

DRAFT

FOR DISCUSSION ONLY

REVISION OF UNIFORM PARENTAGE ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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REVISION OF UNIFORM PARENTAGE ACT

With Prefatory Note and Comments

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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ARTICLE 1.

GENERAL PROVISIONS

SECTION 101. SHORT TITLE1
SECTION 102. DEFINITIONS.....1
SECTION 103. APPLICATION OF ACT3
SECTION 104. CHOICE OF LAW3
SECTION 105. RIGHTS AND DUTIES OF PARENT.....4
SECTION 106. TRIBUNAL OF STATE.....4

ARTICLE 2.

THE PARENT-CHILD RELATIONSHIP

SECTION 201. HOW PARENT-CHILD RELATIONSHIP ESTABLISHED4
SECTION 202. RELATIONSHIP NOT DEPENDENT ON MARRIAGE.....5
SECTION 203. PRESUMPTIONS OF PATERNITY5

ARTICLE 3.

VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

SECTION 301. ACKNOWLEDGMENT OF PATERNITY AUTHORIZED6
SECTION 302. FORM OF ACKNOWLEDGMENT OF PATERNITY.....6
SECTION 303. AFFIDAVIT OF DENIAL OF PATERNITY8
SECTION 304. FORM OF DENIAL OF PATERNITY8
SECTION 305. ADDITIONAL PROVISIONS RELATING TO FORMS9
SECTION 306. COPY OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY10
SECTION 307. DISTRIBUTION OF FORMS10
SECTION 308. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY10
SECTION 309. VALIDITY OF FORMS SIGNED BEFORE EFFECTIVE DATE10
SECTION 310. RESCISSION OF ACKNOWLEDGMENT OF PATERNITY10
SECTION 311. RATIFICATION PROCEEDINGS BARRED.....11
SECTION 312. EFFECT OF NONSIGNING BY PRESUMED FATHER11
SECTION 313. AGENCY TO PROVIDE SERVICES11
SECTION 314. FULL FAITH AND CREDIT.....12

ARTICLE 4.

PUTATIVE FATHER REGISTRY

SECTION 401. ESTABLISHMENT OF REGISTRY12
SECTION 402. NOTICE TO KNOWN FATHER.....12
SECTION 403. REQUIREMENTS OF REGISTRATION13
SECTION 404. REQUIRED INFORMATION13
SECTION 405. KNOWLEDGE OF POSSIBILITY OF PREGNANCY13
SECTION 406. FURNISHING OF INFORMATION; CONFIDENTIALITY14
SECTION 407. OFFENSE FOR RELEASING INFORMATION14
SECTION 408. NOTICE OF INTENT TO CLAIM PATERNITY14
SECTION 409. EFFECT OF FAILURE TO FILE NOTICE OF INTENT15
SECTION 410. CONTEST OF REGISTRANT’S PATERNITY15
SECTION 411. REVOCATION OF CLAIM OF PATERNITY16
SECTION 412. CERTIFICATE OF SEARCH OF REGISTRY16
SECTION 413. REMOVAL OF REGISTRANT'S NAME16
SECTION 414. FEES FOR REGISTRY17
SECTION 415. ADMISSIBILITY OF REGISTRY INFORMATION17

ARTICLE 5.

GENETIC TESTING

SECTION 501. APPLICATION OF ARTICLE17
SECTION 502. ORDER FOR TESTING.....18
SECTION 503. APPOINTMENT OF TESTING LABORATORY19
SECTION 504. REQUIREMENTS OF TESTING19
SECTION 505. COSTS OF TESTING20
SECTION 506. ADDITIONAL TESTING21
SECTION 507. TESTING WHEN ALL PERSONS NOT AVAILABLE21
SECTION 508. IDENTICAL TWINS.....21
SECTION 509. DECEASED INDIVIDUAL22

ARTICLE 6.

PROCEEDING TO DETERMINE PARENTAGE

PART 1. NATURE OF PROCEEDING

SECTION 601. PROCEEDING AUTHORIZED22
SECTION 602. STANDING TO SUE22
SECTION 603. SERVICE OF PROCESS23
SECTION 604. LIMITATION; CHILD WITH NO PRESUMED FATHER.....23
SECTION 605. LIMITATION; CHILD WITH PRESUMED FATHER23
SECTION 606. PERSONAL JURISDICTION24
SECTION 607. VENUE24
SECTION 608. JOINDER OF ACTIONS25
SECTION 609. PROCEEDING STAYED UNTIL AFTER BIRTH.....25
SECTION 610. REPRESENTATION OF CHILD25
SECTION 611. EFFECT OF EARLIER DETERMINATION OF PATERNITY25
SECTION 612. HEARINGS AND RECORDS; CONFIDENTIALITY26
SECTION 613. EFFECT OF PRIVATE AGREEMENT26
SECTION 614. MOTHER-CHILD RELATIONSHIP26

PART 2. ADMISSION OF PATERNITY

SECTION 621. ADMISSION OF PATERNITY AUTHORIZED27
SECTION 622. CONTENTS OF ADMISSION27
SECTION 623. USE OF ADMISSION BEFORE TRIBUNAL27
SECTION 624. VALIDATION OF OTHER ADMISSIONS OF PARENTAGE.....28

PART 3. PRELIMINARY CONFERENCE

SECTION 631. CONDUCT OF PRELIMINARY CONFERENCE.....28
SECTION 632. TEMPORARY ORDERS29
SECTION 633. EFFECT OF TESTS FOR PARENTAGE.....29
SECTION 634. CONSEQUENCES OF REFUSING GENETIC TESTING.....30
SECTION 635. PREFERENTIAL SETTING30

PART 4. FINAL HEARING AND ORDER

SECTION 641. EVIDENCE AT FINAL HEARING30
SECTION 642. PRESUMPTIONS; BURDEN OF PROOF31

SECTION 643. COSTS AND FEES	31
SECTION 644. PRIVATE AGREEMENT TO PAY SUPPORT	32
SECTION 645. FINAL ORDER REGARDING PARENTAGE.....	32
SECTION 646. DEFAULT ORDER.....	32
SECTION 647. EFFECT OF FINAL ORDER.....	33

ARTICLE 7.

PARENTAGE BASED ON EQUITABLE ESTOPPEL

SECTION 701. TRIBUNAL AUTHORIZED TO REFUSE GENETIC TESTING.....	33
SECTION 702. ORDER BASED ON EQUITABLE ESTOPPEL	34

ARTICLE 8.

CHILD OF ASSISTED REPRODUCTION

SECTION 801. HUSBAND’S LIABILITY FOR ASSISTED REPRODUCTION	34
SECTION 802. CONSENT TO ASSISTED REPRODUCTION	35
SECTION 803. LIMITATION ON HUSBAND’S DISPUTE OF PATERNITY	35
SECTION 804. PARENTAL STATUS OF DECEASED INDIVIDUAL.....	36
SECTION 805. EFFECT OF DISSOLUTION OF MARRIAGE	36
SECTION 806. PARENTAL STATUS OF DONOR TO UNMARRIED WOMAN.....	36

ARTICLE 9 MISCELLANEOUS

SECTION 901. UNIFORMITY OF APPLICATION AND CONSTRUCTION	37
SECTION 902. SEVERABILITY CLAUSE	37
SECTION 903. [REPEAL].....	37
SECTION 904. TIME OF TAKING EFFECT	37

ARTICLE 1.
GENERAL PROVISIONS

SECTION 101. SHORT TITLE.

This [Act] may be cited as the "Uniform Parentage Act."

SECTION 102. DEFINITIONS.

In this [Act]:

(1) "Assisted reproduction" means a pregnancy resulting by means other than sexual intercourse, including:

- (A) artificial insemination;
- (B) egg donation;
- (C) embryo donation;
- (D) in vitro fertilization (IVF) and embryo transfer; or
- (E) intracytoplasmic sperm injection (ICSI).

(2) "Child" or "minor" means an individual who has not attained [18] years of age.

(3) "Clear and convincing evidence" means the measure or degree of proof that produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(4) "Determination" or "determined" means the legal finding of the parent-child relationship by a tribunal.

(5) "Donor" means an individual who produces eggs or sperm used for assisted reproduction, whether a payment is made, but the term does not include a woman who gives birth to a resulting child.

(6) "Ethnic or racial group" means the population or populations that an individual considers in his or her ancestry.

(7) "Genetic testing" means:

- (A) analysis of specimens of deoxyribonucleic acid (DNA); and

(B) analysis of specimens that identify the presence or absence of common blood group antigens, red blood cell antigens, human leukocyte antigens (HLA), serum enzymes, serum proteins, red cell enzymes, or genetic markers.

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

(9) "Parent" of a child means:

(A) the mother;

(B) an adoptive mother or father; or

(B) a man who:

(i) is presumed to be the biological father;

(ii) has acknowledged himself to be the biological father as provided under Article 3; or

(iii) has been determined to be the father by a tribunal of competent jurisdiction.

(10) "Parent-child relationship" means the legal relationship existing between a child and the child's parent on whom the law confers or imposes rights and duties. The term includes the mother-child relationship and the father-child relationship.

(11) "Paternity index" means the ratio of the chance that the mother and a man of the putative or presumed father's composition and ethnic or racial group produced the child compared to the chance that the mother and a random man produced the child.

(12) "Probability of paternity" means the measure, for the ethnic or racial group of the alleged parent, of the probability that the individual in question is the biological parent of the child. The probability is expressed as a percentage incorporating the paternity index and a prior probability.

(13) "Putative father" means a man who claims to be, or is alleged to be, the biological father of a child, or is alleged to be the possible biological father of a child, but whose paternity has not been determined. The term does not include:

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

(B) a male donor; or

(C) the male parent.

(14) “Specimen” means a sample of blood, buccal cells, bone, hair, or other body tissue or fluid taken from an individual to be genetically tested. The term includes any other physical component of the individual the genetic testing laboratory determines is appropriate for testing. The samples taken need not be of the same type for each person tested.

(15) “Title IV-D agency” means the state agency designated under [applicable state law] to provide services under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.).

(16) "Tribunal" means a court, an administrative agency, or a quasi-judicial entity authorized to determine parentage.

Reporter’s Note

Source: subsection (2) Uniform Child Custody Jurisdiction and Enforcement Act § 102(2); subsections (6) and (7) Ohio Rev Code Section 3111.09 (E).

SECTION 103. APPLICATION OF ACT.

This [Act] governs every proceeding in which the parentage of a child is determined.

Reporter’s Note

This section makes clear that the Act applies not just in so-called “paternity suits,” but in all disputes of parentage, whether by divorce, paternity, probate, or any other proceeding.

SECTION 104. CHOICE OF LAW.

(a) This [Act] governs a proceeding to determine parentage by a tribunal of this State.

(b) The determination of the parent-child relationship under this [Act] does not depend on

- (1) the place of the child’s birth; or
- (2) the child’s residence, past or present.

Reporter’s Note

This section simplifies choice of law principles; the local tribunal always applies local law.

SECTION 105. RIGHTS AND DUTIES OF PARENT.

This [Act] does not create, enlarge, or diminish the rights and duties of a parent as established by [applicable state law].

SECTION 106. TRIBUNAL OF STATE.

The [court, administrative agency, quasi-judicial entity, or combination] [is the tribunal] [are the tribunals] of this State.

ARTICLE 2.

THE PARENT-CHILD RELATIONSHIP

SECTION 201. HOW PARENT-CHILD RELATIONSHIP ESTABLISHED.

(a) The mother-child relationship is established between the child and the mother by proof of:

- (1) the woman having given birth to the child;
- (2) a determination of the woman's maternity by a tribunal of competent

jurisdiction; or

- (3) an adoption of the child by the woman.

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

(1) an unrebutted presumption as established by this article that the man is the father;

(2) the man's signing of an unchallenged Acknowledgment of Paternity, also signed by the mother, as provided under Article 3;

(3) a determination of the man's paternity by a tribunal of competent jurisdiction;

- (4) an adoption of the child by the man; or

- (5) the man's consent to assisted reproduction as provided under Article 8.

Reporter's Note

Derived from § 4 U.P.A. (1973), and expanded to include all possible bases of the parent-child relationship.

SECTION 202. RELATIONSHIP NOT DEPENDENT ON MARRIAGE.

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

SECTION 203. PRESUMPTIONS OF PATERNITY.

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

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

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

(3) before the child's birth, he and the child's mother attempted to marry each other in apparent compliance with law, although the attempted marriage is, or could be, declared invalid; and:

(A) the child is born during the attempted marriage; or

(B) within 300 days after its termination by divorce, annulment, declaration of invalidity, or death; or

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

(A) he has acknowledged his paternity of the child in a writing filed with the [appropriate tribunal or state agency responsible for maintaining birth records];

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

(C) he is obligated to support the child under a written voluntary promise or by order of the tribunal;

(5) he has resided in the same household with the child and has publicly represented that he is the father of the child; or

(6) he has been shown to have at least a [95] % probability of paternity, using a prior probability of 0.50, based on genetic testing as authorized under Article 5.

(b) A presumption established by this section may be rebutted as provided under Section 633.

Reporter's Note

Source subsection: (a)(6) Minn. Stat. Ann. Section 257.62(5) (b).

ARTICLE 3.

VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

SECTION 301. ACKNOWLEDGMENT OF PATERNITY AUTHORIZED.

The mother and the putative father of a child may sign an Acknowledgment of Paternity as provided under this article.

Reporter's Note

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

SECTION 302. FORM OF ACKNOWLEDGMENT OF PATERNITY.

(a) The [state agency responsible for maintaining birth records/Title IV-D agency], in consultation with the [Title IV-D agency/state agency responsible for maintaining birth records] shall prepare a form entitled an "Acknowledgment of Paternity" to comply with this article. The form must request the mother and putative father to provide the following information:

- (1) the mother's and putative father's current full names, social security numbers, if known, and dates of birth, and the mother's maiden surname;
- (2) the mother's and putative father's current addresses, and permanent addresses, if different;
- (3) the name, sex, and birthplace of child;
- (4) the name of the employer of the putative father [and mother];
- (5) an explanation of the legal consequences of signing the Acknowledgment;
- (6) a statement that both the mother and putative father have 60 days from the date of signing to rescind the Acknowledgment;
- (7) a statement indicating that both the mother and the putative father understand their rights, responsibilities, alternatives, and consequences of signing the Acknowledgment, and that the signings are voluntary;

- (8) the place the Acknowledgment was completed;
 - (9) whether the mother is married to a man other than the putative father, and if so, the name, last known address, and social security number of her husband; and
 - (10) signature lines for mother, putative father and for witnesses or notaries.
- (b) The Acknowledgment must state that the mother and putative father acknowledge that:
- (1) the putative father is the biological father of the child;
 - (2) the Acknowledgment was signed after having been given notice in writing, and orally or through the use of video or audio equipment, of:
 - (A) the alternatives to signing;
 - (B) the legal consequences of signing; and
 - (C) the rights (including, if a parent is a minor, any rights arising from minority status) and responsibilities that arise from signing the Acknowledgment;
 - (3) the Acknowledgment is a legal determination of paternity subject to the right of a signatory to rescind the agreement within the earlier of:
 - (A) 60 days; or
 - (B) the date of a tribunal proceeding relating to the child (including a proceeding to establish the support order) in which the signatory is a party; and
 - (4) after the 60 day period for rescission:
 - (A) the Acknowledgment may be challenged in a tribunal only on the basis of fraud, duress, or material mistake of fact;
 - (B) the burden of proof is on the challenger; and
 - (C) the legal responsibility (including child support obligation) of a signatory arising from the Acknowledgment may not be suspended during the challenge, except for good cause shown.

Reporter's Note

Source: 42 U.S.C. Section 666 (a) (5) (C) (i); 42 U.S.C. Section 666 (a) (D) (ii). Alaska Statutes, Chapter 18.50. Vital Statistics Act; California Family Code Section 7574. Items (a)(1)-(7) are prescribed as the minimum requirements for an acknowledgment by the O.C.S.E., Federal Register, January 23, 1998.

SECTION 303. AFFIDAVIT OF DENIAL OF PATERNITY.

(a) If the Acknowledgment of Paternity states that the mother of the child is married to a man other than the putative father, the man so named may:

- (1) sign an Affidavit of Denial of Paternity as provided under Section 304; or
- (2) contest the putative father’s paternity by filing a proceeding to determine parentage under this [Act].

(b) The failure of a presumed father of a child to take any of the actions described in subsection (a) does not prevent use of the Acknowledgment to determine the putative father to be the father of the child. A determination arising from the Acknowledgment binds the mother and putative father, but does not bind the presumed father except under Section 308.

Reporter’s Note

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

SECTION 304. FORM OF DENIAL OF PATERNITY.

(a) The [state agency responsible for maintaining birth records/Title IV-D agency], in consultation with the [Title IV-D agency/state agency responsible for maintaining birth records] shall prepare a form entitled “Affidavit of Denial of Paternity” to comply with this article. The form must request the parties to provide the following information:

- (1) current full names, social security numbers, if known, and dates of birth of the mother, the presumed father and the putative father, if any, and the maiden surname of the mother;
- (2) addresses of the mother, the presumed father, and the putative father, if any;
- (3) name, sex, and birthplace of the child;
- (4) name of the employer of the presumed father, if any;
- (5) the marital status of the mother and the presumed father;
- (6) the place the Denial was completed; and
- (7) signature lines for the mother, the presumed father, and for witnesses or a notary.

(b) The Denial must state that:

- (1) the presumed father affirms he is not the biological father of the child;
- (2) the signing of the Denial by the presumed father, in conjunction with the signing of an Acknowledgment of Paternity by the mother and putative father, is a legal determination of nonpaternity; and
- (3) it may be challenged in a tribunal only on the basis of fraud, duress, or material mistake of fact, and that the burden of proof is upon the challenger.

SECTION 305. ADDITIONAL PROVISIONS RELATING TO FORMS.

(a) The forms of the Acknowledgment of Paternity or the Affidavit of Denial of Paternity may contain additional information that the [Title IV-D agency/the state agency responsible for maintaining birth records] determines to be necessary for acknowledgment of its responsibilities under this article, including additional requirements under federal law.

(b) Failure of the forms of Acknowledgment or Denial to list all rights and duties of parents or the alternatives to the legal consequences of not signing the form is not a basis for voiding the Acknowledgment or Denial so long as the tribunal determines that the:

(1) Acknowledgment form substantially informs the signatory that the putative father, by signing the Acknowledgment with the consent of the mother, becomes the father of the child, is under a legal duty to support the child, and may be granted rights of [visitation]; or

(2) Denial form substantially informs the signatory that the presumed father, by signing the Denial with the consent of the mother, is not the biological father of the child, is not under a legal duty to support the child, and may not be granted rights of [visitation].

(c) The Acknowledgment and the Denial may be contained in a single document and may be signed in counterparts.

(d) The Acknowledgment and the Denial may be signed before the birth of the child.

SECTION 306. COPY OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY.

A copy of the signed Acknowledgment of Paternity and the signed Affidavit of Denial of Paternity must be given to a signatory.

SECTION 307. DISTRIBUTION OF FORMS.

The [state agency responsible for maintaining birth records/Title IV-D agency] shall distribute copies of the forms prepared under this article to all hospitals and other entities participating in this State's voluntary paternity establishment program, and other persons the agency determines to be in need of such forms.

SECTION 308. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY.

(a) An Acknowledgment of Paternity signed by both the mother and putative father is a legal determination of paternity, subject to the right of a signatory to rescind the Acknowledgment and the right of a signatory to challenge the determination as provided under this article.

(b) An Affidavit of Denial of Paternity signed by a presumed father and filed as a part of, or in conjunction with, an Acknowledgment of Paternity signed by the mother and the putative father is a legal determination of the paternity of the putative father and of the nonpaternity of the presumed father, subject to the right of a signatory to rescind the Acknowledgment.

SECTION 309. VALIDITY OF FORMS SIGNED BEFORE EFFECTIVE DATE.

The validity of an Acknowledgment of Paternity or an Affidavit of Denial of Paternity that met the requirements of state law at the time that the Acknowledgment or Denial was made in the state in which a document was signed is not affected by changes to the form occurring after the date of the signing.

SECTION 310. RESCISSION OF ACKNOWLEDGMENT OF PATERNITY.

(a) An Acknowledgment of Paternity by a putative father may be rescinded by a signatory within the earlier of:

- (1) 60 days; or

(2) the date of the first hearing before a tribunal to determine an issue relating to the child (including a proceeding to establish a support order) in which the signatory is a party.

(b) After the 60-day period for rescission:

(1) the Acknowledgment may be challenged in a tribunal only on the basis of fraud, duress, or material mistake of fact if a proceeding is brought within [two years] after the time for rescission has expired;

(2) the burden of proof is on the challenger; and

(3) the legal responsibility (including child support obligation) of a signatory arising from the Acknowledgment may not be suspended during the challenge, except for good cause shown.

Reporter's Note

Source: 42 U.S.C. Section 666(a)(5)(D)(ii).

SECTION 311. RATIFICATION PROCEEDINGS BARRED.

A tribunal is not permitted or required to ratify an unchallenged Acknowledgment of Paternity.

Reporter's Note

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

SECTION 312. EFFECT OF NONSIGNING BY PRESUMED FATHER.

A proceeding by a presumed father collaterally attacking a determination of parentage arising out of an Acknowledgment of Paternity must be brought within [two years] of the determination becoming effective or the proceeding is barred. The proceeding will be considered a contested parentage proceeding under Article 6.

SECTION 313. AGENCY TO PROVIDE SERVICES.

The [Title IV-D agency] shall offer voluntary paternity services to:

(1) hospitals; and

(2) other entities participating in this State's voluntary paternity establishment program.

Reporter's Note

Source: 42 U.S.C. Section 666(a)(5)(C)(iii)(I),(II).

SECTION 314. FULL FAITH AND CREDIT.

An Acknowledgment of Paternity signed in another state shall be given full faith and credit in this State if the Acknowledgment has been signed in apparent compliance with the provisions of that other state's law.

Reporter's Note

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

ARTICLE 4.

PUTATIVE FATHER REGISTRY

SECTION 401. ESTABLISHMENT OF REGISTRY.

The Putative Father Registry is established in the [applicable state agency], which shall administer and maintain the Registry to:

- (1) protect the parental rights of fathers who affirmatively assume responsibility for children they may have fathered; and
- (2) expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the Registry or otherwise acknowledge their children.

SECTION 402. NOTICE TO KNOWN FATHER.

The existence of the Putative Father Registry does not relieve a mother of the duty to identify the known father of her child in a proceeding affecting the parent-child relationship.

SECTION 403. REQUIREMENTS OF REGISTRATION.

(a) Except as provided in subsection (b), a man who claims to be the father of a child shall file a notice of intent to assert his right to establish paternity of the child.

(b) A man is not required to register in the Putative Father Registry if he:

(1) is a presumed father of a child under Section 203;

(2) has been determined to be the father of a child by a tribunal of competent jurisdiction; or

(3) has signed an Acknowledgment of Paternity pursuant to Article 3.

SECTION 404. REQUIRED INFORMATION.

(a) A man registering in the Putative Father Registry shall provide:

(1) the name, date of birth, last known address, driver's license number, and social security number of the mother of the child, if known;

(2) his name, date of birth, and address, and his driver's license number and social security number, if any;

(3) the name of the child and the place and date of birth of the child, if known, or the probable month and year of the expected birth of the child; and

(4) a statement in which he claims to be the father of the child identified by the statement.

(b) A man who files with the Registry a notice of intent to claim paternity shall promptly notify the Registry in writing of a change in the information registered.

SECTION 405. KNOWLEDGE OF POSSIBILITY OF PREGNANCY.

(a) A person who has sexual intercourse with a person of the opposite sex is deemed to have knowledge that sexual intercourse can result in the woman's pregnancy.

(b) Ignorance of a pregnancy does not excuse the legal consequences of failing to register.

SECTION 406. FURNISHING OF INFORMATION; CONFIDENTIALITY.

(a) If the mother's address has been provided, the Putative Father Registry shall send her a copy of the notice of a man's intent to claim paternity.

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

(1) a tribunal;

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

(3) an authorized agency;

(4) a licensed child-placing agency;

(5) an attorney at law in this State who is participating or assisting in a proceeding affecting the parent-child relationship, including termination of the parent-child relationship or a proceeding for the adoption of the child that the registrant claims to have fathered;

(6) the putative father registry of another state; or

(7) a person or entity the Registry considers to have a legitimate interest in the information.

(c) The Registry must furnish information by electronic data exchange or any other available means to the Title IV-D agency and the [appropriate agency].

SECTION 407. OFFENSE FOR RELEASING INFORMATION.

A person commits a [appropriate level] misdemeanor if the person intentionally and unlawfully releases information from the Putative Father Registry to the public or makes other unlawful use of the information in violation of this article.

SECTION 408. NOTICE OF INTENT TO CLAIM PATERNITY.

(a) A man may file with the Putative Father Registry a notice of intent to claim paternity on a form provided by the Registry. This form must be signed and witnessed or notarized.

(b) The Registry shall make forms for registration available to:

(1) hospitals and other birthing facilities in this State;

- (2) licensed child-placing agencies;
- (3) county and district clerks;
- (4) municipal clerks;
- (5) justices of the peace;
- (6) jails;
- (7) prisons; and
- (8) facilities [for the detention of juvenile offenders].

(c) A notice of intent to claim paternity may be filed before the birth of the child and must be filed within 30 days after the birth of the child.

(d) If the Registry has received notice of an order terminating the rights of a putative father from the clerk of a tribunal of competent jurisdiction, the Registry must:

- (1) refuse to enter the notice of intent to claim paternity filed by the man into the Registry; and
- (2) notify the man that his rights have been terminated by the order.

SECTION 409. EFFECT OF FAILURE TO FILE NOTICE OF INTENT.

A man who fails to file a notice of intent to claim paternity may not assert an interest in the child unless:

- (1) registration is not required under Section 402;
- (2) registration is within 30 days after birth of the child; or
- (3) he brings a proceeding to determine parentage before a tribunal has terminated his parental rights.

SECTION 410. CONTEST OF REGISTRANT'S PATERNITY.

(a) Within 30 days of receiving notice of a man's intent to claim paternity, the mother may contest the claim of paternity on a form provided by the Putative Father Registry.

(b) On receipt of a mother's contest of a registration claiming paternity of her child, the Registry shall immediately notify the registrant of the denial and of his right to bring a proceeding to determine paternity.

SECTION 411. REVOCATION OF CLAIM OF PATERNITY.

A man who files a notice of intent to claim paternity may at any time revoke the notice by sending the Putative Father Registry a written statement signed by the registrant and witnessed or notarized. The revocation must include a declaration that, to the best of the registrant's knowledge and belief:

- (1) the registrant is not the father of the named child; or
- (2) a tribunal has determined paternity and a person other than he has been determined to be the father of the child.

SECTION 412. CERTIFICATE OF SEARCH OF REGISTRY.

On request, the Putative Father Registry shall furnish a certificate attesting to the results of a search of the Registry regarding a notice of intent to claim paternity to:

- (1) a tribunal;
- (2) the mother of a child;
- (3) an authorized agency;
- (4) a licensed child-placing agency;
- (5) an attorney licensed to practice law in this State who is participating or assisting in a termination of parental rights or an adoption proceeding; or
- (6) any other person or entity the Registry considers to have a legitimate interest in the information.

SECTION 413. REMOVAL OF REGISTRANT'S NAME.

If a tribunal determines that a registrant is not the father of the child, the tribunal shall order the Putative Father Registry to remove the registrant's name from the Registry.

SECTION 414. FEES FOR REGISTRY.

(a) A fee may not be charged for filing a notice of intent to claim paternity of a child or a contest of a registrant's paternity.

(b) Except as provided under subsection (c), the Putative Father Registry may charge a fee for making a search of the Registry and for furnishing a certificate.

(c) The Title IV-D agency and the [appropriate agency] are not required to pay a fee under subsection (b).

SECTION 415. ADMISSIBILITY OF REGISTRY INFORMATION.

In a proceeding under this [Act], information maintained in the Putative Father Registry is admissible for any purpose, including the establishment of the registrant's paternity or a proceeding to terminate parental rights.

**ARTICLE 5.
GENETIC TESTING**

SECTION 501. APPLICATION OF ARTICLE.

(a) This article applies to all genetic testing performed pursuant to this [Act] of an individual who:

- (1) submits voluntarily to testing; or
- (2) is ordered by a tribunal to be tested.

(b) If genetic testing of a child is performed without the consent of the child's mother and presumed father or in a manner other than that described in this section, the results are inadmissible in a proceeding to determine parentage.

Reporter's Note:

*Subsection (a) is intended to avoid problems encountered in *Catawba v. Khatod*, 479 S.E. 2d 270 (N.C. App 1997) and *Yokley v. Townsend*, 849 S.W. 2d 722 (Mo. App. W.D. 1993).*

Subsection (b) is designed to deter unilateral self-testing of a parent and a child.

SECTION 502. ORDER FOR TESTING.

(a) The tribunal shall order the parties and the child to submit to genetic testing, if the request for testing is supported by the sworn statement of a party:

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

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

(b) The genetic testing must be of a type generally acknowledged to be scientifically reliable and must be performed in a testing laboratory accredited by:

(1) American Association of Blood Banks;

(2) American Society for Histocompatibility and Immunogenetics; or

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

(c) If the testing is requested before birth of the child, the tribunal shall order the testing as soon as medically practical after birth.

(d) If the mother volunteers and an *in utero* specimen is necessary for other health care purposes, she may submit to *in utero* specimen collection to determine parentage of the fetus. A tribunal may not order the mother to undergo *in utero* specimen collection.

(e) If more than one man is a possible biological father of the child, the tribunal may simultaneously order all the men to submit to genetic testing.

(f) The parties may agree to genetic testing if the testing complies with the requirements of this article.

(g) If a party fails to appear and wholly defaults, or if there is an admission of paternity, the parties or a tribunal may waive genetic testing.

(h) The tribunal may refuse to order genetic testing as provided in this section only if the tribunal:

(1) determines that Article 7 is applicable to the proceeding; and

(2) determines the presumed father is the father of the child.

Reporter's Note

Subsection (a) and (b) conform to the mandates of 42 U.S.C. § 666(a)(5)(B)(i)(I)(II) and § 666(a)(5)(F)(i)(I)(II).

The Secretary of Health and Human Services has not officially designated any accreditation bodies as referenced in subsection (b)(3). However, Information Memorandum OCSE-IM-97-03 of April 10, 1997, from the Deputy Director of OCSE identifies the American Association of Blood Banks and American Society for Histocompatibility and Immunogenetics as meeting this requirement.

SECTION 503. APPOINTMENT OF TESTING LABORATORY.

(a) A tribunal shall render an order:

(1) appointing a testing laboratory qualified in genetic testing to perform the tests;

(2) determining the number and qualifications of the testing laboratories; and

(3) prescribing the location, date, time and other arrangements necessary to collect the specimens.

(b) Any testing laboratory contracted by this State's or another state's Title IV-D agency to perform genetic testing shall be considered a qualified testing laboratory.

Reporter's Note

Source: U.P.A. § 11; 42 U.S.C. § 666(a)(5)(B)(ii)(II).

SECTION 504. REQUIREMENTS OF TESTING.

(a) The tribunal shall order genetic testing be conducted in a method necessary to yield:

(1) at least a [95] % probability of paternity, using a prior probability of 0.50, that the man is the biological father of the child; or

(2) an exclusion of the man as the biological father of the child.

(b) The genetic testing results must be in writing and signed by a designee of the genetic testing laboratory.

(c) Documentation from the genetic testing laboratory of the following information shall be sufficient to establish a reliable chain of custody and shall cause the genetic testing results to be admissible without testimony:

(1) the names of the parties having their specimens taken;

- (2) the name of the person collecting the specimens;
- (3) the place and date of the collection of the specimens;
- (4) name of person receiving the specimens in the testing laboratory; and
- (5) the date the specimens are received.

(d) Based on the information provided by the individuals, the testing laboratory shall determine the ethnic or racial group to be used in the selection of frequencies for use in the calculations. If there is disagreement as to the testing laboratory's choice:

(1) the testing laboratory shall be notified within 30 days after receipt of the test to recalculate with a new ethnic or racial group;

(2) the party objecting to the testing laboratory's initial choice shall provide the requested frequencies, if the frequencies are not available to the testing laboratory for the ethnic or racial group requested, compiled in a manner recognized by accreditation bodies, or obtain another testing laboratory to make its own calculations;

(3) the testing laboratory may use its own statistical estimate, in the event the matter is not resolved as to which ethnic or racial group is applicable, and, if available, statistics for any other ethnic or racial group requested; and

(4) a party or other individual who has been tested may require that additional testing be conducted, if after a recalculation using a different ethnic or racial group, the probability of paternity does not result in a presumption of paternity as provided under Section 203(a)(6).

Reporter's Note:

Subsections (c) and (d) are designed to avoid evidentiary problems encountered in Dotson v. Petty, 359 S.E. 2d 403 (Va. App. 1987) Most jurisdictions apparently do not have this problem. See: State v. Brashear, 841 S.W. 2d 754 (Mo. App. 1992); DeLaGarza v. Salazar, 851 S.W. 2d 380 (Tex.App.--San Antonio 1993, no writ).

SECTION 505. COSTS OF TESTING.

(a) The cost of initial genetic testing shall be paid:

- (1) by the IV-D agency if the proceeding is brought by that agency;
- (2) by the party who made the request;
- (3) as agreed upon by the parties; or
- (4) as ordered by a tribunal.

(b) The tribunal shall order reimbursement from the party who challenges the existence or nonexistence of paternity if the result of the genetic test is contrary to the position of the challenger.

SECTION 506. ADDITIONAL TESTING.

The tribunal shall order additional testing on the request and advance payment for the testing of a party contesting the result of the original testing.

SECTION 507. TESTING WHEN ALL PERSONS NOT AVAILABLE.

(a) If the mother of the child is not available for genetic testing, the child and the putative father or the presumed father may, by order of a tribunal, submit to genetic testing as authorized by this article.

(b) If the putative or presumed father is not available for testing, a tribunal may, and upon a request of a party shall, require the following persons to submit to genetic testing by a laboratory:

- (1) the putative or presumed father's parents;
- (2) brothers and sisters of the putative or presumed father;
- (3) the putative or presumed father's other children and their mothers; and
- (4) other persons considered appropriate by the testing laboratory.

(c) Genetic test results obtained under subsection (b) may be used only to establish the right of the child to receive public assistance, including employment, social security, and veteran's benefits.

SECTION 508. IDENTICAL TWINS.

(a) If identical twin putative or presumed fathers are named in a parentage proceeding, the tribunal shall order both men to submit to genetic testing.

(b) If neither man is excluded by genetic testing, and both men exceed a [95] % probability of paternity, the tribunal shall rely on nongenetic evidence to determine which man, between the identical twins, is the biological father.

Reporter's Note:

See Illinois Dept. of Public Aid v. Whitworth, 652 N.E.2d 458 (Ill. App. 4 Dist. 1995).

SECTION 509. DECEASED INDIVIDUAL.

On good cause shown, a tribunal may order genetic testing of a deceased individual for the purpose of determining the parentage of a child.

ARTICLE 6.

PROCEEDING TO DETERMINE PARENTAGE

PART 1. NATURE OF PROCEEDING

SECTION 601. PROCEEDING AUTHORIZED.

This article governs a proceeding brought to determine the parentage of a child. The proceeding is a civil action governed by the rules of civil procedure.

SECTION 602. STANDING TO SUE.

Subject to Sections 604 and 605, a proceeding to determine the existence or non-existence of a parent-child relationship may be brought by:

- (1) a child;
- (2) the mother;
- (3) a man presumed to be the child's father as provided under Section 203;
- (4) a man alleging that he is the putative father of the child;
- (5) a governmental entity;
- (6) an authorized adoption agency or licensed child-placing agency; or
- (7) the personal representative of a person entitled to bring a proceeding who is

deceased, incapacitated, or a minor.

SECTION 603. SERVICE OF PROCESS.

(a) The following persons are entitled to service of process on the filing of a proceeding to determine parentage:

(1) each parent as to whom the parent-child relationship has not been terminated or service of process has not been waived; and

(2) a putative father, unless;

(A) an affidavit of [waiver of interest in a child signed by the putative father] is attached to the [petition]; or

(B) service is not required under Article 4.

(b) Process may be served on any other person, governmental entity, adoption agency or licensed child-placing agency, who has asserted an interest in the child.

SECTION 604. LIMITATION; CHILD WITH NO PRESUMED FATHER.

(a) A proceeding to determine parentage of a child with no presumed father may be brought no later than [two years] after the child becomes an adult.

(b) This section applies to a child for whom an earlier proceeding was dismissed because a statute of limitation of less than the [age of majority] was then in effect.

SECTION 605. LIMITATION; CHILD WITH PRESUMED FATHER.

(a) Subject to subsections (b) and (c), a proceeding seeking to declare the nonexistence of the presumed father-child relationship must be brought within a reasonable time after obtaining knowledge of relevant facts and, in no event, later than [two years] after the child's birth.

(b) A proceeding seeking to declare the nonexistence of the presumed father-child relationship may be brought at any time if the tribunal determines that:

(1) the mother and presumed father of the child did not cohabit with each other or engage in sexual intercourse during the time of probable time of conception; and

(2) the presumed father has not established a father-child relationship with the child.

(c) The tribunal shall dismiss a proceeding brought by a putative father seeking to establish his paternity of a child who has a presumed father if the tribunal determines that:

(1) the child's presumed father has resided in the same household as the child in a father-child relationship or has established a father-child relationship with the child through his other actions;

(2) the child's presumed father seeks a determination by the tribunal naming him as the father of the child; and

(3) the proceeding is brought more than [two years] after the latter of:

(A) the date of the child's birth; or

(B) the time the presumption of paternity came into existence under Section 203.

SECTION 606. PERSONAL JURISDICTION.

(a) A tribunal of this State with jurisdiction to determine parentage may exercise personal jurisdiction over a nonresident individual, or the individual's guardian or conservator, under Section 201, Uniform Interstate Family Support Act.

(b) A party not subject to the jurisdiction of the tribunal is not bound by a determination of parentage.

(c) Lack of jurisdiction over a party does not preclude a tribunal from making a final determination as to those parties over whom the tribunal has personal jurisdiction.

SECTION 607. VENUE.

The proceeding may be brought in the [county] in which:

(1) the child or the presumed or putative father resides or is found; or

(2) a proceeding for probate of the presumed or putative father's estate has been or may be brought.

SECTION 608. JOINDER OF ACTIONS.

A proceeding to determine parentage may be joined with an action for divorce, annulment, legal separation, separate maintenance, custody, visitation, support, termination of parental rights, or adoption.

SECTION 609. PROCEEDING STAYED UNTIL AFTER BIRTH.

A proceeding may be brought under this article either before or after the birth of the child. The proceeding must be stayed until after the birth, but service of process and the taking of depositions to perpetuate testimony may be pursued at any time after filing.

SECTION 610. REPRESENTATION OF CHILD.

(a) The child is not a necessary party to a proceeding under this article.

(b) It is rebuttably presumed that in a final hearing on the merits to determine parentage the interests of the child are adequately represented by the party bringing the proceeding to determine parentage.

(c) If the tribunal finds that the interests of the child are not adequately represented by a party to the proceeding or are adverse to that party, the tribunal shall appoint an [attorney ad litem] to represent the child.

(d) The child shall be represented by an [attorney ad litem] appointed by the tribunal in a settlement agreement, dismissal, or nonsuit, unless the tribunal:

(1) finds on the record that the interests of the child are adequately represented by a party to the proceeding, or are not adverse to that party; and

(2) approves the settlement agreement, dismissal, or nonsuit.

SECTION 611. EFFECT OF EARLIER DETERMINATION OF PATERNITY.

(a) A final determination of parentage by a tribunal of competent jurisdiction bars a later proceeding under this [Act] by application of res judicata and issue preclusion.

(b) For purposes of this section, a final order of a tribunal of competent jurisdiction dissolving a marriage of the mother and presumed father shall be considered a final determination of parentage if:

(1) both parties participated in the proceeding; and

(2) the final order specifically identifies a child as the child of the mother and presumed father.

SECTION 612. HEARINGS AND RECORDS; CONFIDENTIALITY.

(a) Notwithstanding other law concerning public hearings and records, a temporary or final hearing under this article shall be held in closed session without admittance of persons other than those necessary to the proceeding.

(b) Subject to subsection (c), all papers and records pertaining to the proceeding are not subject to public inspection, including the permanent record of the tribunal and of the Title IV-D Agency.

(c) Public inspection may be made of the:

- (1) final order in the proceeding;
- (2) papers and records in the proceeding with:
 - (A) consent of the parties; or
 - (B) an order of the tribunal for good cause shown.

SECTION 613. EFFECT OF PRIVATE AGREEMENT.

An agreement between a putative or presumed father and the mother or child not approved by a tribunal of competent jurisdiction does not bar a proceeding under this article.

SECTION 614. MOTHER-CHILD RELATIONSHIP.

A woman claiming maternity or a party with standing under Section 602 may bring a proceeding to determine the existence or nonexistence of a mother-child relationship. Insofar as practicable, the provisions of this article relating to the father-child relationship apply to a proceeding to determine the mother-child relationship.

[Sections 615-620 reserved for expansion.]

PART 2. ADMISSION OF PATERNITY

SECTION 621. ADMISSION OF PATERNITY AUTHORIZED.

In a proceeding to determine parentage of a child, the respondent may admit to the paternity of a child by signing an admission of paternity.

Reporter's Note

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

SECTION 622. CONTENTS OF ADMISSION.

(a) An admission of paternity as provided under this article must:

- (1) be in writing;
- (2) state whether the putative father is a minor;
- (3) state that the putative father admits the child is his biological child;
- (4) state the marital status of the mother;
- (5) include the social security number of the putative father;
- (6) state that the admission creates a presumption of paternity that is sufficient

for the tribunal to render an order determining parentage pursuant to the admission; and

(7) be signed by the putative father before a witness or a person authorized to administer oaths as provided under the laws of this State.

(b) The admission may include a waiver of:

- (1) process in a proceeding to establish the parent-child relationship; and
- (2) the right to notice of further proceedings in the tribunal.

(c) The admission may be signed before the birth of the child.

Reporter's Note

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

SECTION 623. USE OF ADMISSION BEFORE TRIBUNAL.

(a) The admission of paternity may be attached to the [petition] seeking a determination of parentage or filed later.

(b) The tribunal shall render an order determining the child to be the biological child of the putative father if the tribunal finds that the admission of paternity was signed as provided under this article and that the facts stated in the admission are true.

SECTION 624. VALIDATION OF OTHER ADMISSIONS OF PARENTAGE.

An admission of paternity that fails to meet all of the requirements of this article is sufficient for determining parentage if the tribunal determines that the admission is true and was signed by the putative father .

[Sections 626-630 reserved for expansion.]

PART 3. PRELIMINARY CONFERENCE

SECTION 631. CONDUCT OF PRELIMINARY CONFERENCE.

(a) After completion of genetic testing, the tribunal shall order the parties to appear at a preliminary conference, either in person or by attorney.

(b) At the preliminary conference, a written report of a genetic testing expert is admissible as evidence of the truth of the matters it contains, unless within [30] days after receipt a party objects to the report and cites specific grounds for exclusion. The admissibility of the report is not affected by the report resulting from an agreement of the parties or an order of the tribunal, nor is the admissibility affected by the testing having been performed before or after the filing of the proceeding.

(c) If objected to within [30] days after receipt of the most recent genetic test, a party may call one or more genetic testing experts to testify in person, by telephone, or by deposition about the expert's findings and opinions, at the expense of the person challenging the genetic testing results.

(d) Testimony at a preliminary conference is governed by the rules of evidence as in other civil cases.

(e) Evidence admitted at the preliminary conference is a part of the record of the case.

Reporter's Note

p. 949, 42 U.S.C. § 666(a)(5)(F)(ii).

SECTION 632. TEMPORARY ORDERS.

The tribunal may render an order in a proceeding under this article, including an order for temporary support of the child, if the person ordered to pay support:

- (1) is a presumed father under Section 203;
- (2) is a putative father petitioning to have his paternity determined or who admits paternity in pleadings filed with the tribunal; or
- (3) is shown to be the father of the child by clear and convincing evidence.

SECTION 633. EFFECT OF TESTS FOR PARENTAGE.

(a) If at the preliminary conference the tribunal finds that genetic testing establishes a presumption of paternity as provided under Section 203(a)(6), the presumption may be rebutted only by a second genetic test in compliance with the requirements of Article 5 which:

- (1) excludes the man as a possible father of the child; or
- (2) identifies another man as a probable father of the child.

(b) If another man is identified by a second genetic test as a possible father of the child other than identical twins as provided under Section 508, the tribunal shall order both men to submit to additional testing that complies with the requirements of Article 5.

(c) If no evidence is presented at the preliminary conference of a second genetic test to rebut the presumption of paternity established under Section 203(a)(6), the tribunal shall render a final order determining the man to be the father of the child under Section 645.

(d) If the tribunal finds the genetic testing fails to either show a [95] % probability of paternity or an exclusion of the presumed or putative father as the father of the child, the tribunal shall set the proceeding for final hearing.

(e) Subject to a party's right to additional testing as provided under Section 506, if the tribunal finds that the genetic testing excludes a presumed or putative father as the father of the child, as to that party the tribunal shall dismiss the proceeding with prejudice.

Reporter's Note

Subsection (e) is designed to avoid situations such as those found in Cable v. Anthou, 449 Pa. Super. 553, 674 A.2d 732, appeal granted, 546 Pa 140, 683 A.2d 290 (1996) and In re Paternity of Bratcher, 551 N.E.2d 1160 (Ind. App. 1 Dist. 1990).

SECTION 634. CONSEQUENCES OF REFUSING GENETIC TESTING.

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

(b) If the petitioner refuses to submit to genetic testing, irrespective of whether the refusing party is the mother or a presumed or putative father of the child, the tribunal may dismiss the proceeding, without prejudice.

(c) If the respondent refuses to submit to genetic testing as ordered by a tribunal, the tribunal may render a final determination of parentage against that party on proof sufficient to render a default final order.

(d) If the mother or a presumed or putative father refuses to submit to testing for parentage, the fact of refusal may be introduced as evidence as provided under this article.

SECTION 635. PREFERENTIAL SETTING.

In a proceeding under this article, the tribunal shall grant a motion for a preferential setting for final hearing if the tribunal is satisfied that discovery has been completed or sufficient time has elapsed since the filing of the proceeding for the completion of all necessary and reasonable discovery.

[Sections 636-640 reserved for expansion]

PART 4. FINAL HEARING AND ORDER

SECTION 641. EVIDENCE AT FINAL HEARING.

(a) A written report of a genetic testing expert is admissible at the final hearing in the same way as provided in Section 631.

(b) If objected to within [30] days after receipt of the most recent genetic test, a party may call a genetic testing expert to testify at the final hearing, in person, by telephone, or by deposition, at the expense of the person challenging the genetic testing results.

(c) If the tribunal finds that genetic testing shows the possibility of a putative father's paternity, the tribunal shall admit this evidence if offered at the final hearing.

(d) The party seeking to establish a putative father's paternity retains the right to open and close at final hearing.

(e) Copies of bills for genetic testing and for prenatal and postnatal health care of the mother and child furnished to the adverse party not less than [10] days before the final hearing are admissible in evidence to prove:

- (1) the amount of the charges; and
- (2) that the charges were reasonable, necessary and customary.

SECTION 642. PRESUMPTIONS; BURDEN OF PROOF.

(a) If at final hearing the tribunal finds that genetic testing shows at least a [95] % probability of paternity using a prior probability of 0.50, the man is presumed to be the child's father. The party opposing the establishment of paternity may only rebut the presumption by a second genetic test as provided in Section 633.

(b) In a proceeding in which there is a presumption of parentage under Section 203, the party contesting a presumed father's paternity of the child has the burden of rebutting the presumption of paternity by clear and convincing evidence.

(c) A man who refuses to submit to genetic testing has the burden of proving that he is not the father of the child by clear and convincing evidence.

(d) If two or more presumptions are in conflict, the weightier presumption of paternity is that of a presumed or putative father who is shown by genetic testing to have a greater than [95] % probability of paternity using a prior probability of 0.50.

(e) If a presumption of paternity is rebutted, the tribunal shall enter an order finding that the man presumed to be the father of the child is not the father.

(f) The final hearing shall be by the tribunal without a jury.

SECTION 643. COSTS AND FEES.

(a) Except as provided in subsection (b), the tribunal may assess filing fees, reasonable attorney's fees, genetic testing fees, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this article. Attorney's fees may be taxed as costs and may be paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of child support has priority over fees, costs, and expenses.

(b) The tribunal may not assess fees, costs, or expenses against the support enforcement agency of this State or another state, except as provided under other law.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if the tribunal determines that a final hearing was requested for delay.

Reporter's Note.

Derived from UIFSA Section 313

SECTION 644. PRIVATE AGREEMENT TO PAY SUPPORT.

(a) Subject to Section 613, a written agreement to pay child support arising out of a putative father-child relationship does not require consideration and is enforceable according to its terms.

(b) In the best interest of the child or the mother, the tribunal may, and upon the payor's request shall, order the agreement to be kept in confidence and designate a person or agency to receive and disburse child support payments paid in performance of the agreement.

SECTION 645. FINAL ORDER REGARDING PARENTAGE.

(a) The tribunal shall render a final order declaring whether a presumed or putative father is the biological parent of the child.

(b) An order establishing parentage shall state the name of the child.

(c) As appropriate, the final order shall include provisions for custody, visitation, and support as provided under other state law.

SECTION 646. DEFAULT ORDER.

The tribunal may render a final order of parentage against a party, who, after service of process, fails to answer and wholly makes default.

SECTION 647. EFFECT OF FINAL ORDER.

A final order determining that a presumed or putative father is the biological father of a child confirms or creates the parent-child relationship between the father and the child for all purposes.

ARTICLE 7.

PARENTAGE BASED ON EQUITABLE ESTOPPEL

SECTION 701. TRIBUNAL AUTHORIZED TO REFUSE GENETIC TESTING.

(a) A tribunal may deny genetic testing of a presumed father of a child if the tribunal determines:

- (1) that the conduct of either the mother or of a presumed father creates an equitable estoppel; and
- (2) an order for genetic testing may cause an inequitable result by denying the father-child relationship to the child.

(b) In determining whether to grant or deny genetic testing based on the best interest of the child, the tribunal shall consider the following factors:

- (1) the length of time between the proceedings to contest his paternity and the time that the presumed father was placed on notice that he might not be the biological father;
- (2) the length of time that the presumed father assumed the role of father of the child;
- (3) the facts surrounding the presumed father's discovery of his possible nonpaternity;
- (4) the nature of the father-child relationship;
- (5) the age of the child;
- (6) the harm that may result to the child if paternity is successfully disproved;
- (7) the extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child; and
- (8) other factors that may affect the equities involved in the potential disruption of the father-child relationship or the chance of undeniable harm to the child.

(c) In a proceeding involving the application of this article, the child shall be represented by [an attorney] ad litem.

(d) The tribunal may grant a motion to deny genetic testing on the request of either the mother or the presumed father.

(e) A denial of genetic testing must be based on clear and convincing evidence that the evidentiary factors listed in this section sustain that determination.

SECTION 702. ORDER BASED ON EQUITABLE ESTOPPEL.

If a tribunal denies genetic testing, the tribunal shall render an order determining that the presumed father is the biological father of the child.

Reporter's Note

See "Paternity Litigation Involving Presumed Versus Putative Fathers: Conflicting Right and Results" by Marilyn Ray Smith.

ARTICLE 8.

CHILD OF ASSISTED REPRODUCTION

SECTION 801. HUSBAND'S LIABILITY FOR ASSISTED REPRODUCTION.

(a) If the husband consents to assisted reproduction by his wife, the husband will be treated in law as the biological father of any resulting child.

(b) Consent by the husband includes:

(1) the artificial insemination of his wife;

(2) providing his sperm to fertilize a donor's egg that is placed in the uterus of his wife; or

(3) the implanting of an embryo in the uterus of his wife, whether;

(A) the donated embryo is the result of separate sperm and egg donations;

or

(B) the donated embryo is created for the purpose of assisted reproduction.

Reporter's Note

Subsection (a) is derived from UPA Section 5. Subsection (b) is derived from USCACA Section 1 and 2

SECTION 802. CONSENT TO ASSISTED REPRODUCTION.

(a) Consent to participation in assisted reproduction must be given by each participant involved, including as applicable:

- (1) the husband and wife;
- (2) the sperm donor if other than the husband;
- (3) the egg donor if other than the wife; and
- (4) the unmarried woman.

(b) The consent must :

- (1) specify the legal consequences of participating in the assisted reproduction;
- (2) be in writing; and
- (3) be signed by the participant.

(c) Failure to comply with subsection (b) does not:

(1) preclude treating the husband as the father of a child born to his wife if the wife and husband treat the child as their child in all respects and jointly represent their parenthood to others;

(2) grant a donor rights as a mother or father of the child if the donation of reproductive material was made under circumstances demonstrating that assisted reproduction without parental responsibility was intended; or

(3) impose duties on a donor as a mother or father of the child if the donation of reproductive material was made under circumstances demonstrating that assisted reproduction without parental responsibility was intended.

SECTION 803. LIMITATION ON HUSBAND'S DISPUTE OF PATERNITY.

(a) The husband of a woman who gives birth to a child through assisted reproduction is deemed to be the father of the child unless:

(1) within two years after learning of the child's birth he brings a proceeding to contest his presumed parentage; and

(2) the tribunal determines he did not consent to the assisted reproduction.

(b) The limitation of subsection (a) applies to a marriage declared invalid after the assisted reproduction.

Reporter's Note

This section is derived from USCACA Section 3

SECTION 804. PARENTAL STATUS OF DECEASED INDIVIDUAL.

An individual who dies before implantation of an embryo or before a child is conceived from the individual's egg or sperm, other than through sexual intercourse, is not a parent of the resulting child.

Reporter's Note

This section is derived from USCACA Section 4

SECTION 805. EFFECT OF DISSOLUTION OF MARRIAGE.

If a husband and wife dissolve their marriage before implantation of an embryo or before a child is conceived by use of the husband's sperm, his earlier consent for assisted reproduction is void.

Reporter's Note

This section is entirely new, but is derived from the policy stated in Section 804. If there is to be no liability for a child conceived after death, then there should be no liability for a child conceived or implanted after divorce.

SECTION 806. PARENTAL STATUS OF DONOR TO UNMARRIED WOMAN.

(a) A sperm donor is not the father of a child conceived through assisted reproduction if the mother is unmarried at the time of conception unless:

(1) the donor consents in writing to be treated in law as the father of the child;

or

(2) after birth of the child, the mother and the donor jointly treat the donor as the father of the child and jointly represent this parentage to others.

(b) An egg donor or an embryo donor is not a parent of the child born by the woman.

Reporter's Note

Adapted from USCACA Sections 3 and 4. USCACA does not deal expressly with unmarried people, but presumably the legal principles should be the same. Subsection (a) is uniquely applicable to a nonmarital child where the mother knows the donor.

This draft of the Uniform Parentage Act takes no position on surrogacy contracts for birth of children.

Jurisdictions considering legalizing such contracts should consider Alternative A, USCACA, Sections 5-9.

Jurisdictions considering prohibiting such contracts should consider Alternative B, Section 5, USCACA.

Either choice may be incorporated into a new Article 9 of this Act.

ARTICLE 9 MISCELLANEOUS

SECTION 901. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this Uniform Act consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 902. SEVERABILITY CLAUSE.

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

SECTION 903. [REPEAL].

The following acts and parts of acts are repealed:

- (1) [Paternity Act]
- (2)
- (3)

SECTION 904. TIME OF TAKING EFFECT.

This[Act] takes effect on _____.