child. States often use a number of terms that fall within this definition,  
16 including “primary physical custody,” “secondary physical custody,” “visitation,” and  
17 “possessory conservatorship.” All these are meant to be subsumed under the term  
18 “caretaking authority.”  
19

20 In contrast, the term “decision-making authority” means the authority to make decisions  
21 about a child’s life beyond the authority that ordinarily accompanies a transfer of  
22 caretaking authority under state custody law. This term is meant to encompass the  
23 authority referred to in many states as “legal custody,” including the authority reasonably  
24 necessary to make decisions such as the ability to enroll the child in a local school, to  
25 deal with health care, to participate in religious training, and to allow the child to engage  
26 in extracurricular activities and travel.  
27

28 Finally, the term “limited contact” refers to a form of visitation with the child given to  
29 nonparents on the request of a deployed service member. This type of visitation allows  
30 the service member to sustain his or her relationship with the child through designating  
31 either a family member or other person with whom the child has a close relationship to  
32 spend time with the child during the service member’s absence. The limited contact  
33 definition allows the possibility that it may be granted to minors as well as adults. Thus a  
34 minor half-sibling or step-sibling of the child could be granted limited contact during a  
35 service member’s deployment. This type of contact with the child is a more limited form  
36 of visitation than courts usually grant to parents or grandparents outside the deployment  
37 context.”

38 Black's Law Dictionary (10th ed. 2014) provides definitions of the following terms:  
39

40 “Physical custody” — “The right to have the child live with the person awarded custody  
41 by the court.”  
42

43 “Visitation” — “A relative’s, esp. a noncustodial parent’s, period of access to a child.  
44 Also termed parental access; access; parenting time; residential time.”  
45



1 disposition of non-meritorious cases by motions to dismiss or for summary judgment.  
2

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

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

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

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

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

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

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

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

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

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

11 **SECTION 4. JURISDICTION.** ~~A petition seeking non-parental custody or visitation~~  
12 ~~may be filed only in a court that has jurisdiction under [insert citation to the Uniform Child~~  
13 ~~Custody Jurisdiction and Enforcement Act].~~

14 **Alternative A**

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

18 **Alternative B**

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

22 **End of Alternatives**

23 **Comment**

24  
25 The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (1997) has  
26 been adopted in 49 states. As of ~~October 2015~~February 2016, Massachusetts is the only state  
27 that has not adopted the UCCJEA, although Massachusetts did adopt the Uniform Child Custody  
28 Jurisdiction Act (UCCJA). The Uniform Law Commission has promulgated a 2013 version of  
29 the UCCJEA (to cover international issues) as well as domestic issues. As of ~~October~~  
30 ~~2015~~February 2016, the 2013 UCCJEA has not been adopted in any states.

31  
32 If at the time a petition is filed under this act, an action is already pending regarding the  
33 same child, the petition should be filed as part of the pending action (assuming the pending

1 action is filed in compliance with the UCCJEA).

2  
3 Jurisdiction over Native American children is governed by the Indian Child Welfare Act,  
4 25 U.S.C. §§ 1901 et seq. (2015).

5  
6 **Reporter’s Note:** Perhaps the preceding sentence (or concept) should be in the text of  
7 the act. Ms. Behr asks if we “need a scope section for whether Indian children covered  
8 by the Indian Child Welfare Act are included under the Act?”

9 Inclusion of such a scope section seems like a useful reminder to litigants and courts  
10 (although, in a technical sense, the scope section is not necessary since the Indian Child  
11 Welfare Act preempts any inconsistent state law). The Uniform Child Custody  
12 Jurisdiction and Enforcement Act (UCCJEA) has a scope provision. Section 104(a) of  
13 the UCCJEA – entitled “Application To Indian Tribes” – provides: “A child-custody  
14 proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25  
15 U.S.C. 1901 et seq., is not subject to this [act] to the extent that it is governed by the  
16 Indian Child Welfare Act.” On the other hand, the Uniform Deployed Parents Custody  
17 and Visitation Act and the Uniform Child Abduction Prevention Act do not have such a  
18 provision.

19  
20 **SECTION 5. ~~PERSONS WHO MAY BRING ACTION [STANDING].~~ INITIAL**

21 **PETITION BY DE FACTO PARENT.**

22 ~~[A non-parent may bring an action for [may seek] custody or visitation]~~

23 ~~[A non-parent has standing to seek custody or visitation] if:~~

24 ~~(1) before the child’s birth, the non-parent entered into a written [or oral] agreement with~~  
25 ~~the child’s parent or parents, if the child has more than one parent, to accept full and permanent~~  
26 ~~responsibilities as a parent and to raise the child together;—~~

27 ~~(2) the non-parent~~ (a) An individual who has served as a de facto parent of the may file an  
28 initial petition for custody of or visitation with the child;

29 ~~(3b) The court shall adjudicate a petitioner to be a de facto parent if the court finds by~~  
30 clear and convincing evidence that the petitioner is a de facto parent.

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

33 **Reporter’s Note:** Ms. Behr comments that although some sections refer to “Initial

1 Petition[s],” there is no mention of “Subsequent Petitions.” (The differentiation the  
2 Drafting Committee made was between “Initial Petition[s]” and actions to modify  
3 existing orders.” Ms. Behr suggested we might use the word “commence” for initial  
4 actions. I think that verb has some ambiguity since both an initial action and a  
5 modification action can be “commenced.” For this draft, I tried to deal with Ms. Behr’s  
6 concern by keeping the phrase “Initial Petition” and adding the phrase “Petition to  
7 Modify.”

8  
9 **Comment** ~~both parents are deceased, incapacitated, [or unfit], or there has been a complete~~  
10 ~~failure of the parents to exercise parental responsibility—[and a substantial relationship exists~~  
11 ~~between the child and the non-parent]; or~~

12 (4) ~~denial of~~

13 “De facto parent” is defined in the definition section of this act [Section 2(3)]. As noted  
14 in the Comment to that section, a trend in the law is to grant rights by statute or case law to de  
15 facto parents to seek custody or visitation to the non-parent would be a detriment to the child,  
16 and a substantial relationship exists between the child and the non-parent.—

17 **Comment**

18 ~~———The requirement of a standing [The designation of . States which provide that de facto~~  
19 ~~parents (or persons who may bring an action] serves to protect the interests of parents and filter~~  
20 ~~out cases in which the non-parent does not have a meritorious claim, while at the same time~~  
21 ~~allowing the opportunity to preserve relationships between children and non-parents within~~  
22 ~~whom the children have a particularly close relationship. Many states provide that a non-parent~~  
23 ~~has standing if that person has served as a de facto parent (or stood in loco parentis) to the child—~~  
24 ~~e.g.,) have standing to seek custody or visitation include: AZ, CT, DE, HA, IN, KY, MN, MT,~~  
25 ~~PA, WA. A related concept is that the an individual may seek visitation (or custody) if the child~~  
26 ~~has been residing with the person seeking custody individual for a certain period of time – e.g.,~~  
27 ~~CA, MI, NV, WI. In Illinois, a non-parent has standing if the child is not in custody of a parent.~~  
28

29 ~~———The act provides four alternative bases for standing. ——— The first basis for standing—~~  
30 ~~an agreement to prior to the child’s birth for the non-parent to accept responsibilities as a parent~~  
31 ~~—right of de facto parents to seek custody or visitation applies to couples of the same sex or~~  
32 ~~different sex who agree to raise a child together, even though only one of the parties is related to~~  
33 ~~the child by genetics, adoption, or other bases for parenthood recognized by the state. Some of~~  
34 ~~the phrasing in this subsection is drawn from the American Law Institute’s Principles of the Law~~  
35 ~~of Family Dissolution, § 2.03(1)(b) (2002). That section provides, as one of the alternative~~  
36 ~~definitions of “parent by estoppel”: “an individual who, though not a legal parent, . . . (iii) lived~~  
37 ~~with the child since the child’s birth, holding out and accepting full and permanent~~

1 ~~responsibilities as parent, as part of a prior co-parenting agreement with the child’s legal parent~~  
2 ~~(or, if there are two legal parents, both parents) to raise a child together each with full parental~~  
3 ~~rights and responsibilities, when the court finds that recognition of the individual as a parent is in~~  
4 ~~the child’s best interests.”~~

5  
6 Regarding This section [coupled with the second basis for standing—service as a  
7 definition of “de facto parent—if a state’s law already” in Section 2(3)(b)] provides that a de  
8 facto parent is a “who has entered into an agreement with the parent,” then that existing law  
9 gives the de facto parent standing, and this act would not apply.

10  
11 ~~[A comment is likely “to be inserted about third basis of standing—“accept full and permanent~~  
12 ~~parental responsibility and to raise the child together” “has the same right to custody, visitation,~~  
13 ~~or parenting time as a parent.” Agreements between parents regarding custody of children have~~  
14 ~~been held to be of “constitutional magnitude” and entitled to presumptive enforcement. *In re*~~  
15 ~~*Marriage of Coulter and Trinidad*, 2012 IL 113474, 364 Ill. Dec. 59, 976 N.E.2d 337, 342~~  
16 ~~(enforcing an agreement between parents regarding future relocation of the children). *See also*~~  
17 ~~*Frazier v. Goudschaal*, 296 Kan. 730, 295 P.3d 542 (2013) (enforcing a coparenting agreement~~  
18 ~~between members of a same-sex couple); *Fawzy v. Fawzy*, 199 N.J. 456, 973 A.2d 347, 350~~  
19 ~~(2009) (enforcing parents’ agreement to arbitrate a custody dispute). *both parents are deceased,*~~  
20 ~~*incapacitated, [or unfit], or there has been a complete failure of the parents to exercise parental*~~  
21 ~~*responsibility*—[and~~

22  
23 In this section (as well as in Section 6 and 7) the standards for being able to obtain  
24 custody or visitation are the same.

25  
26 **SECTION 6. INITIAL PETITION BY NON-PARENT OF CHILD IN CUSTODY**  
27 **OF PARENT OR DE FACTO PARENT.**

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

31 (1) a substantial relationship exists between the child and the non-parent.”], and

32 (2) the denial of custody or visitation to the non-parent would be a detriment to  
33 the child.

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

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

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

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

4 Comment

5 ~~————The fourth basis for standing provides that a non-parent party has standing to seek~~  
6 ~~custody or visitation if “denial of custody or visitation to the non-parent would be a detriment to~~  
7 ~~the child, and a substantial relationship exists between the child and the non-parent.” That~~  
8 ~~criteria is designed to reflect the holding of the U.S. Supreme Court in *Troxel v. Granville*, 530~~  
9 ~~(2000), in which the Court struck down Washington State’s third party visitation statute as~~  
10 ~~applied. Justice O’Connor, in a plurality decision, said “The Superior Court’s order was not~~  
11 ~~founded on any special factors that might justify the State’s interference with Granville’s~~  
12 ~~fundamental right to make decisions concerning the rearing of her two daughters.” *Id.* at 68.~~

13  
14 ~~————The statutes of many states specify categories of persons who may seek visitation. E.g.,~~  
15 ~~grandparents, great-grandparents, stepparents, siblings, or persons who have raised the child for a~~  
16 ~~certain period of time. In addition, This section governs requests for custody or visitation by a~~  
17 ~~non-parent when the child is in the custody of a parent or de facto parent. Section 2(8) defines~~  
18 ~~“non-parent” as “an individual other than a parent, including a child’s grandparents, great-~~  
19 ~~grandparents, step-parents, and siblings.” The most common persons seeking custody or~~  
20 ~~visitation will be one of the specifically listed categories of individuals, but the definition allows~~  
21 ~~others to seek custody or visitation if the requirements of the act are met.~~

22  
23 ~~The statutes of~~ many states specify the circumstances in which visitation may be sought –  
24 circumstances which often involve some disruption of the family – e.g., divorce, separation,  
25 death of a parent, or a child born ~~out~~outside of ~~wedlock~~marriage. ~~These~~The categories of  
26 persons who may seek visitation and the broad description of circumstances in which visitation  
27 may be sought do not, by themselves, provide a reliable indicator of whether non-parental  
28 visitation (or custody) should be allowed. It is preferable to focus on the factors used to decide  
29 visitation or custody, particularly the closeness of the relationship between the child and the non-  
30 parent.

31  
32 ~~————This act does not set a maximum number of persons who may obtain rights of custody or~~  
33 ~~visitation. In most cases, the number of actively involved parental figures probably will not be~~  
34 ~~large. As courts sort through complex family structures, the number of persons acting in a~~  
35 ~~parental role is a factor that should be considered — but without applying a fixed rule about how~~  
36 ~~many parental figures with rights to time with the child is too many. The focus needs to remain~~  
37 ~~on the best interests of the child.~~

38 The presumption

39 **Reporter’s Note**

40  
41 ~~————Additional comments and other options regarding standing:~~

1 ~~1. This section has been retitled “Persons who may bring action,” which reflects the~~  
2 ~~preference of several members of the Drafting Committee. The prior title of the section—~~  
3 ~~“Standing” is in brackets in the event members of the Drafting Committee wish to discuss the~~  
4 ~~issue of title further.—~~

5  
6 ~~2. Regarding the nature of agreement to raise a child together:~~

7  
8 ~~Should oral agreements be sufficient (as well as written agreements)?~~

9 ~~Could an agreement be shown by conduct?~~

10 ~~Should there be a requirement of heightened burden of proof in this section, such—~~  
11 ~~as clear and convincing evidence (there already is such a burden in Section 6)?~~

12 ~~Should there be any requirement about when the agreement must take place—e.g.,~~  
13 ~~before conception, before birth, before the child is of a certain age?~~

14  
15 ~~3. Should there be a time limit within which a non-parent seeking rights by~~  
16 ~~agreement must exercise that right—e.g., a certain number of months or years from the time the~~  
17 ~~non-parent has not been living with or visiting with the child? (The length and duration of the~~  
18 ~~relationship between child and non-parent are factors in granting relief—See Section 8.)~~

19  
20 ~~4. Note that under Section 5(1), conferring standing by agreement requires~~  
21 ~~agreement of all parents. Thus, for example, if a married couple had child, and the couple~~  
22 ~~divorced, one parent could not use this provision to confer parental rights to seek custody or~~  
23 ~~visitation to a new spouse or partner over the objection of the other parent. If the act provides~~  
24 ~~standing for de facto parents, that might be a separate basis for conferring standing to the non-~~  
25 ~~parent, although the definition of de facto parent, as currently drafted, also requires “the support~~  
26 ~~and consent of the child’s parent or parents to foster the formation and establishment of a parent-~~  
27 ~~like relationship between the child and the de facto parent.”~~

28  
29 ~~5. Regarding consent required for to raise a child together or to attain status as de~~  
30 ~~facto parent, the following issue was raised at the first Drafting Committee meeting: How to~~  
31 ~~handle a case in which one parent leaves before the child’s birth or during the child’s infancy;~~  
32 ~~the remaining parent has a new partner (perhaps a stepparent); and the parent and new partner~~  
33 ~~agree to raise the child together? Is consent required from the departed parent in order for the~~  
34 ~~new partner to become a de facto parent or a parent by agreement?~~

35  
36 ~~6. Should the act utilize the term “de facto parent”? “De facto parent” (or “in loco~~  
37 ~~parentis” is a useful concept, reflecting a trend in case law and statutory law of several states.~~  
38 ~~Inclusion of the term in this act does not revise the Uniform Parentage Act, although use of the~~  
39 ~~term will expand the rights of certain persons to seek custody and visitation.~~

40  
41 ~~7. There is overlap between the provision of “agreement to accept full and~~  
42 ~~permanent responsibilities as a parent and to raise the child together” and the “de facto parent”~~  
43 ~~provision. Both, as drafted, require agreement or consent of the parents. The “agreement”~~  
44 ~~provisions focuses on the existence of an agreement, and presumably could be enforced soon~~  
45 ~~after the child’s birth even if the child and non-parent have not had a long-term relationship. The~~  
46 ~~“de facto provision” focuses more on the quality and duration of the relationship between the~~

1 child and the non-parent. The definition of “de facto parent” provides the de facto parent “...  
2 (ii) has exercised parental responsibility for the child; and (iii) has acted in a parental role for a  
3 length of time sufficient to have established a bonded and dependent relationship with the child  
4 that is parental in nature”).

5  
6 ——— 8. ——— Note that an enforceable agreement to raise a child together could be viewed as an  
7 alternative to (or a bypass of) adoption laws—at least for the purpose of custody and visitation.  
8 Presumably this act—which focuses on custody and visitation—will not modify other areas of  
9 law, such as Probate Law and rights to compensation for personal injury.

10  
11 ——— 9. ——— A prior draft of the third basis for standing [regarding both parents being deceased  
12 or incapacitated] also required that “a substantial relationship exists between the child and the  
13 non-parent.” Perhaps it is better to leave out that requirement in order to allow for cases in  
14 which the parents are deceased or incapacitated; the child needs to be placed somewhere; and the  
15 non-parent seems to be good candidate for custody, even if the non-parent’s relationship with the  
16 child is not currently substantial. ———

17  
18 ——— 10. ——— An interesting issue related to this section (or another section): How to handle  
19 cases in which the non-parent’s level of relationship with the children varies. For example,  
20 assume the grandparents helped raise a child who is now 10 years old and have a very close  
21 relationship with that child. The parents have a second child, who is one year old at the time the  
22 grandparents seek visitation. The grandparents have a moderate relationship with the second  
23 child, but never raised the child on a day-to-day basis. If the grandparent can meet the criteria  
24 for visitation with the first child, should they also be able to obtain visitation with the second  
25 child, or should they be prevented from doing so?

26  
27 ——— 11. ——— Another issue: What if non-parents (e.g., grandparents) sought to have substantial  
28 relationship with child, but were not able to because parent(s) unreasonably blocked the  
29 relationship? To what degree does *Troxel* permit fit parents to be arbitrary in their decisions?

30  
31 ——— 12. ——— Should non-parent visitation be allowed to continue following adoption of a child  
32 by a relative? (Many state laws so provide.)

33  
34 ——— 13. ——— A broad issue for consideration by the Drafting Committee will be the  
35 impact of the U.S. Supreme Court decision on same-sex marriage (*Obergefell v. Hodges*). [The  
36 ULC has recently established a study committee that will follow developments at the Supreme  
37 Court and make recommendations as to whether the Uniform Parentage Act or other ULC acts  
38 should be revised in light of the Supreme Court decision.] [End “Reporter’s Note”]

## 39 40 ——— **SECTION 6. PRESUMPTIONS AND BURDEN OF PROOF IN INITIAL**

41 **ACTIONS.** In initial actions for custody or visitation:

42 ——— (a) Agreement to raise a child together. A non-parent found by [a preponderance of the  
43 evidence] [clear and convincing evidence] to have entered into a written [or oral] agreement

1 under Section 5(1) before the child's birth has the same right as the parent to obtain custody and  
2 visitation.

3 ~~—— (b) Initial action for custody between parent and non parent. In other actions for custody  
4 of a child between a parent and a non parent, there is a rebuttable presumption that parental  
5 custody is in the best interests of the child. The non parent seeking custody must rebut the  
6 presumption by [clear and convincing evidence] [a preponderance of the evidence] that custody  
7 with the non parent is in the best interests of the child and that custody with the parent would be  
8 a detriment to the child. Proof of parental unfitness is not required to rebut the presumption.~~

9 ~~—— (c) Initial action for custody between two or more non parents. In an initial action for  
10 custody of a child between two or more non parents, there is no presumption that custody should  
11 be given to a particular party. The burden of persuasion to show the best interests of the child is  
12 by [a preponderance of the evidence] [clear and convincing evidence]. If an action for custody  
13 between two or more non parents is brought under law of this state other than this act, the other  
14 law applies.~~

15 ~~—— (d) Initial action for visitation when child in custody of parent or non parent under  
16 agreement to raise child together. In an initial action regarding visitation when the child is in the  
17 custody of a parent or a non parent who has been found to have entered into a written [or oral]  
18 agreement Section 5(1) to raise a child together, there is a rebuttable presumption that the  
19 custodian's decision about visitation is in the best interests of the child. To rebut the  
20 presumption, the non parent seeking visitation must establish by [clear and convincing evidence]  
21 [a preponderance of the evidence] (i) that absence of visitation will be a detriment to the child [or  
22 that special factors exist to justify the visitation — *probably delete this bracketed phrase*] and (ii)  
23 that the visitation will be in the best interests of the child.~~

1 ~~[Reporter’s query to the Drafting Committee: Did the Committee wish to include de facto~~  
2 ~~parents in this section so that the categories of persons entitled to a presumption in favor of their~~  
3 ~~decisions will include: (1) parents, (2) non-parents who have been found to have entered into a~~  
4 ~~valid written [or oral] agreement to raise a child together under Section 5(1), and (3) de facto~~  
5 ~~parents? If so, subsection (e) also will need to be revised.]~~  
6

7 ~~———— (e) Initial action for visitation when child in custody of non-parent with no agreement to~~  
8 ~~raise a child together. In an initial action regarding visitation with a child when the child is in the~~  
9 ~~custody of a non-parent with whom there is not an agreement to raise the child together, the court~~  
10 ~~must allow visitation by a non-parent if the party seeking visitation establishes by [a~~  
11 ~~preponderance of the evidence] [clear and convincing evidence] that visitation is in the best~~  
12 ~~interests of the child.~~

### 13 **Comment**

14 ~~———— This section governs initial actions by non-parents for custody and visitation.~~  
15 ~~Modification of orders is governed by Section 7.~~

16 ~~———— Subparagraph (a) provides that a non-parent who has entered into a valid written [or oral]~~  
17 ~~agreement with a child’s parent(s) to raise a child together have the same rights to obtain custody~~  
18 ~~and visitation as the parent. Agreements between parents regarding custody of children have~~  
19 ~~been held to be of “constitutional magnitude” and entitled to presumptive enforcement. *In re*~~  
20 ~~*Marriage of Coulter and Trinidad*, 2012 IL 113474, 364 Ill. Dec. 59, 976 N.E.2d 337, 342~~  
21 ~~(enforcing an agreement between parents regarding future relocation of the children). *See also*~~  
22 ~~*Frazier v. Goudschaal*, 296 Kan. 730, 295 P.3d 542 (2013) (enforcing a coparenting agreement~~  
23 ~~between members of a same-sex couple); *Fawzy v. Fawzy*, 199 N.J. 456, 973 A.2d 347, 350~~  
24 ~~(2009) (enforcing parents’ agreement to arbitrate a custody dispute).~~  
25

26 ~~———— The presumption and burden of proof in subparagraph (b) recognize the superior right of~~  
27 ~~parents to custody of their children in custody disputes with non-parents, and also provides that~~  
28 ~~the superior right or presumption can be overcome. The standard in subparagraph (b) is similar~~  
29 ~~to Pa. Stat. Ann. tit. 23, § 5327(b) (2015).~~

30 ~~———— As stated in Black’s Law Dictionary, “The Burden of proof includes both the burden of~~  
31 ~~persuasion and the burden of production.” Black’s Law Dictionary (7<sup>th</sup> ed. 1999).~~  
32

33 ~~———— The presumption and burden of proof in the first two sentences of subparagraph (c),~~  
34 ~~regarding custody disputes between non-parents, is based on Pa. Stat. tit. 23, § 5327(c) (2015).~~  
35 ~~The third sentence of subparagraph (b) provides: “If an action for custody between two or more~~  
36 ~~third parties is brought under a law other than this act, the other law shall govern.” Thus, if a~~  
37 ~~state has law governing custody of children who are in foster care, the foster care law of that~~  
38 ~~state shall govern.” Thus, if a state has law governing custody of children who are in foster care, the foster care law of that~~  
39

1 ~~state would govern. If an action is brought under a state’s guardianship laws, the guardianship~~  
2 ~~laws would control.~~

3  
4 The presumption and burden of proof ~~in subparagraph (d), regarding visitation disputes~~  
5 ~~between a parent and a non-parent, applies the standard in~~ is designed to meet the requirements  
6 of *Troxel v. Granville*, 530 U.S. 57 (2000), in which the Supreme Court struck down Washington  
7 State’s third party visitation statute as applied. Justice O’Connor, in a plurality decision, said the  
8 Washington statute “contains no requirement that a court accord the parent’s decision any  
9 presumption of validity or any weight whatsoever.” *Id.* at 67, 120 S.Ct. at 2061. “The Superior  
10 Court’s order was not founded on any special factors that might justify the State’s interference  
11 with Granville’s fundamental right to make decisions concerning the rearing of her two  
12 daughters.” *Id.* at 68, 120 S.Ct. at 2061.

13  
14 In the years since *Troxel* was decided, state courts have generally held that a  
15 grandparent’s claim that ~~they have~~ the grandparent has a positive relationship with ~~their~~ the  
16 grandchild is not sufficient to justify an order of visitation over the objection of a parent. *See,*  
17 *e.g., Neal v. Lee*, 2000 Ok 90, 14 P.3d 547 (2000); *State Dept. of Social and Rehabilitative*  
18 *Services v. Paillet*, 16 P.3d 962 (2001); *Flynn v. Henkel*, 227 Ill.2d 176, 880 N.E.2d 166 (2007).  
19 On the other hand, if the grandparent has a substantial relationship with the grandchild – such as  
20 raising the child for a few years – that can be the basis for granting visitation to the grandparent  
21 over the parents’ objection. *See, e.g., Rideout v. Riendeau*, 761 A.2d 291 (Me. 2000) (the  
22 grandparents had helped raise their grandchildren for the first seven years of the oldest  
23 grandchild’s life and for lesser periods for the younger grandchildren); *E.S. v. P.D.*, 8 N.Y.3d  
24 150, 863 N.E.2d 100 (2007) (grandparents cared for children while the mother was dying of  
25 cancer).

26  
27 ~~Subparagraph (e) governs initial actions for visitation when child in custody of non-~~  
28 ~~parent with no agreement to raise a child together. Since~~ This act does not set a maximum  
29 number of persons who may obtain rights of custody or visitation. In most cases, the number of  
30 actively involved parental figures probably will not be large. As courts sort through complex  
31 family structures, the number of persons acting in a parental role is a factor that should be  
32 considered -- but without applying a fixed rule about how many parental figures with rights to  
33 time with the child is too many. The focus needs to remain on the best interests of the child.

34  
35 **SECTION 7. INITIAL PETITION BY NON-PARENT OF CHILD NOT IN**  
36 **CUSTODY OF PARENT OR DE FACTO PARENT.**

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

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

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

6 **Comment**

7 This section governs custody and visitation disputes when the child is not in the custody  
8 of a parent or de facto parent. The non-parent needs to demonstrate a substantial relationship  
9 exists between the child and the non-parent and establish by clear and convincing evidence that  
10 custody or visitation for the non-parent is in the best interests of the child. If the petitioner does  
11 not prove his or her case by clear and convincing evidence, other laws – such as guardianship  
12 laws – are available to decide custody and visitation issues. In cases in which the dispute does  
13 not involve a parent, the Supreme Court’s holding in *Troxel* regarding giving deference to a  
14 parent’s decision does not apply, and visitation may be granted if it is in the best interests of the  
15 child to do so.

16  
17 Subsection (b) is similar to 23 Pa. Stat. and Cons. Stat. Ann. § 5327(c) (West 2016),  
18 which provides: “In any action regarding the custody of the child between a nonparent and  
19 another nonparent, there shall be no presumption that custody should be awarded to a particular  
20 party.”

21  
22 **Reporter’s Note:** Before review for style, this draft had a subsection (d), which  
23 provided: “If a non-parent’s petition for custody or visitation is filed under law of this  
24 state other than this act, the other law applies.” Ms. Behr commented: “Not needed.  
25 Covered by other law.”

26  
27 We discussed having a section which would give standing to a non-parent based on the  
28 non-parent having exercised parental responsibility pursuant to a court order.  
29 Presumably, a non-parent would have standing under whatever law that granted them  
30 parental responsibility (as well as potential standing under this act if the person if the  
31 criteria of this act were met).

32  
33 We have discussed, but not firmly decided, whether to explicitly deal with situations in  
34 which “both parents are deceased, incapacitated, [or unfit], or there has been a complete  
35 failure of the parents to exercise parental responsibility [and a substantial relationship  
36 exists between the child and the non-parent].” These situations could be covered by  
37 Sections 5 – 7.

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

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

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

14  
15           From my view, standards for parental custody or visitation are beyond the scope of this  
16 act.

17  
18           Regarding a non-parent’s kinship or other significant ties to a person who has committed  
19 domestic violence, etc., I agree that should be a relevant factor in the non-parent’s request  
20 for custody or visitation (and it is listed as a factor in Section 9). If a proposed custodian  
21 is living with an abuser or would expose the child to an abuser, that would be a strong  
22 negative factor against the proposed custodian. If, however, the proposed custodial (or  
23 visitor) has a relative or friend who has abused somebody, but the proposed custodian or  
24 visitor agrees not have the child in the company of that person (or not to have the child in  
25 the company of that person without others around), I view the non-parent’s significant  
26 ties to the abuser to be a less relevant factor. The proposed language creating a rebuttable  
27 presumption against custody or visitation for a person who has “kinship or other  
28 significant ties” to someone who has engaged in abuse, is unduly broad.

29  
30           Ms. Behr proposes that the list of persons against whom domestic violence has been  
31 perpetrated include “domestic partners.” That seems like a reasonable suggestion.  
32 Alternatively, she asks if the phrase “family members” would work (as a substitute for  
33 the more detailed list of persons). [The potential problem with the phrase “family  
34 members” is that the phrase is somewhat vague. Does it, for example, include third  
35 cousins or inlaws?]



1 shows that the petitioning party has engaged in domestic violence, sexual assault, or stalking  
2 against the parent, child, child’s siblings, or custodial guardian, and that a continuing relationship  
3 with the petitioner party will affect negatively the health or safety of the parent, child, child’s  
4 siblings, custodial parent, or custodial guardian;

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

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

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

13 (9) the reasons for the parties’ positions in the proceeding regarding ~~modification of~~  
14 custody and visitation ~~orders applicable to~~;

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

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

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

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

28  
29 Ms. Behr comments that the ULC has a preference for use of the singular in technical  
30 drafting. Thus, the Style Committee may prefer the term “best interest” rather than “best

1 interests.” She also notes that statutes and court cases have used both terms. From my  
2 review of statutes and case law, the plural -- “best interests” -- is much more widely used  
3 than “best interest,” and for that reason, I favor use of “best interests.”  
4

5 **Alternative B**

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

9 **End of Alternatives**

10 *Legislative Note: The act offers two alternatives for a list of factors a court shall consider when*  
11 *determining whether to grant custody or visitation to non-parents. Alternative A lists 11 factors,*  
12 *which are similar to the lists of factors in the 36 states that have factors in statutes pertaining*  
13 *non-parental visitation and custody. Alternative B provides a cross-reference to the state’s*  
14 *existing factors that are considered in disputes between parents regarding custody, visitation, or*  
15 *parenting time. Before using Alternative B, drafters should ascertain if the list of factors in*  
16 *parental disputes is applicable to disputes involving non-parents. Some factors may be specific*  
17 *to parents, such as the wishes of the parents regarding custody or the willingness of the parents*  
18 *to encourage a close and continuing relationship between the child and the other parent.*  
19

20 **Reporter’s Note:** I suggest the Drafting Committee adopt Alternative A (listing 11  
21 factors for the court to consider). There are at least two reasons for this approach. First,  
22 when states enacted third party visitation statutes, 36 states listed specific factors for  
23 consideration – thus reflecting a preference by legislatures for use of specific factors  
24 rather than just a cross-reference to another portion of the state’s Family Law statutes.  
25 Second, when a state lists factors to be considered in disputes between parents, the factors  
26 often are phrased in terms of the parents’ conduct or relationship with the child – rather  
27 than a more generic factor that would be equally applicable to disputes between two  
28 parents versus a parent and a non-parent (or two or more non-parents).  
29

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

33 **Comment**

34 **SECTION 10. PETITION TO MODIFY CUSTODY OR VISITATION.** A petition  
35 to modify a custody or visitation order entered under this [act] shall be decided under [cite to the

1 law of this state other than this act for modification of a custody, visitation, or parenting time  
2 order applicable to a dispute between parents).

3 Comment

4 This section makes reference to a state’s existing law regarding modification of custody  
5 and, visitation, or parenting time orders applicable to disputes between parents. In most states,  
6 that standard is a showing of substantial change of circumstances coupled with a showing that  
7 modification is in the best interests of the child (although a few states have different standards,  
8 such as requiring a showing of endangerment if modification is sought within two years of a  
9 prior order). See Jeff Atkinson, *Modern Child Custody Practice - Second Edition*, §§ 10.1 –  
10 10.13 (LexisNexis ~~2014~~2015). Under this approach, a custody or visitation order in favor of a  
11 non-parent generally would stay the same unless the substantial change of circumstances and  
12 best interests of the child were shown.

13  
14 ~~SECTION 8. FACTORS CONSIDERED.~~

15 ~~Alternative A~~

16 ~~When determining whether to grant custody or visitation under this act, the court must~~  
17 ~~consider the best interests of the child and:~~

18 ~~—— (1) the quality of relationship between the child and the parent and between the child and~~  
19 ~~non-parent, including whether the non-parent has served as a de facto parent of the child;~~

20 ~~—— (2) the frequency and continuity of contact between the child and the non-parent;~~

21 ~~—— (3) the views of the child, having regard to the child’s age and maturity;~~

22 ~~—— (4) the willingness of the parent and non-parents to facilitate, as appropriate, a positive~~  
23 ~~relationship among the child, the parties to the proceedings, and family members of the child;~~

24 ~~—— (5) the child’s adjustment to the child’s current and proposed home, school, and~~  
25 ~~community;~~

26 ~~—— (6) the mental and physical health of all individuals involved;~~

27 ~~—— (7) a history of or threat of domestic violence, child abuse, or child neglect;~~

28 ~~—— (8) the reasons for the parties’ positions regarding custody and visitation;~~





1 following:

2 (1)- appoint a child’s attorney, guardian ad litem, child’s representative, or similar  
3 personnel;

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

6 ~~[Reporter’s note~~Note: The Drafting Committee discussed bracketing a portion of  
7 subsection (2) or including additional language in the subsection – perhaps to allow for  
8 mediation in jurisdictions that have appropriate protections for victims of domestic  
9 violence – e.g., shuttle mediation in which the parties do not have direct contact with  
10 each other.] ~~[End Reporter’s Note]~~.

11  
12 (3) -order evaluations or home studies of the child, parent, de facto parent, or petitioners  
13 who are non-parents; and

14 (4) -allocate payment among the parties to the proceeding of fees for the services listed in  
15 this section.

## 16 Comment

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

21  
22 ~~SECTION 11. CHILD SUPPORT. The court may order a party receiving visitation~~  
23 ~~under this act to pay child support and the cost of providing transportation in connection with~~  
24 ~~visitation.~~ 14. CHILD SUPPORT; VISITATION COSTS.

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

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

1 transportation.

2 **Comment**

3 ~~The court has discretion~~Individuals adjudicated to order a party receiving visitation be de  
4 facto parents under this act have the same obligation to pay child support ~~or as parents.~~  
5 Individuals who are not de facto parents who receive visitation under this act may, in the court's  
6 discretion, be required to pay the cost of ~~providing transportation in connection with~~facilitating  
7 visitation. ~~Factors in setting child support, if any, would include the resources of the parties, the~~  
8 ~~needs of the child, and, including~~ the cost of transportation. ~~The state's presumptive guidelines~~  
9 ~~for child support paid by a non-custodial parent to the custodial parent would not apply to this~~  
10 ~~determination.~~

11  
12 **Reporter's Note**

13 \_\_\_\_\_  
14 ~~—The Drafting Committee began discussion of child support issues, but did~~those  
15 individuals may not reach final conclusions. Several members of the committee seemed to agree  
16 on two propositions: (1) if a person is regarded as a parent under state law, then the state's child  
17 support guidelines would apply (and this act would not apply); (2) for most non-parents, the  
18 state's child support guidelines should not apply . . . although there was some support for  
19 applying child support guidelines to persons who were found to have entered into an agreement  
20 to raise a child together. [End Reporter's Note]be required to pay child support.

21  
22 **SECTION 1215. ATTORNEY FEES AND COSTS.** The court may allocate and order  
23 payment of attorney fees, including interim fees, and costs: among the parties to the proceeding  
24 under this [act].

25 **Comment**

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

29  
30 **Reporter's Note**

31 \_\_\_\_\_  
32 ~~—When the ABA Section of Family Law drafted a third party custody and visitation act, it~~  
33 ~~adopted a similar provision regarding attorney fees and costs and added the phrase “as equity~~  
34 ~~may require.” Another possible addition to the provision is that fees and costs may be ordered~~  
35 ~~“to a prevailing party.” [End Reporter's Note]~~



1 “priority” to many types of proceedings, and, as a result, such provisions have little effect.

2  
3 ~~SECTION 15~~ **SECTION 18. APPLICATION TO ABUSED, NEGLECTED, OR**

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

7 **Comment**

8  
9 This act does not provide for granting non-parental custody or visitation for children who  
10 are the subject proceedings for abused, neglected, or dependent children. Such laws and related  
11 regulations have their own provisions regarding where a child will be placed and who may have  
12 contact with the child. The abuse, neglect and dependency laws usually are in a different portion  
13 of the statutes than laws pertaining to divorce, parentage, and non-parental rights. The drafters  
14 of this act do not wish for this act to conflict with or interfere with the abuse, neglect, or  
15 dependency laws. When a child is no longer the subject of such proceedings, relief may be  
16 sought under this act. The provision in this section is similar to Or. Stat. § 109.119(9) (West  
17 2015). See also Minn. Stat. Ann. § 257C.08(4) (West 2015) (excluding foster parents from  
18 coverage under the state’s non-parental visitation law).

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

23 **Comment**

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

29  
30 **Reporter’s Note:** Ms. Behr comments: “Please explain the special need for this  
31 provision in light of Rule 502. Full Style Committee is likely to have a concern with the  
32 provision.”

33  
34 Uniform Law Commission, Drafting Rules, Section 502 (2012) provides:

35  
36 **RULE 502. PROVISION DUPLICATING GENERAL PROVISION**  
37 **OF LAW.**

1 (a) Do not include a provision concerning civil, criminal, administrative,  
2 or appellate procedure unless the act is intended to establish a procedure different  
3 from general procedures.

4  
5 (b) Do not include a provision stating that the act is supplemented by  
6 common-law principles unless, without such an affirmative statement, the act is  
7 likely to be construed as occupying the field, displacing common-law principles.

8  
9 **[ULC] Comment**

10  
11 The incorporation of procedural provisions may impair the enactability of a  
12 uniform or model act. Repetition of general procedural provisions especially  
13 creates problems in states in which such procedures are established by court rule  
14 rather than by legislation.

15  
16 State statutes are usually presumed to be supplemented by the common law. The  
17 rare exception is an act, such as a workers' compensation act, that is intended to  
18 preempt the field and displace common-law remedies. Unless there is a  
19 legitimate concern that a uniform or model act, although not intended to occupy  
20 the field, will nevertheless be so construed, it is unnecessary and confusing to  
21 include a provision that repeats this settled principle of common law.

22  
23 **SECTION 20. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

26 **Reporter's Note:** Ms. Behr asks: "Do you need standard provision in [ULC] Rule 602  
27 regarding electronic signatures? Courts are moving to electronic filing or petitions." I  
28 am not an expert on the law of electronic signatures, but I doubt that the ULC boilerplate  
29 signature section (quoted below) is necessary in this act. It appears that the electronic  
30 signature section is necessary in acts that specifically deal with recognitions of certain  
31 classes of documents, such as commercial paper and the signatures on those documents.  
32 Rule 602 provides for using the electronic signature section if the act contains a provision  
33 "requiring a notice or other record or a signature." Our act does not have such a  
34 provision. There is a trend toward electronic filings for legal actions (in general), but I  
35 believe that is an issue for local rules and statutes, not for our uniform act. The ULC  
36 electronic signature section provides as follows: "RELATION TO ELECTRONIC  
37 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act]  
38 modifies, limits, or supersedes the Electronic Signatures in Global and National  
39 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede  
40 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of  
41 any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b)."

42  
43 **SECTION 1621. TRANSITIONAL PROVISION.** A petition or other request for

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

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

10  
11 **SECTION ~~17~~22. REPEALS; CONFORMING AMENDMENTS.**

12 (a) . . . .

13 (b) . . . .

14 (c) . . . .

15 **SECTION ~~18~~23. EFFECTIVE DATE.** This [act] takes effect . . . .