

D R A F T
FOR APPROVAL

REVISED UNIFORM PARENTAGE ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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REVISED UNIFORM PARENTAGE ACT

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ON UNIFORM STATE LAWS

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June 13, 2017

REVISED UNIFORM PARENTAGE ACT

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REVISED UNIFORM PARENTAGE ACT

PREFATORY NOTE

Drafted by:

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Brief description of act:

The Uniform Parentage Act (UPA) was originally promulgated in 1973 (UPA (1973)). UPA (1973) removed the legal status of illegitimacy and provided a series of presumptions used to determine a child's legal parentage. A core principle of UPA (1973) was to ensure that "all children and all parents have equal rights with respect to each other," regardless of the marital status of their parents. UPA (1973) § 2, Comment.

The UPA was revised in 2002 (UPA (2002)). UPA (2002) augmented and streamlined UPA (1973). UPA (2002) added provisions permitting a non-judicial acknowledgment of paternity procedure that is the equivalent of an adjudication of parentage in a court and added a paternity registry. UPA (2002) also included provisions governing genetic testing and rules for determining the parentage of children whose conception was not the result of sexual intercourse. Finally, UPA (2002) included a bracketed Article 8 to authorize surrogacy agreements.

UPA (2017) makes five major changes to the UPA. First, UPA (2017) seeks to ensure the equal treatment of children born to same-sex couples. UPA (2002) was written in gendered terms, and its provisions presumed that couples consist of one man and one woman. For example, Section 703 of UPA (2002) provided that "[a] man who provides sperm for, or consents to, assisted reproduction by a woman as provided in Section 704 with the intent to be the parent of her child, is a parent of the resulting child."

In *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the United States Supreme Court held that laws barring marriage between two people of the same sex are unconstitutional. After *Obergefell*, some parentage laws that treat same-sex couples differently than different-sex couples may be unconstitutional. For example, in July 2015, a federal district court in Utah held that refusing to apply Utah's assisted reproduction parentage provisions equally to same-sex couples likely was unconstitutional. Under the Utah Uniform Parentage Act, which is modeled on UPA (2002), a husband who consents to his wife's insemination is the legal father of the resulting child. Utah Code Ann. §§ 78B-15-703, 78B-15-704; 78B-15-201(2)(e). The court concluded that the plaintiffs were "highly likely to succeed in their claim" that extending the "benefits of the assisted reproduction statutes to male spouses in opposite-sex couples but not for female spouses in same-sex couples" was unconstitutional. *Roe v. Patton*, 2015 WL 4476734, *3 (D. Utah. 2015).

UPA (2017) updates the Act to address this potential constitutional infirmity by amending provisions throughout the Act so that they address and apply equally to same-sex couples. These include broadening the presumption, acknowledgment, genetic testing, and assisted reproduction

1 articles to make them gender-neutral.

2
3 Second, UPA (2017) includes a provision for the establishment of a de facto parent as a full legal
4 parent of a child. Most states recognize and extend at least some parental rights to people who
5 have functioned as parents to children but who are unconnected to those children through either
6 biology or marriage. These states span the country; ranging from Massachusetts, to West
7 Virginia, to North and South Carolina, to Texas. Some states recognize such people under a
8 variety of equitable doctrines – sometimes called de facto parentage, or in loco parentis, or the
9 psychological parent doctrine. Other states extend rights to such people through broad third party
10 standing statutes. And, more recently, states have begun to treat such people as legal parents
11 under their parentage provisions. Two states – Delaware and Maine – achieve this result by
12 including “de facto parents” in their definition of parent in their state versions of the Uniform
13 Parentage Act. Other states, including California, Colorado, Kansas, New Hampshire, and New
14 Mexico, reached this conclusion by applying their existing parentage provisions to such persons.
15 New Section 609 provides a process for the establishment of de facto parentage.

16
17 Third, UPA (2017) includes a provision that precludes establishment of a parent-child
18 relationship by the perpetrator of a sexual assault that resulted in the conception of the child.
19 The U.S. Congress adopted the Rape Survivor Child Custody Act in 2015, which provides
20 incentives for states to enact “a law that allows the mother of any child that was conceived by
21 rape to seek court-ordered termination of the parental rights of her rapist with regard to that
22 child, which the court shall grant upon clear and convincing evidence of rape.” In 2017, at least
23 17 state legislatures were considering bills to enact such statutes. New Section 614 provides
24 language to implement the federal law.

25
26 Fourth, UPA (2017) updates the surrogacy provisions to reflect developments in that area. States
27 have been particularly slow to enact Article 8 of UPA (2002). Eleven (11) states adopted
28 versions of UPA (2002).¹ Of these eleven (11) states, only two (2) – Texas and Utah – enacted
29 the surrogacy provisions based on Article 8 of UPA (2002). At least five (5) of the eleven (11)
30 states that enacted UPA (2002) enacted surrogacy provisions that are *not* premised on the 2002
31 UPA. These states include: Delaware (permitting) (enacted 2013); Illinois (permitting) (enacted
32 2004); Maine (permitting) (enacted 2015); North Dakota (banning) (enacted 2005); and
33 Washington (banning compensated) (enacted 1989).

34
35 The fact that very few states enacted Article 8 is likely the result of a confluence of factors. One
36 likely factor is the controversial nature of surrogacy itself. But the fact that four of the states that
37 enacted UPA (2002) have provisions permitting surrogacy that are not modeled on Article 8 of
38 UPA (2002) suggests that the small number of enactments is also affected by the substance of
39 Article 8. Accordingly, UPA (2017) updates the surrogacy provisions to make them more
40 consistent with current surrogacy practice.

41
¹ The eleven states are: Alabama, Delaware, Illinois, Maine, New Mexico, North Dakota, Oklahoma, Texas, Utah, Washington, Wyoming. *See* Uniform Law Commission, *Legislative Fact Sheet – Parentage Act*.

1 Finally, UPA (2017) includes a new article – Article 9 – that addresses the right of children born
2 through assisted reproductive technology to access medical and identifying information
3 regarding any gamete providers. Based on data from 2014, the CDC reports that “approximately
4 1.6% of all infants born in the United States every year are conceived using ART.”² Data suggest
5 that this percentage continues to increase. Gaia Bernstein, *Unintended Consequences:
6 Prohibitions on Gamete Donor Anonymity and the Fragile Practice of Surrogacy*, 10 Ind. Health
7 L. Rev. 291, 298 (2013) (noting that “from 2004 to 2008 the number of IVF cycles used for
8 gestational surrogacy grew by 60%, the number of births by gestational surrogates grew by 53%
9 and the number of babies born to gestational surrogates grew by 89%”). Accordingly, it is
10 increasingly important for states to address the right of children to access information about their
11 gamete donor. Article 9 does not require disclosure of the identity of a gamete donor, but it does
12 require gamete banks and fertility clinics to ask donors if they want to have their identifying
13 information disclosed when the resulting child turns 18. It does require disclosure of non-
14 identifying medical history of the gamete donor.

15 16 **Questions about UPA?**

17 For further information contact the following persons:

18 Jamie Pedersen, Chair of the UPA (2017) drafting committee

19 Courtney G. Joslin, Reporter for the UPA (2017) drafting committee
20

21 **Notes about ULC Acts:**

22 For information on the specific drafting rules used by ULC, the Conference *Procedural and
23 Drafting Manual* is available online at www.uniformlaws.org.
24

25 Because these are uniform acts, it is important to keep the numbering sequence intact while
26 drafting. In general, the use of bracketed language in ULC acts indicates that a choice must be
27 made between alternate bracketed language, or that specific language must be inserted into the
28 empty brackets. For example: “An athlete agent who violates Section 14 is guilty of a
29 [misdemeanor] [felony] and, upon conviction, is punishable by [].
30

31 A word, number, or phrase, or even an entire section, may be placed in brackets to indicate that
32 the bracketed language is suggested but may be changed to conform to state usage or
33 requirements, or to indicate that the entire section is optional. For example: “An applicant for
34 registration shall submit an application for registration to the [Secretary of State] in a form
35 prescribed by the [Secretary of State]. [An application filed under this section is a public record.]
36 The application must be in the name of an individual, and, except as otherwise provided in
37 subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury.”
38

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

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

1 **REVISED UNIFORM PARENTAGE ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Revised Uniform
5 Parentage Act.

6 **SECTION 102. DEFINITIONS.** In this [act]:

7 (1) “Acknowledged parent” means an individual who has established a parent-child
8 relationship under [Article] 3.

9 (2) “Adjudicated parent” means an individual who has been adjudicated by a court with
10 jurisdiction to be a parent of a child.

11 (3) “Alleged genetic parent” means an individual who is alleged to be, or alleges that the
12 individual is, a genetic parent or possible genetic parent of a child whose parentage has not been
13 adjudicated. The term includes an alleged genetic father and alleged genetic mother. The term
14 does not include:

15 (A) a presumed parent;

16 (B) an individual whose parental rights have been terminated or declared not to
17 exist; or

18 (C) a donor.

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

21 (A) intrauterine or intracervical insemination;

22 (B) donation of gametes;

23 (C) donation of embryos;

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

2 (E) intracytoplasmic sperm injection.

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

5 (6) “Child-support agency” means a government entity, public official, or private agency
6 authorized to provide parentage-establishment services under Title IV-D of the Social Security
7 Act, 42 U. S. C. Section 651 et seq.

8 (7) “De facto parent” means an individual adjudicated to be a parent under Section 609.

9 (8) “Determination of parentage” means establishment of a parent-child relationship by a
10 judicial or administrative proceeding or signing of a valid acknowledgment of parentage under
11 [Article] 3.

12 (9) “Donor” means an individual who provides gametes intended for use in assisted
13 reproduction, whether or not for consideration. The term does not include:

14 (A) a woman who gives birth to a child conceived by assisted reproduction[,
15 except as otherwise provided in [Article] 8]; or

16 (B) a parent under [Article] 7[or an intended parent under [Article] 8].

17 (10) “Gamete” means sperm, egg, or any part of a sperm or egg.

18 (11) “Genetic testing” means an analysis of genetic markers to identify or exclude a
19 genetic relationship.

20 (12) “Individual” means a natural person of any age.

21 (13) “Intended parent” means an individual, married or unmarried, who manifests an
22 intent to be legally bound as a parent of a child conceived by assisted reproduction.

23 (14) “Man” means a male individual of any age.

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

3 (16) “Parentage” or “parent-child relationship” means the legal relationship between a
4 child and a parent of the child.

5 (17) “Presumed parent” means an individual who under Section 204 is recognized as a
6 parent of a child, until the status is rebutted in a judicial proceeding, a valid denial of parentage is
7 made under [Article] 3, or a court adjudicates the individual to be a parent.

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

10 (19) “Sign” means, with present intent to authenticate or adopt a record:

11 (A) to execute or adopt a tangible symbol; or

12 (B) to attach to or logically associate with the record an electronic symbol, sound,
13 or process.

14 (20) “Signatory” means an individual who signs a record.

15 (21) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
16 United States Virgin Islands, or any territory or insular possession under the jurisdiction of the
17 United States. The term includes a federally recognized Indian tribe.

18 (22) “Transfer” means a procedure for assisted reproduction by which an embryo or
19 sperm is placed in the body of the woman who will give birth to the child.

20 (23) “Witness” means that an individual signs a record to verify that the individual
21 personally observed a signatory signing the record.

22 (24) “Woman” means a female individual of any age.

1 **Comment**

2
3 As was true of UPA (2002), UPA (2017) utilizes separate classifications of parents. Five
4 of the classifications—acknowledged parents, adjudicated parents, alleged genetic parents,
5 intended parents, and presumed parents—are largely carried over from UPA (2002), although the
6 classifications have been made gender neutral. UPA (2017) adds one new classification of
7 individuals—de facto parents.
8

9 As was true in UPA (2002), the terms “woman” and “man” are defined to clarify that any
10 human, regardless of age, can be a parent under the Act.
11

12 UPA (2017) includes new definitions and amendments to existing definitions related to
13 assisted reproduction. For example, the definition of the term “gamete” has been amended to
14 include parts of gametes to reflect new technological developments. Definitions that are used in
15 only one article have been moved into the relevant Article.
16

17 **SECTION 103. SCOPE.**

18 (a) This [act] applies to an adjudication or determination of parentage.

19 (b) This [act] does not create, affect, enlarge, or diminish parental rights or duties under
20 law of this state other than this [act].

21 [(c) This [act] does not authorize or prohibit an agreement between one or more intended
22 parents and a woman who is not an intended parent in which the woman agrees to become
23 pregnant through assisted reproduction and which provides that each intended parent is a parent
24 of a child conceived through assisted reproduction. If a birth results under the agreement and the
25 agreement is unenforceable under [cite to the law of this state regarding surrogacy agreements],
26 the parent-child relationship is established as provided in [Articles] 1 through 6.]

27 ***Legislative Note:*** A state should enact subsection (c) if the state does not enact Article 8 or
28 otherwise does not permit surrogacy agreements.
29

30 **Comment**

31
32 Source: UPA (2002) § 103.
33

34 UPA (2002) contained a section that addressed both the scope of the act and the issue of
35 choice of law under the Act. UPA (2017) follows the substance of UPA (2002), but addresses
36 these concepts in two separate sections. The scope of the act is addressed in Section 103. Choice

1 of law is addressed in Section 105.

2
3 **SECTION 104. AUTHORIZED COURT.** The [designate court] may adjudicate
4 parentage under this [act].

5 **Comment**

6
7 Source: UPA (2002) § 104.

8
9 The court and, if applicable, child-support agency having jurisdiction over parentage
10 proceedings under the UPA should be identified here. As recognized in the comment to Section
11 402 of UIFSA, several states have laws that allow a child-support agency to determine parentage
12 administratively in certain cases, such as when parentage is not contested, while other states rely
13 solely on the judicial process for parentage adjudications. Section 466(a)(2) of the Social
14 Security Act authorizes both administrative and judicial procedures for parentage establishment.

15
16 **SECTION 105. APPLICABLE LAW.** The court shall apply the law of this state to
17 adjudicate parentage. The applicable law does not depend on:

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

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

20 **Comment**

21
22 Source: UPA (2002) § 103; UIFSA (2008) § 303; UIFSA (1996) § 303.

23
24 2017 UPA follows the choice of law approach of UPA (2002) § 103, UIFSA (1996)
25 § 303, and UIFSA (2008) § 303. These acts all direct the local court to apply local law. If this
26 state is an inappropriate forum, dismissal for forum non-conveniens may be appropriate.

27
28 **SECTION 106. DATA PRIVACY.** A proceeding under this [act] is subject to law of
29 this state other than this [act] which governs the health, safety, privacy, and liberty of a child or
30 other individual who could be affected by disclosure of information that could identify the child
31 or other individual, including address, telephone number, digital contact information, place of
32 employment, social security number, and the child's day-care facility or school.

33 **Comment**

34
35 Source: UPA (2002) § 105; UCCJEA (1997) § 209(e).

SECTION 107. ESTABLISHMENT OF MATERNITY AND PATERNITY. To the extent practicable, a provision of this [act] applicable to a father-child relationship applies to a mother-child relationship and a provision of this [act] applicable to a mother-child relationship applies to a father-child relationship.

Comment

Source: UPA (2002) § 106; UPA (1973) § 21.

This section carries over a principle followed in UPA (1973) § 21 and UPA (2002) § 106, that, where appropriate, a court may apply a gender-specific provision in a gender-neutral manner. Although UPA (2017) revised many provisions and concepts to make them gender neutral, some provisions of UPA (2017) remain written in terms applicable to one gender or the other. This section makes clear that a court has the authority to apply gendered provisions in a gender-neutral manner where appropriate.

[ARTICLE] 2

PARENT-CHILD RELATIONSHIP

SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP. A parent-child relationship is established between an individual and a child if:

- (1) the individual gives birth to the child[, except as otherwise provided in [Article] 8];
- (2) there is an un rebutted presumption of the individual’s parentage of the child under Section 204;
- (3) the individual is adjudicated a parent of the child;
- (4) the individual adopts the child;
- (5) the individual acknowledges parentage of the child under [Article] 3, unless the acknowledgment is rescinded or successfully challenged;[or]
- (6) the individual’s parentage of the child is established under [Article] 7[; or]
- (7) the individual’s parentage of the child is established under [Article] 8].

1 **Legislative Note:** A state should include paragraph (7) if the state includes Article 8 in the act or
2 otherwise permits and recognizes surrogacy agreements.
3

4 **Comment**

5 Source: UPA (2002) § 201.
6

7 UPA (2017) updates the UPA so that it applies equally to children born to same-sex
8 couples. Most of the mechanisms for establishing parentage apply equally without regard to
9 gender. Accordingly, UPA (2017) merges into a single list what had been separate subsections
10 for establishing the parentage of women and men. This approach removes unnecessary
11 distinctions based on gender. This approach is also consistent with the approach taken by states
12 that have amended their UPA-based parentage provisions to apply equally to children born to
13 same-sex couples. *See, e.g.,* Me. Rev. Stat. tit. 19-a, § 1851; N.H. Rev. Stat. § 168-B:2.
14

15 **SECTION 202. NO DISCRIMINATION BASED ON MARITAL STATUS OF**

16 **PARENT.** A parent-child relationship extends equally to every child and parent, regardless of
17 the marital status of the parent.

18 **Comment**

19
20 Source: UPA (2002) § 202; UPA (1973) § 2.
21

22 Historically, children born to unmarried women were extended fewer rights and
23 protections than were extended to marital children. In the 1960s and 1970s, the Supreme Court
24 decided cases in which it held unconstitutional rules that treated nonmarital children unequally.
25 The nondiscrimination provision of UPA (1973), UPA 1973, § 2, was one of the “major
26 substantive sections of the Act.” UPA (1973), § 2, Comment. Section 2 of UPA (1973) was
27 intended to “establish the principle that regardless of the marital status of the parents, all children
28 and all parents have equal rights with respect to each other.” UPA (1973) § 2, Comment. *See*
29 *also* UPA (2002) § 202, Comment (“From a legal and social policy perspective, this is one of the
30 most significant substantive provisions of the Act, reaffirming the principle that regardless of the
31 marital status of the parents, children and parents have equal rights with respect to each other.”).
32

33 This provision reaffirms the principle that once a parent-child relationship has been
34 established, that relationship is entitled to substantive equality, regardless of whether the child is
35 a marital or a nonmarital child.
36

37 **SECTION 203. CONSEQUENCES OF ESTABLISHING PARENTAGE.** Unless

38 parental rights are terminated, a parent-child relationship established under this [act] applies for
39 all purposes, except as otherwise provided by law of this state other than this [act].

1 **Comment**

2
3 Source: UPA (2002) § 203; USCACA (1988) § 10.
4

5 The qualifier “as otherwise provided by law of this state other than this [act]” is
6 necessary because other statutes may restrict rights of a parent. For example, UPC (2008) § 2-
7 114(a)(2) precludes a parent of a child (and the parent’s family) from inheriting from the child by
8 intestate succession if the child “died before reaching [18] years of age and there is clear and
9 convincing evidence that immediately before the child’s death the parental rights of the parent
10 could have been terminated under the law of this state . . . ”
11

12 **SECTION 204. PRESUMPTION OF PARENTAGE.**

13 (a) An individual is presumed to be a parent of a child if:

14 (1) except as otherwise provided under[[Article] 8 or] law of this state other than
15 this [act]:

16 (A) the individual and the woman who gave birth to the child are married
17 to each other and the child is born during the marriage, whether the marriage is or could be
18 declared invalid;

19 (B) the individual and the woman who gave birth to the child were
20 married to each other and the child is born not later than 300 days after the marriage is
21 terminated by death, annulment, declaration of invalidity, divorce, or dissolution[, or after a
22 decree of separation], whether the marriage is or could be declared invalid;

23 (C) the individual and the woman who gave birth to the child married each
24 other after the birth of the child, whether the marriage is or could be declared invalid, and the
25 individual at any time asserted parentage of the child, and:

26 (i) the assertion is in a record filed with [state agency maintaining
27 birth records]; or

28 (ii) the individual agreed to be and is named as a parent of the child
29 on the birth certificate of the child; or

(2) the individual resided in the same household with the child for the first two years of the life of the child, including periods of temporary absence, and openly held out the child as the individual's child.

(b) A presumption of parentage under this section may be rebutted, and competing claims to parentage may be resolved, only by an adjudication under [Article] 6 or a valid denial of parentage under [Article] 3.

Comment

Source: UPA (2002) § 204; UPA (1973) § 4.

A network of presumptions was established by UPA (1973). Under UPA (1973), presumptions of parentage were established by previous marriage to the woman, subsequent marriage to the woman, and by the conduct of holding the child out as the individual's own child. Because, at the time of its drafting, marriage was permitted only between one man and one woman, and because few same-sex couples were raising children together, the presumptions were written to apply only to men.

These presumptions were largely carried over by UPA (2002), although UPA (2002) added an express durational requirement to the holding out presumption. As was true of UPA (1973), the presumptions remained gendered, referring only to men.

UPA (2017) carries over the substance of these presumptions, but revises them so that they apply equally to men and women. Revising the presumptions so that they apply equally to men and women may be required now that same-sex couples can marry in all fifty states. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). In *Obergefell*, the Supreme Court made clear that states not only are precluded from denying same-sex couples from the right to marry, they are also precluded from denying same-sex married spouses the "constellation of benefits" that are extended to married different-sex spouses. Several states recently have enacted similar revisions to parentage presumptions, making them apply equally to men and women. *See, e.g.*, Cal. Fam. Code § 7611; D.C. Code § 16-909; 750 Ill. Comp. Stat. Ann. § 46/204; Me. Rev. Stat. tit. 19-a, § 1881(1); N.H. Rev. Stat. § 168-B:2(V).

In addition, the holding out provision has been amended to account for situations where the person is absent only temporarily. The newly added language is modeled on the UCCJEA's definition of "home state." *See* UCCJEA § 102(7) ("A period of temporary absence of any of the mentioned persons is part of the period.").

Subsection (b) expressly addresses cases where multiple individuals have claims to parentage of a child under the act. UPA (1973) contained a provision for resolving cases involving multiple presumptions. Section 4(b) provided, in relevant part: "If two or more

1 presumptions arise which conflict with each other, the presumption which on the facts is founded
2 on the weightier considerations of policy and logic controls.” UPA (1973) § 4(b). UPA (2002)
3 omitted this provision and contained no provision expressly addressing how courts should
4 resolve cases in which there are multiple presumptions of parentage. UPA (2017) provides
5 express guidance for resolving such cases. Section 204(b) references the possibility that a court
6 might have to resolve competing presumptions of parentage. Factors to be considered in such
7 cases are set forth in newly added Section 613.

8 9 [ARTICLE] 3

10 VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

11 Comment

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

24
25 Article 3 of UPA (2002) referred only to the establishment of paternity through this
26 administrative process. UPA (2017) makes Article 3 gender neutral and refers to the
27 establishment of parentage through the acknowledgment process for an alleged genetic father, an
28 intended parent, and a presumed parent, allowing Article 3 to apply to both men and women. The
29 gender neutral language and addition of the term “intended parent” is consistent with one of the
30 goals of this revision process, which is to ensure that UPA (2017) applies equally to same-sex
31 couples.

32
33 The federal Office of Child Support Enforcement (OCSE) worked with the Drafting
34 Committee to ensure the revised Article 3 of UPA (2017) is consistent with Title IV-D
35 requirements. State law determines what support rights exist and are legally enforceable. These
36 changes ensure that all children can have parentage established regardless of a parent’s gender
37 and facilitate the establishment and enforcement of child support under state law.

38
39 **SECTION 301. ACKNOWLEDGMENT OF PARENTAGE.** A woman who gave
40 birth to a child and an individual who is the alleged genetic father of the child, an intended parent
41 under [Article] 7, or a presumed parent may sign an acknowledgment of parentage to establish

1 the parentage of the child.

2 **Comment**

3
4 Source: 42 U.S.C. § 666(a)(5)(C); UPA (2002) § 301.

5
6 This section has been revised to permit an intended parent under Article 7 or a presumed
7 parent to sign an acknowledgment of parentage, in addition to an alleged genetic parent. This
8 change not only furthers the goal of ensuring that the act applies equally to children born to
9 same-sex couples, but it also furthers the goal of establishing parentage quickly and with
10 certainty.

11
12 **SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF PARENTAGE.**

13 (a) An acknowledgment of parentage must:

14 (1) be in a record signed by the woman who gave birth to the child and by an
15 individual seeking to establish a parent-child relationship and the signatures must be attested by a
16 notarial officer or witnessed by at least one individual;

17 (2) state that a child whose parentage is being acknowledged:

18 (A) does not have a presumed parent other than the individual seeking to
19 establish the parent-child relationship or has a presumed parent whose full name is stated; and

20 (B) does not have another acknowledged parent, adjudicated parent, or
21 individual who is a parent of the child under [Article] 7[or [Article] 8] other than the woman
22 who gave birth to the child; and

23 (3) state that the signatories understand that the acknowledgment is the equivalent
24 of an adjudication of parentage of the child and that a challenge to the acknowledgment is
25 permitted only under limited circumstances and is barred two years after the effective date of the
26 acknowledgment.

27 (b) An acknowledgment of parentage is void if, at the time of signing:

28 (1) an individual other than the individual seeking to establish parentage is a

1 presumed parent, unless a denial of parentage by the presumed parent in a signed record is filed
2 with the [agency maintaining birth records]; or

3 (2) an individual other than the woman who gave birth to the child is an
4 acknowledged or adjudicated parent or a parent under [Article] 7[or [Article] 8].

5 **Comment**

6
7 Source: 42 U.S.C. § 666(a)(5)(C); UPA (2002) § 302.

8
9 Section 302 has been amended to apply equally to men and women.

10
11 UPA (2017) also effects a substantive change to Subsection (b): the acknowledgment is
12 void if another person other than the woman who gave birth *is* a presumed, acknowledged, or
13 adjudicated parent. Under UPA (2002), the acknowledgment was void only if it *stated* that there
14 was another presumed, acknowledged, or adjudicated parent. Thus, under UPA (2002), the
15 acknowledgment was void only if the person knowingly lied on the form. As a result, under UPA
16 (2002), the acknowledgment could cut off potential claims of other individuals so long as the
17 signatories did not lie. UPA (2017) protects the rights of other individuals who are presumed,
18 acknowledged, or adjudicated parents. What had been subsection (b)(3) of UPA (2002) § 302 has
19 been eliminated because it is no longer necessary in light of this change to subsection (b).

20
21 **SECTION 303. DENIAL OF PARENTAGE.** A presumed parent or an alleged genetic
22 parent may sign a denial of parentage in a record. The denial of parentage is valid only if:

23 (1) an acknowledgment of parentage by another individual is filed under Section 305;

24 (2) the signature of the presumed parent or alleged genetic parent is attested by a notarial
25 officer or witnessed by at least one individual; and

26 (3) the presumed parent or alleged genetic parent has not previously:

27 (A) completed a valid acknowledgment of parentage, unless the previous
28 acknowledgment was rescinded under Section 308 or challenged successfully under Section 309;

29 or

30 (B) been adjudicated to be a parent of the child.

SECTION 304. RULES FOR ACKNOWLEDGMENT OR DENIAL OF PARENTAGE.

(a) An acknowledgment of parentage and a denial of parentage may be contained in a single document or may be in counterparts and may be filed with the [agency maintaining birth records] separately or simultaneously. If filing of the acknowledgment and denial both are required under this [act], neither is effective until both are filed under this subsection.

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

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

(d) An acknowledgment of parentage or denial of parentage signed by a minor is valid if the acknowledgment complies with this [act].

Comment

Source: 42 U.S.C. § 666(a)(5)(C)(i); UPA (2002) § 304.

SECTION 305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PARENTAGE.

(a) Except as otherwise provided in Sections 308 and 309, an acknowledgment of parentage that complies with this [article] and is filed with the [agency maintaining birth records] is equivalent to an adjudication of parentage of the child and confers on the acknowledged parent all rights and duties of a parent.

(b) Except as otherwise provided in Sections 308 and 309, a denial of parentage by a presumed parent or alleged genetic parent that complies with this [article] and is filed with the

1 [agency maintaining birth records] with an acknowledgment of parentage that complies with this
2 [article] is equivalent to an adjudication of the nonparentage of the presumed parent or alleged
3 genetic parent and discharges the presumed parent or alleged genetic parent from all rights and
4 duties of a parent.

5 **Comment**

6
7 Source: 42 U.S.C. § 666(a)(5)(D)(ii), and 42 U.S.C. § 666(a)(5)(M); UPA (2002) § 305.

8
9 **SECTION 306. NO FILING FEE.** The [agency maintaining birth records] may not
10 charge a fee for filing an acknowledgment of parentage or denial of parentage.

11 **SECTION 307. RATIFICATION BARRED.** A court conducting a judicial
12 proceeding or an administrative agency conducting an administrative proceeding is not required
13 or permitted to ratify an unchallenged acknowledgment of parentage.

14 **Comment**

15
16 This provision, which is carried over verbatim from UPA (2002), is required by federal
17 law. *See* 42 U.S.C. § 666(a)(5)(E) (“procedures under which judicial administrative proceedings
18 are not required or permitted to ratify an unchallenged acknowledgment of paternity.”).

19
20 **SECTION 308. PROCEDURE FOR RESCISSION.**

21 (a) A signatory may rescind an acknowledgment of parentage or denial of parentage by
22 filing with [the relevant state agency] a signed record of rescission which is attested by a notarial
23 officer or witnessed by at least one individual before the earlier of:

24 (1) 60 days after the effective date under Section 304 of the acknowledgment or
25 denial; or

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

(b) If an acknowledgment of parentage is rescinded under subsection (a), the [agency maintaining birth records] shall notify the woman who gave birth to the child and any individual who signed a denial of parentage of the child that the acknowledgment has been rescinded. Failure to comply with this subsection does not affect the validity of the rescission.

Comment

UPA (2002) required a judicial process to rescind a voluntary acknowledgment of parentage. This is not required by the federal statute, 42 U.S.C. § 666(a)(5)(D)(ii), and many states allow the acknowledgment to be rescinded within the applicable timeframe by filing a rescission form with the child-support agency or vital records agency. UPA (2017) removes the judicial proceeding requirement to offer states flexibility in designing their rescission process.

SECTION 309. CHALLENGE AFTER EXPIRATION OF PERIOD FOR RESCISSION.

(a) After the period for rescission under Section 308 expires, but not later than two years after the effective date under Section 304 of an acknowledgment of parentage or denial of parentage, a signatory of the acknowledgment or denial may commence a proceeding to challenge the acknowledgment or denial, including a challenge brought under Section 614, only on the basis of fraud, duress, or material mistake of fact.

(b) A challenge to an acknowledgment of parentage or denial of parentage by an individual who was not a signatory to the acknowledgment or denial is governed by Section 610.

Comment

Source: 42 U.S.C. § 666(a)(5)(D)(iii); UPA (2002) § 308.

The substance of subsection (a) is largely carried over from UPA (2002), § 308. This provision is consistent with federal law which permits a “challenge” to a voluntary acknowledgment of parentage, but only on the basis of alleged “fraud, duress, or material mistake of fact.” 42 U.S.C. § 666(a)(5)(D)(iii). UPA (2017) does, however, add a cross-reference to the new Section 614 regarding children born as the result of sexual assault. If a woman establishes that the child was born as the result of sexual assault under Section 614, generally this showing will be sufficient to establish that she signed the acknowledgment under duress.

1 UPA (2017) also adds an express cross-reference to the provision governing challenges to
2 an acknowledgment by a nonparent. The substantive rules governing such challenges were
3 included in Article 6 of UPA (2002), but there was no cross-reference in Article 3 to the relevant
4 provision.

5
6 **SECTION 310. PROCEDURE FOR CHALLENGE BY SIGNATORY.**

7 (a) Every signatory to an acknowledgment of parentage and any related denial of
8 parentage must be made a party to a proceeding to challenge the acknowledgment or denial.

9 (b) By signing an acknowledgment of parentage or denial of parentage, a signatory
10 submits to personal jurisdiction in this state in a proceeding to challenge the acknowledgment or
11 denial, effective on the filing of the acknowledgment or denial with the [agency maintaining
12 birth records].

13 (c) The court may not suspend the legal responsibilities arising from an acknowledgment
14 of parentage, including the duty to pay child support during the pendency of a proceeding to
15 challenge the acknowledgment or a related denial of parentage, unless the party challenging the
16 acknowledgment or denial shows good cause.

17 (d) A party challenging an acknowledgment of parentage or denial of parentage has the
18 burden of proof.

19 (e) If the challenge to an acknowledgment of parentage or denial of parentage is
20 successful, the court shall issue an order directing the [agency maintaining birth records] to
21 amend the birth record of the child to reflect the legal parentage of the child.

22 (f) A proceeding to challenge an acknowledgment of parentage or denial of parentage
23 must be conducted under [Article] 6.

24 **Comment**

25
26 Source: UPA (2002) § 309.

27
28 The relevant provision of UPA (2002) addressed the procedure for both rescission and

1 challenge. UPA (2017), however, removed the requirement that rescission be done through an
2 adjudicatory process. Accordingly, references to rescission have been removed from this section.
3 This section now addresses only the judicial procedures governing a challenge to an
4 acknowledgment or denial of parentage.

5
6 UPA (2017) also places the responsibility to file the order described in subsection (e)
7 with the agency maintaining birth records on the party who wants the record changed. If the
8 party who wants the record changed does not file the order with the agency maintaining records
9 and take any other required steps, the record will not be changed.

10
11 **SECTION 311. FULL FAITH AND CREDIT.** The court shall give full faith and
12 credit to an acknowledgment of parentage or denial of parentage effective in another state if the
13 acknowledgment or denial was in a signed record and otherwise complies with the law of the
14 other state.

15 **Comment**

16
17 Source: 42 U.S.C. § 666(a)(5)(C)(iv); UPA (2002) § 311.

18
19 The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996
20 requires states “to give full faith and credit to such an affidavit signed in any other State
21 according to its procedures.” 42 U.S.C. § 666(a)(5)(C)(iv), and that it have the same status as a
22 judgment. This section, carried over from UPA (2002), implements these mandates.

23
24 **SECTION 312. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF**
25 **PARENTAGE.**

26 (a) The [agency maintaining birth records] shall prescribe forms for an acknowledgment
27 of parentage and denial of parentage.

28 (b) A valid acknowledgment of parentage or denial of parentage is not affected by a later
29 modification of the form under subsection (a).

30 **Comment**

31
32 Source: 42 U.S.C. § 666(a)(5)(C)(i), (iv); UPA (2002) § 312.

33
34 **SECTION 313. RELEASE OF INFORMATION.** The [agency maintaining birth
35 records] may release information relating to an acknowledgment of parentage or denial of

parentage to a signatory of the acknowledgment or denial, a court, federal agencies, and [appropriate state agencies] of this or another state.

Comment

Source: UPA (2002) § 313.

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

Comment

Source: UPA (2002) § 314.

Like UPA (2002), UPA (2017) makes this section optional to account for situations in which it may conflict with other rulemaking limitations in a particular state. States will implement acknowledgment procedures in a variety of ways, depending on local practice. This grant of rulemaking authority to carry out the provisions of this article may include electronic transmission of birth and acknowledgment data to the designated state agency.

[ARTICLE] 4

REGISTRY OF PATERNITY

Comment

The provisions establishing a paternity registry were added by UPA (2002). Signing a registry entitles the registrant to notice of and a right to oppose the adoption of an infant child; signing a paternity registry is *not* a means of establishing parentage. In *Lehr v. Robertson*, 463 U.S. 248 (1983), the Supreme Court upheld the constitutionality of a New York “putative father registry.” A New York statute required a father of a nonmarital child to sign a paternity registry if he wished to be notified of a termination of parental rights or adoption proceeding. Thereafter, a series of well-publicized adoption cases occurred in which state courts held that nonmarital fathers had not been given proper notice of such proceedings and voided established adoptions. A substantial number of legislatures responded to these decisions by enacting paternity registries similar to the New York statute.

Like UPA (2002), UPA (2017) limits the effect of the registry to cases in which a child is less than one year of age at the time of the court hearing. This recognizes the need to expedite infant adoptions, while properly protecting the rights of those individuals who have not registered, but instead have established some relationship with the child following birth.

UPA (2017) does not make any substantive changes to Article 4. UPA (2017) does, however, replace gendered terms with gender-neutral ones where appropriate.

1 [PART] 1

2 GENERAL PROVISIONS

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

5 SECTION 402. REGISTRATION FOR NOTIFICATION.

6 (a) Except as otherwise provided in subsection (b) or Section 405, a man who desires to
7 be notified of a proceeding for adoption of, or termination of parental rights regarding, his
8 genetic child must register in the registry of paternity established by Section 401 before the birth
9 of the child or not later than 30 days after the birth.

10 (b) A man is not required to register under subsection (a) if[:
11 (1)] a parent-child relationship between the man and the child has been
12 established under this [act] or law of this state other than this [act] []; or
13 (2) the man commences a proceeding to adjudicate his parentage before a court
14 has terminated his parental rights].

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

19 Comment

20
21 Source: UPA (2002) § 402.

22
23 Subsection (b)(2) addresses and eliminates a concern raised by *Lehr v. Robertson*, 463
24 U.S. 248 (1983). In *Lehr*, although the alleged genetic father did not avail himself of the New
25 York putative fathers registry, he had filed a “visitation and paternity” petition in another local
26 court. The trial judge in the adoption proceeding knew the identity of the genetic father, where he
27 could be located, and that he was seeking to establish his parentage in another court.
28 Nonetheless, the court granted the adoption and terminated the genetic father’s parental rights

1 without notice to him. Subsection (b)(2) exempts an alleged parent from the requirement of
2 registration if the man “commences a proceeding to adjudicate his parentage before a court has
3 terminated his parental rights.”
4

5 **SECTION 403. NOTICE OF PROCEEDING.** An individual who seeks to adopt a
6 child or terminate parental rights to the child shall give notice of the proceeding to a registrant
7 who has timely registered under Section 402 regarding the child. Notice must be given in a
8 manner prescribed for service of process in a civil proceeding.

9 **SECTION 404. TERMINATION OF PARENTAL RIGHTS: CHILD UNDER**
10 **ONE YEAR OF AGE.** An individual who seeks to adopt a child or terminate parental rights to
11 a child is not required to give notice to a man who may be the genetic father of the child if:

12 (1) the child is under one year of age at the time of the termination of parental rights;

13 (2) the man did not register timely under Section 402(a); and

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

15 **SECTION 405. TERMINATION OF PARENTAL RIGHTS: CHILD AT LEAST**
16 **ONE YEAR OF AGE.** If a child is at least one year of age, an individual seeking to adopt or
17 terminate parental rights to the child shall give notice of the proceeding to each alleged genetic
18 father of the child, whether or not he has registered under Section 402(a) unless his parental
19 rights have already been terminated. Notice must be given in a manner prescribed for service of
20 process in a civil proceeding.

21 **[PART] 2**

22 **OPERATION OF REGISTRY**

23 **SECTION 406. REQUIRED FORM.**

24 (a) The [agency maintaining the registry] shall prepare a form for registering under
25 Section 402(a). The form must state that:

1 (1) the registrant signs the form under penalty of perjury;

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

4 (3) timely registration does not commence a proceeding to establish parentage;

5 (4) the information disclosed on the form may be used against the registrant to
6 establish parentage;

7 (5) services to assist in establishing parentage are available to the registrant
8 through [the appropriate child-support agency];

9 (6) the registrant also may register in a registry of paternity in another state if
10 conception or birth of the child occurred in the other state;

11 (7) information on registries of paternity of other states is available from [the
12 appropriate state agency]; and

13 (8) procedures exist to rescind the registration.

14 (b) The registrant shall sign the form described in subsection (a) under penalty of perjury.

15 **SECTION 407. FURNISHING INFORMATION; CONFIDENTIALITY.**

16 (a) The [agency maintaining the registry] is not required to seek to locate the woman who
17 gave birth to the child who is the subject of a registration under Section 402(a), but the [agency
18 maintaining the registry] shall give notice of the registration to the woman who gave birth to the
19 child if the [agency maintaining the registry] has her address.

20 (b) Information contained in the registry established by Section 401 is confidential and
21 may be released on request only to:

22 (1) a court or individual designated by the court;

23 (2) the woman who gave birth to the child who is the subject of the registration;

1 (3) an agency authorized by law of this state other than this [act], law of another
2 state, or federal law to receive the information;

3 (4) a licensed child-placing agency;

4 (5) a child-support agency;

5 (6) a party or the party's attorney of record in a proceeding under this [act] or in a
6 proceeding to adopt or terminate parental rights to a child who is the subject of the registration;
7 and

8 (7) a registry of paternity in another state.

9 **SECTION 408. PENALTY FOR RELEASING INFORMATION.** An individual
10 who intentionally releases information from the registry established under Section 401 to an
11 individual or agency not authorized under Section 407 to receive the information commits a
12 [appropriate level misdemeanor].

13 **SECTION 409. RESCISSION OF REGISTRATION.** A registrant under Section
14 402(a) may rescind his registration at any time by filing with the registry a rescission in a signed
15 record that is attested by a notarial officer or witnessed by at least one individual.

16 **SECTION 410. UNTIMELY REGISTRATION.** If a man registers under Section
17 402(a) more than 30 days after the birth of the child, the [agency maintaining the registry] shall
18 notify the registrant that, based on a review of the registration, the registration was not filed
19 timely.

20 **SECTION 411. FEES FOR REGISTRY.**

21 (a) [The agency maintaining the registry] may not charge a fee for filing a registration
22 under Section 402(a) or a rescission of registration under Section 409.

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

registry] may charge a reasonable fee to search the registry established under Section 401 and for furnishing a certificate of search under Section 414.

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

Legislative Note: A state should include subsection (c) if the state does not require certain agencies to pay fees authorized by subsection (b).

[PART] 3

SEARCH OF REGISTRY

SECTION 412. CHILD BORN THROUGH ASSISTED REPRODUCTION:

SEARCH OF REGISTRY INAPPLICABLE. This [part] does not apply to a child born through assisted reproduction.

Comment

This section was added to clarify that individuals who have children through assisted reproduction are not required to conduct a search of the paternity registry, which was not designed or intended to address such situations.

SECTION 413. SEARCH OF APPROPRIATE REGISTRY. If a parent-child relationship has not been established under this [act] for a child who is under one year of age for an individual other than the woman who gave birth to the child:

(1) an individual seeking to adopt or terminate parental rights to the child shall obtain a certificate of search under Section 414 to determine if a registration has been filed in the registry regarding the child; and

(2) if the individual has reason to believe that conception or birth of the child may have occurred in another state, the individual shall obtain a certificate of search from the registry of paternity, if any, in that state.

1 **SECTION 414. CERTIFICATE OF SEARCH OF REGISTRY.**

2 (a) The [agency maintaining the registry] shall furnish a certificate of search of the
3 registry on request to an individual, court, or agency identified in Section 407(b) or the
4 individual required under Section 413(1) to obtain a certificate.

5 (b) A certificate furnished under subsection (a):

6 (1) must be signed on behalf of the [agency maintaining the registry] and state
7 that:

8 (A) a search has been made of the registry established under Section 401;
9 and

10 (B) a registration under Section 402(a) containing the information required
11 to identify the registrant:

12 (i) has been found; or

13 (ii) has not been found; and

14 (2) if subsection (1)(B)(i) applies, must have a copy of the registration attached.

15 (c) An individual seeking to adopt or terminate parental rights to a child must file with
16 the court the certificate of search furnished under subsection (a) before a proceeding to adopt or
17 terminate parental rights to the child may be concluded.

18 **SECTION 415. ADMISSIBILITY OF REGISTERED INFORMATION. A**

19 certificate of search of a registry of paternity in this or another state is admissible in a proceeding
20 for adoption of, or termination of parental rights regarding, a child and, if relevant, in other legal
21 proceedings.

1 [ARTICLE] 5

2 GENETIC TESTING

3 SECTION 501. DEFINITIONS. In this [article]:

4 (1) “Combined relationship index” means the product of all tested relationship indices.

5 (2) “Ethnic or racial group” means, for purpose of genetic testing, a recognized group that
6 an individual identifies as the individual’s ancestry or part of the ancestry or that is identified by
7 other information.

8 (3) “Hypothesized genetic relationship” means an asserted genetic relationship between
9 an individual and a child.

10 (4) “Probability of parentage” means, for the ethnic or racial group to which an individual
11 alleged to be a parent belongs, the probability that a hypothesized genetic relationship is
12 supported, compared to the probability that a genetic relationship is supported between a child
13 and a random individual of the ethnic or racial group used in the hypothesized genetic
14 relationship, expressed as a percentage incorporating the combined relationship index and a prior
15 probability.

16 (5) “Relationship index” means a likelihood ratio that compares the probability of a
17 genetic marker given a hypothesized genetic relationship and the probability of a genetic marker
18 given a genetic relationship between a child and a random individual of the ethnic or racial group
19 used in the hypothesized genetic relationship.

20 Comment

21
22 UPA (2017) amends terms that were used in UPA (2002) to reflect the fact that a court
23 may need to adjudicate the parentage of an alleged genetic mother. UPA (2017) moves the
24 relevant definitions from Section 102 to Section 501 because they are used only in this article.
25

SECTION 502. SCOPE OF [ARTICLE]; LIMITATION ON USE OF GENETIC TESTING.

(a) This [article] governs genetic testing of an individual in a proceeding to adjudicate parentage, whether the individual:

(1) voluntarily submits to testing; or

(2) is tested under an order of the court or a child-support agency.

(b) Genetic testing may not be used:

(1) to challenge the parentage of an individual who is a parent by operation of law under [Article] 7[or 8]; or

(2) to establish the parentage of an individual who is a donor.

Comment

Source: UPA (2002) § 501.

The substance of Section 502(a) is carried over from UPA (2002) § 501.

Subsection (b) has been added to clarify that genetic testing cannot be used to challenge or argue against the legal parentage of an intended parent who is considered a parent under Articles 7 or 8. Because the parentage of an intended parent under Articles 7 and 8 is not premised on a genetic connection, the lack of a genetic connection should not be the basis of a challenge to the individual's legal parentage.

New subsection (b)(2) clarifies that an individual who is a donor under this act, and therefore is not a legal parent, is precluded from seeking to establish parentage by evidence of a genetic connection to the child.

SECTION 503. AUTHORITY TO ORDER OR DENY GENETIC TESTING.

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

(1) alleging a reasonable probability of genetic parentage of the child; or

(2) denying genetic parentage of the child and stating facts establishing a possibility that the party is not a genetic parent.

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

(c) The court or child-support agency may not order in-utero testing.

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

(e) Genetic testing of a woman who gave birth to a child is not a condition precedent to testing of the child and an individual whose genetic parentage of the child is being determined. If the woman who gave birth is unavailable or declines to submit to genetic testing, the court may order testing of the child and each individual whose genetic parentage of the child is being adjudicated.

(f) In a proceeding to adjudicate the parentage of a child having a presumed parent or an individual who claims to be a de facto parent, or to challenge an acknowledgment of parentage, the court may deny a motion for genetic testing of the child and other individuals after considering the factors in Section 613(a) and (b).

(g) If an individual requesting genetic testing is barred under [Article] 6 from establishing the individual's parentage, the court shall deny the request for genetic testing.

(h) An order under this section for genetic testing is enforceable by contempt.

Comment

Source: 42 U.S.C. § 666(a)(5)(B)(i); UPA (2002) § 502 & § 608; UPA (1973) § 11.

Most of the substance of this section regarding genetic testing is carried over from UPA (2002). This section of UPA (2017) does, however, consolidate several subsections that had been included in different sections and in different articles of UPA (2002). Subsections (a) through (d) are carried over from UPA (2002) § 502, with some minor modifications to make the provisions

gender neutral where appropriate. Subsection (e) is carried over from UPA (2002) § 622(c). Subsection (h) is carried over from UPA (2002), § 622(a). Subsection (f) is similar in substance to Section 608 of UPA (2002).

Subsection (g) is new and is intended to clarify that if an individual is barred under Article 6 from establishing parentage, there is no use for the genetic testing under this act, which governs legal parentage. Accordingly, it directs a court to deny the request in such circumstances.

SECTION 504. REQUIREMENTS FOR GENETIC TESTING.

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

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

(2) an accrediting body designated by the Secretary of the United States Department of Health and Human Services.

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

(c) Based on the ethnic or racial group of an individual undergoing genetic testing, a testing laboratory shall determine the databases from which to select frequencies for use in calculating a relationship index. If an individual objects to the laboratory's choice, the following rules apply:

(1) Not later than 30 days after receipt of the report of the test, the individual objecting may move the court to require the laboratory to recalculate the relationship index using an ethnic or racial group different from that used by the laboratory.

(2) The individual objecting to the initial choice of laboratory shall:

(A) if frequencies are not available to the laboratory for the ethnic or racial

group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

(B) engage another laboratory to perform the calculations.

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

(d) If, after recalculation of the relationship index under subsection (c) using a different ethnic or racial group, genetic testing does not identify an individual as a genetic parent of a child under Section 506, the court may require an individual who has been tested to submit to additional genetic testing to identify a genetic parent.

Comment

Source: 42 U.S.C. § 666(a)(5)(B)(i) and § 666(a)(5)(F)(i); UPA (2002) § 503.

This substance of this section is largely carried over from UPA (2002). Section 504(a)(1), however, was revised because the listed entity now uses a different name. The reference to the American Society for Histocompatibility and Immunogenetics was deleted because that body is no longer accrediting laboratories for parentage testing.

SECTION 505. REPORT OF GENETIC TESTING.

(a) A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report complying with the requirements of this [article] is self-authenticating.

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

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

- 1 (2) the names of the individuals who collected the specimens;
2 (3) the places and dates the specimens were collected;
3 (4) the names of the individuals who received the specimens in the testing
4 laboratory; and
5 (5) the dates the specimens were received.

6 **Comment**
7

8 Source: 42 U.S.C. § 666(a)(5)(F).
9

10 **SECTION 506. GENETIC TESTING RESULTS; CHALLENGE TO RESULTS.**

11 (a) Subject to a challenge under subsection (b), an individual is identified under this [act]
12 as a genetic parent of a child if genetic testing complies with this [article] and the results of the
13 testing disclose that:

14 (1) the individual has at least a 99 percent probability of parentage, using a prior
15 probability of 0.50, as calculated by using the combined relationship index obtained in the
16 testing; and

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

18 (b) An individual identified under subsection (a) as a genetic parent of the child may
19 challenge the genetic testing results only by other genetic testing satisfying the requirements of
20 this [article] which:

21 (1) excludes the individual as a genetic parent of the child; or

22 (2) identifies an individual other than the woman who gave birth as a possible
23 genetic parent of the child.

24 (c) Except as otherwise provided in Section 511, if more than one individual other than
25 the woman who gave birth is identified by genetic testing as a possible genetic parent of the

1 child, the court shall order each individual to submit to further genetic testing to identify a
2 genetic parent.

3 **Comment**

4
5 Source: 42 U.S.C. § 666(a)(5)(G); UPA (2002) § 505.

6
7 The use of a probability of parentage of 99.0% and a combined relationship index of 100
8 to 1 is consistent with accreditation standards in the year 2017 within the parentage-testing
9 community.

10
11 Identification as a child's genetic parent does not, in and of itself, establish the
12 individual's parentage. The standards for adjudicating parentage are addressed in article 6.

13
14 **SECTION 507. COST OF GENETIC TESTING.**

15 (a) Subject to assessment of fees under [Article] 6, payment of the cost of initial genetic
16 testing must be made in advance:

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

19 (2) by the individual who made the request for genetic testing;

20 (3) as agreed by the parties; or

21 (4) as ordered by the court.

22 (b) If payment of the cost of genetic testing is advanced by a child-support agency, the
23 agency may seek reimbursement from the genetic parent whose parent-child relationship is
24 established.

25 **Comment**

26
27 Source: 42 U.S.C. § 666(a)(5)(B)(ii)(I); UPA (2002) § 506; UPA (1973) § 11.

28
29 **SECTION 508. ADDITIONAL GENETIC TESTING.** The court or child-support
30 agency shall order additional genetic testing on request of an individual who contests the result
31 of the initial testing under Section 506. If initial genetic testing under Section 506 identified an

individual as a genetic parent of the child, the court or agency may not order additional testing unless the contesting individual pays for the testing in advance.

Comment

Source: 42 U.S.C. § 666(a)(5)(B)(ii)(II); UPA (2002) § 507; UPA (1973) § 11.

SECTION 509. GENETIC TESTING WHEN SPECIMEN NOT AVAILABLE.

(a) Subject to subsection (b), if a genetic-testing specimen is not available from an alleged genetic parent of a child, an individual seeking genetic testing demonstrates good cause, and the court finds that the circumstances are just, the court may order the following individuals to submit specimens for genetic testing:

(1) a parent of the alleged genetic parent;

(2) a sibling of the alleged genetic parent;

(3) another child of the alleged genetic parent and the woman who gave birth to the child; and

(4) another relative of the alleged genetic parent necessary to complete genetic testing.

(b) To issue an order under this section, the court must find that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

Comment

Source: UPA (2002) § 508.

SECTION 510. DECEASED INDIVIDUAL. If an individual seeking genetic testing demonstrates good cause, the court may order genetic testing of a deceased individual.

Comment

Source: UPA (2002) § 509.

SECTION 511. IDENTICAL SIBLINGS.

(a) If the court finds that there is reason to believe that an alleged genetic parent has an identical sibling and there is evidence that the sibling may be a genetic parent of the child, the court may order genetic testing of the sibling.

(b) If more than one sibling is identified under Section 506 as a genetic parent of the child, the court may rely on nongenetic evidence to adjudicate which sibling is a genetic parent of the child.

Comment

Source: UPA (2002) § 510.

SECTION 512. CONFIDENTIALITY OF GENETIC TESTING.

(a) Release of a report of genetic testing for parentage is controlled by [cite to applicable law of this state other than this [act]].

(b) An individual who intentionally releases an identifiable specimen of another individual for a purpose not relevant to a proceeding regarding parentage, without a court order or written permission of the individual who furnished the specimen, commits a [appropriate level misdemeanor].

Comment

Source: UPA (2002) § 511.

[ARTICLE] 6

PROCEEDING TO ADJUDICATE PARENTAGE

Comment

While largely retaining the substance of Article 6 of UPA (2002), UPA (2017) substantially reorganizes the content of former Article 6 to improve its clarity and flow.

1 [PART] 1

2 NATURE OF PROCEEDING

3 SECTION 601. PROCEEDING AUTHORIZED.

4 [(a)] A proceeding may be commenced to adjudicate the parentage of a child. Except as
5 otherwise provided in this [act], the proceeding is governed by [the rules of civil procedure].

6 [(b) A proceeding to adjudicate the parentage of a child born under a surrogacy
7 agreement is governed by [Article] 8.]

8 *Legislative Note: A state should include subsection (b) if the state includes Article 8 in the act.*

9
10 Comment

11 Source: UPA (2002) § 601.

12 Subsection (b), which is new, clarifies that Article 8 governs proceedings to determine
13 the parentage of a child born through surrogacy.

14 SECTION 602. STANDING TO MAINTAIN PROCEEDING. Except as otherwise
15 provided in [Article] 3 and Sections 608 through 611, a proceeding to adjudicate parentage may
16 be maintained by:

17 (1) the child;

18 (2) the woman who gave birth to the child unless a court has adjudicated that she is not a
19 parent;

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

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

22 (5) a child-support agency[or other governmental agency authorized by law of this state
23 other than this [act]];

24 (6) an adoption agency authorized by law of this state other than this [act] or licensed
25 child-placement agency; or
26

1 (7) a representative authorized by law of this state other than this [act] to act for an
2 individual who otherwise would be entitled to maintain a proceeding but is deceased,
3 incapacitated, or a minor.

4 **Comment**

5
6 Source: UPA (2002) § 602; UPA (1973) § 6.

7
8 **SECTION 603. NOTICE OF PROCEEDING.**

9 (a) A [petitioner] shall give notice of the proceeding to adjudicate parentage to the
10 following individuals:

11 (1) the woman who gave birth to the child unless a court has adjudicated that she
12 is not a parent;

13 (2) an individual who is a parent of the child under this [act];

14 (3) a presumed, acknowledged, or adjudicated parent of the child; and

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

16 (b) An individual entitled to notice under subsection (a) has a right to intervene in the
17 proceeding.

18 (c) Lack of notice required by subsection (a) does not render a judgment void. Lack of
19 notice does not preclude an individual entitled to notice under subsection (a) from bringing a
20 proceeding under Section 611(b).

21 **Comment**

22
23 This new section is intended to ensure that steps are taken to give notice to all persons
24 with a claim to parentage regarding a child. Giving such individuals notice of and a right to
25 intervene in the proceeding is important because the rights of any absent individual with a claim
26 to parentage could be indirectly affected by the proceeding. Indeed, Section 623(d) provides that,
27 “[e]xcept as otherwise provided in subsection (b), a determination of parentage may be a defense
28 in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party
29 to the earlier proceeding.”
30

1 While a goal of the Section 603 is to ensure that steps are taken to permit all individuals
2 with a claim to parentage the opportunity to participate in the proceeding, another goal of the
3 section is to permit parentage to be adjudicated even if such an individual declines to participate
4 in the proceeding. Hence, the section does not require joinder of such individuals. Subsection (c)
5 also clarifies that failure to comply with the notice requirement of this section does not render the
6 judgment void.

7
8 Section 603 does not require that notice be given to the child. This is consistent with the
9 policy decision of UPA (2002) not to require that the child be joined as a necessary party to the
10 proceeding. As the Comment to Section 602 of UPA (2002) explained, few states require
11 children to be joined as necessary parties in parentage actions, and no states then required
12 children born during a marriage to be named as parties to the divorce proceeding. Because the
13 child need not be a party to the action, there is no obligation to notice the child of the proceeding.
14 In addition, as provided in Section 623, the child is not bound during minority by the
15 adjudication unless the order is consistent with the results of genetic testing or the child was
16 represented by an attorney.

17 18 **SECTION 604. PERSONAL JURISDICTION.**

19 (a) The court may adjudicate parentage only if the court has personal jurisdiction over the
20 individual.

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

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

27 **Comment**

28
29 Source: UPA (2002) § 604; UPA (1973) § 6(b).

30
31 This section is carried over from UPA (2002). UPA (2017) continues to take the position
32 that, unlike child custody and visitation proceedings which are considered status adjudications
33 that do not require personal jurisdiction over both parents, parentage proceedings require
34 personal jurisdiction.

35
36 While the ideal scenario involves bringing all potential claimants together in a single
37 proceeding, subsection (c) takes the approach that if the court lacks jurisdiction over an

1 individual with a claim to parentage, the court can still proceed.

2
3 **SECTION 605. VENUE.** Venue for a proceeding to adjudicate parentage is in the
4 [county] of this state in which:

- 5 (1) the child resides or is found;
- 6 (2) if the child does not reside in this state, the [respondent] resides or is found; or
- 7 (3) a proceeding for administration of the estate of a person who is or may be a parent
- 8 under this [act] has been commenced.

9 **Comment**

10 Source: UPA (2002) § 605; UPA (1973) § 8(c).

11 The venue provision follows the approach taken by UPA (1973) and UPA (2002).

12
13 **[PART] 2**

14
15 **SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE**

16
17 **SECTION 606. ADMISSIBILITY OF RESULTS OF GENETIC TESTING.**

18 (a) Except as otherwise provided in Section 502(b), the court shall admit a report of a
19 genetic-testing expert as evidence of the truth of the facts asserted in the report.

20 (b) A party may object to the admission of a report described in subsection (a) not later
21 than [14] days after the party receives the report. The party shall cite specific grounds for
22 exclusion.

23 (c) A party who objects to the results of genetic testing may call a genetic-testing expert
24 to testify in person or by another method approved by the court. Unless the court orders
25 otherwise, the party offering the testimony bears the expense for the expert testifying.

26 (d) The admissibility of the report is not affected by whether the testing was performed:

- 27 (1) voluntarily or under an order of the court or a child-support agency; or

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

Comment

Source: 42 U.S.C. § 666(a)(5)(F)(ii); UPA (2002) § 621(a), (b); UPA (1973) §§ 10, 13.

**SECTION 607. ADJUDICATING PARENTAGE OF CHILD WITH ALLEGED
GENETIC PARENT.**

(a) Except as otherwise provided in Sections 610 and 611, a proceeding to adjudicate the parentage of a child by an alleged genetic parent who is not a presumed parent may be commenced:

(1) before the child becomes an adult; or

(2) after the child becomes an adult, but only if the child initiates the proceeding.

(b) Except as otherwise provided in Section 614, the following rules apply in the proceeding if the woman who gave birth to the child is the only other individual with a claim to parentage of the child. The court shall adjudicate the alleged genetic parent to be a parent of the child if the alleged genetic parent:

(1) is identified as a genetic parent of the child under Section 506 and the identification is not successfully challenged under Section 506;

(2) admits parentage in a pleading or admits parentage when making an appearance or during a hearing, the court accepts the admission, and the court finds the alleged genetic parent to be a parent of the child;

(3) declines to submit to genetic testing ordered by the court, in which case the court may adjudicate the alleged genetic parent to be a parent of the child even if the alleged genetic parent denies a genetic relationship with the child;

(4) is in default after service of process and the court finds the alleged genetic

parent to be a parent of the child; or

(5) is neither identified nor excluded as a genetic parent by genetic testing and is found by the court to be a parent of the child based on other evidence.

(c) Except as otherwise provided in Section 614 and subject to other applicable limitations in this [part], in a proceeding involving an alleged genetic parent if at least one other individual in addition to the woman who gave birth has a claim to parentage under this [act], the court shall adjudicate parentage under Section 613.

Comment

This substance of this Section is largely carried over from UPA (2002). This Section, however, consolidates into a single provision concepts that were previously scattered throughout Article 6 of UPA (2002).

Subsection (b) is based on UPA (2002) § 606; UPA (2017), however, eliminates UPA (2002) § 606(2), which permitted a parentage action to be commenced at any time if an earlier proceeding had been dismissed based on the application of a statute of limitation then in effect. Because federal law requires states to permit parentage establishment any time before the child turns 18, that provision is no longer necessary. 42 U.S.C. § 666(a)(5)(A)(ii).

Subsection (c)(1) is based on UPA (2002) § 631(2). Subsection (c)(2) is based on UPA (2002) § 623. Subsection (c)(3) is based on UPA (2002) § 622(b). Subsection (c)(4) is based on UPA (2002) § 634. Subsection (c)(5) is based on UPA (2002) § 631(3).

Subsection (d) is arguably new, although its underlying principle – that a court may adjudicate someone who is not a genetic parent to be a child’s legal parent based on consideration of the child’s best interest – is based on and consistent with UPA (2002) § 608.

SECTION 608. ADJUDICATING PARENTAGE OF CHILD WITH PRESUMED PARENT.

(a) A proceeding to determine if a presumed parent is a parent of a child may be commenced by:

(1) the presumed parent, the woman who gave birth to the child, or a child-support agency, at any time before the child becomes an adult;

1 (2) the child at any time; and

2 (3) an alleged genetic parent not later than two years after the child's birth.

3 (b) A presumption of parentage under Section 204 becomes irrebuttable after the child is
4 two or more years of age unless the court determines that:

5 (1) the presumed parent is not a genetic parent, never resided with the child, and
6 never held out the child as the presumed parent's child; or

7 (2) the child has more than one presumed parent.

8 (c) Except as otherwise provided in Section 614, the following rules apply in a
9 proceeding to adjudicate a presumed parent's parentage of a child if the woman who gave birth
10 to the child is the only other individual with a claim to parentage:

11 (1) If no party to the proceeding challenges the presumed parent's parentage of
12 the child, the court shall adjudicate the presumed parent to be a parent of the child.

13 (2) If the presumed parent is identified as a genetic parent of the child under
14 Section 506 and that identification is not successfully challenged under Section 506, the court
15 shall adjudicate the presumed parent to be a parent of the child.

16 (3) If the presumed parent is not identified as a genetic parent of the child under
17 Section 506 and if the presumed parent or the woman who gave birth to the child challenges the
18 presumed parent's parentage of the child, the court shall adjudicate the parentage of the child in
19 the best interest of the child based on the factors under Section 613(a) and (b).

20 (d) In a proceeding to adjudicate a presumed parent's parentage of a child if another
21 individual in addition to the woman who gave birth to the child asserts a claim to parentage
22 under this [act], the court shall adjudicate parentage under Section 613, subject to other
23 applicable limitations in this [part].

1 **Comment**

2
3 This substance of this section is largely carried over from UPA (2002). This section,
4 however, consolidates into a single provision concepts that were previously included in a number
5 of different provisions of Article 6 of UPA (2002).
6

7 Subsection (a) is based on UPA (2002) § 607(a). Subsection (b) is based on UPA (2002)
8 § 607(b)(1) and (2). Subsections (c) and (d) are based on UPA (2002) § 608.
9

10 **SECTION 609. ADJUDICATING DE FACTO PARENTAGE OF CHILD.**

11 (a) A proceeding to establish the de facto parentage of a child may be commenced only
12 by an individual who claims to be a de facto parent of the child.

13 (b) An individual who claims to be a de facto parent of a child must commence the
14 proceeding before the child is 18 years of age, but in any case, before the death of the individual
15 who claims to be a de facto parent or before the death of the child, whichever is earlier.

16 (c) An individual who claims to be a de facto parent of a child must establish standing to
17 commence the proceeding under the following rules:

18 (1) The individual must file an initial verified pleading alleging specific facts that
19 support the existence of de facto parentage of the child. The verified pleading must be served on
20 all parents and legal guardians of the child and any other party to the proceeding.

21 (2) An adverse party, parent, or legal guardian may file a pleading in response to
22 the pleadings filed under paragraph (1). A responsive pleading must be verified and must be
23 served on parties to the proceeding.

24 (3) The court shall determine based on the pleadings under paragraphs (1) and (2)
25 whether the individual seeking to be adjudicated a de facto parent of the child has alleged facts
26 sufficient to satisfy the requirements of subsection (d)(1) through (7). The court may hold a
27 hearing to determine disputed facts necessary and material to the issue of standing. If the court
28 holds a hearing, the hearing must be held on an expedited basis.

1 (4) If the court determines that an individual has alleged facts sufficient to satisfy
2 the requirements of subsection (d)(1) through (7), the individual has standing to maintain a
3 proceeding to adjudicate de facto parentage.

4 (d) The court may find that an individual is a de facto parent of a child if the individual
5 demonstrates by clear-and-convincing evidence that:

6 (1) the individual resided with the child as a regular member of the child's
7 household for a significant period;

8 (2) the individual engaged in consistent caretaking of the child;

9 (3) the individual undertook full and permanent responsibilities of a parent of the
10 child without expectation of financial benefit;

11 (4) the individual held out the child as the individual's child;

12 (5) the individual established a bonded and dependent relationship with the child
13 which is parental in nature;

14 (6) another parent of the child fostered or supported the bonded and dependent
15 relationship required under paragraph (5); and

16 (7) continuing the relationship between the individual and the child is in the best
17 interest of the child.

18 (e) In a proceeding to adjudicate the parentage of an individual who claims to be a de
19 facto parent of the child, if there is only one other individual who is a parent or has a claim to
20 parentage of the child and the court determines that the requirements of subsection (d) are met,
21 the court shall adjudicate the individual who claims to be a de facto parent to be a parent of the
22 child.

23 (f) Except as otherwise provided in subsection (e), in a proceeding to adjudicate the
24 parentage of an individual who claims to be a de facto parent of the child, if the court determines

1 that the requirements of subsection (d) are met, the court shall adjudicate parentage under
2 Section 613, subject to the limitations in this [part].

3 **Comment**

4 This section adds a new means by which an individual can establish a parent-child
5 relationship. This section is modeled on provisions that were recently enacted in Delaware and
6 Maine, two states that adopted UPA (2002), and it reflects trends in state family law.

7
8 In most states, if an individual can establish that he or she has developed a strong parent-
9 child relationship with the consent and encouragement of a legal parent, the individual is entitled
10 to some parental rights and possibly some parental responsibilities. Some states extend rights to
11 such persons under equitable principles. *See, e.g., Bethany v. Jones*, 378 S.W.3d 731 (Ark. 2011)
12 (in loco parentis); *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010) (in equity); *Boseman v.*
13 *Harrell*, 704 S.E.2d 494 (N.C. 2010) (in equity); *McAllister v. McAllister*, 779 N.W.2d 652
14 (N.D. 2010) (psychological parent); *Marquez v. Caudill*, 656 S.E.2d 737 (S.C. 2008)
15 (psychological parent); *In re Clifford K.*, 619 S.E.2d 138 (W. Va. 2005) (psychological parent).
16 Other states extend rights to such individuals through broad third party custody and visitation
17 statutes. *See, e.g.,* Minn. Stat. § 257C.01-08; Tex. Fam. Code § 102.003(9).

18
19 In addition, by statute and through case law, a number of states now recognize such
20 persons as legal parents. *See, e.g., Elisa B. v. Superior Court*, 117 P.3d 660 (Cal. 2005) (under
21 the holding out provision of UPA (1973)); *In re Parentage of L.B.*, 122 P.3d 161 (Wash. 2005)
22 (under Washington state constitution); *In re S.N.V.*, 2011 WL 6425562 (Colo. App. 2011) (under
23 the holding out provision of UPA (1973)); Del. Code Ann., tit. 13, § 8-201(c) (by express
24 statutory provision); *Frazier v. Goudschaal*, 295 P.3d 542 (Kan. 2013) (under a provision based
25 on UPA (1973)); *Partanen v. Gallagher*, 59 N.E.3d 1133 (Mass. 2016) (under a provision based
26 on the holding out provision of UPA (1973)); Me. Rev. Stat. tit. 19-a, § 1891 (by express
27 statutory provision); *Guardianship of Madelyn B.*, 98 A.3d 494 (N.H. 2014) (under the holding
28 out provision of UPA (1973)); *Chatterjee v. King*, 280 P.3d 283 (N.M. 2012) (under the holding
29 out provision of UPA (1973)).

30
31 To provide greater clarity to the parties and affected child, UPA (2017) addresses this
32 issue through an express statutory provision. Under this new section, an individual who has
33 functioned as a child's parent for a significant period such that the individual formed a bonded
34 and dependent parent-child relationship may be recognized as a legal parent. This provision
35 ensures that people who form strong parent-child bonds with children with the consent and
36 encouragement of the child's legal parent are not excluded from a determination of parentage
37 simply because they entered the child's life sometime after the child's birth. Consistent with the
38 case law and the existing statutory provisions in other states, this section does not include a
39 specific time length requirement. Instead, whether the period is significant is left to the
40 determination of the court, based on the circumstances of the case. The length of time required
41 will vary depending on the age of the child.

1 At the same time, however, the scope of this section is limited in several ways. First, this
2 section includes a heightened standing requirement that must be met by the individual claiming
3 to be a de facto parent. This requirement is included to ensure that permitting proceedings by de
4 facto parents does not subject parents to unwarranted and unjustified litigation. Second, the
5 section sets forth a series of demanding substantive requirements that must be met before a court
6 can adjudicate such an individual to be a parent. Third, this section permits only the individual
7 alleging himself or herself to be a de facto parent to initiate a proceeding under this Section. This
8 limitation was added to address concerns that stepparents might be held responsible for child
9 support under this theory of parentage. Finally, this section requires the proceeding to establish
10 de facto parentage be commenced before the death of the child and the death of the individual
11 alleged to be a de facto parent, and before the child becomes 18 years of age. These safeguards
12 protect against unwarranted and unjustified litigation.
13

14 This section is not intended to preclude legal actions based on other legal theories. *See*,
15 *e.g.*, *DeHart v. DeHart*, 986 N.E.2d 85 (Ill. 2013) (recognizing a cause of action for equitable
16 adoption and contract for adoption in an action contesting the validity of a will).
17

18 **SECTION 610. ADJUDICATING PARENTAGE OF CHILD WITH**
19 **ACKNOWLEDGED PARENT.**

20 (a) If a child has an acknowledged parent, a proceeding to challenge the acknowledgment
21 of parentage or denial of parentage brought by a signatory to the acknowledgment or denial is
22 governed by Sections 309 and 310.

23 (b) If a child has an acknowledged parent, the following rules apply in a proceeding to
24 challenge the acknowledgment of parentage or denial of parentage by an individual, other than
25 the child, who has standing under Section 602 and was not a signatory to the acknowledgment or
26 denial:

27 (1) The individual must commence a proceeding not later than two years after the
28 effective date of the acknowledgment.

29 (2) A court may permit the proceeding to occur only if the court finds that the
30 proceeding is in the best interest of the child under Section 613(a) and (b).

31 **Comment**

32 Source: UPA (2002) § 609.

1 This section is based on UPA (2002) § 609. Section 609 of UPA (2002) addressed
2 challenges both to adjudicated parents and to acknowledged parents. UPA (2017) separates these
3 concepts into separate sections – Section 611, addressing challenges to acknowledged parents,
4 and Section 612, addressing challenges to adjudicated parents.
5

6 As was true under UPA (2002), subsection (b) imposes a two-year limitations period to
7 challenges to an acknowledgment. This is consistent with the limitations periods in other sections
8 of the UPA, including the time for challenging an acknowledgment of parentage by a signatory
9 under Section 307. As was true under UPA (2002), a challenge brought within this limitations
10 period is subject to considerations related to the best interest of the child.
11

12 **SECTION 611. ADJUDICATING PARENTAGE OF CHILD WITH**
13 **ADJUDICATED PARENT.**

14 (a) If a child has an adjudicated parent, a proceeding to challenge the adjudication by an
15 individual who was a party to the adjudication or received notice under Section 603 is governed
16 by the rules governing collateral attacks on judgments.

17 (b) If a child has an adjudicated parent, the following rules apply to a proceeding to
18 challenge the adjudication of parentage by an individual, other than the child, who has standing
19 under Section 602 and was not a party to the adjudication and did not receive notice under
20 Section 603:

21 (1) The individual must commence the proceeding not later than two years after
22 the effective date of the adjudication.

23 (2) A court may permit the proceeding only if the court finds that the proceeding
24 is in the best interest of the child under Section 613(a) and (b).

25 **Comment**

26
27 Source: UPA (2002) § 609.
28

29 This section is based on UPA (2002) § 609. Section 609 of UPA (2002) addressed
30 challenges both to adjudicated parents and to acknowledged parents. UPA (2017) separates these
31 concepts into separate sections: Section 611, addressing challenges to acknowledged parents, and
32 Section 612, addressing challenges to adjudicated parents.
33

1 Subsection (a) clarifies that if the individual received notice of the action under Section
2 603, a proceeding to challenge the adjudication by the individual is governed by the rules
3 governing collateral attacks on judgments.
4

5 As was true under UPA (2002), subsection (b) imposes a two-year limitations period on
6 challenges to an adjudication of parentage of a child by an individual who was not a party to and
7 did not receive notice of the prior proceeding. Other sections of the act likewise utilize a two-
8 year limitations period. *See, e.g.*, Section 307; Section 608. As was true under UPA (2002), a
9 challenge brought within this limitations period is subject to considerations related to the best
10 interest of the child.
11

12 **SECTION 612. ADJUDICATING PARENTAGE OF CHILD OF ASSISTED**
13 **REPRODUCTION.**

14 (a) An individual who is a parent under [Article] 7 may bring a proceeding to adjudicate
15 parentage. If the court finds that the individual is a parent under [Article] 7, the court shall
16 adjudicate the individual to be a parent of the child.

17 (b) In a proceeding to adjudicate the individual's parentage of a child where another
18 individual other than the woman who gave birth to the child is a parent under [Article] 7, the
19 court shall adjudicate the individual's parentage of the child under Section 613(c).

20 **Comment**

21
22 This new section specifically authorizes the filing of a proceeding to adjudicate the
23 parentage of individuals who are intended parents under Article 7. The rules regarding
24 adjudications of parentage for individuals who are parents under Article 8 are set forth in Article
25 8.
26

27 **SECTION 613. ADJUDICATING COMPETING CLAIMS OF PARENTAGE.**

28 (a) Except as otherwise provided in Section 614, if two or more individuals other than the
29 woman who gave birth to the child have competing claims of parentage of the child, the court
30 must adjudicate parentage in the best interest of the child, based on:

31 (1) the age of the child;

32 (2) the length of time during which each individual assumed the role of parent of

1 the child;

2 (3) the nature of the relationship between the child and each individual;

3 (4) the harm to the child if the relationship between the child and each individual
4 is not recognized; and

5 (5) other equitable factors arising from the disruption of the relationship between
6 the child and each individual or the likelihood of other harm to the child.

7 (b) If an individual is challenging parentage based on the results of genetic testing, in
8 addition to the factors listed in subsection (a), the court shall consider:

9 (1) the facts surrounding the discovery that the individual might not be a genetic
10 parent of the child;

11 (2) the length of time between the time that the individual was placed on notice
12 that the individual might not be a genetic parent and the commencement of the proceeding.

13 **Alternative A**

14 (c) The court may not adjudicate a child to have more than two parents under this [act].

15 **Alternative B**

16 (c) The court may adjudicate a child to have more than two parents under this [act] if the
17 court finds that failure to recognize more than two parents would be detrimental to the child. A
18 finding of detriment to the child does not require a finding of unfitness of any parent or
19 individual seeking an adjudication of parentage. In determining detriment to the child, the court
20 shall consider all relevant factors, including the harm if the child is removed from a stable
21 placement with an individual who has fulfilled the child's physical needs and psychological
22 needs for care and affection, and who has assumed the role for a substantial period.

23 **End of Alternatives**

1 **Legislative Note:** *A state should enact Alternative A if the state does not want any child to have*
2 *more than two legal parents. A state should enact Alternative B if the state wants to authorize a*
3 *court in limited circumstances to establish more than two legal parents for a child.*
4

5 **Comment**

6

7 UPA (1973) contained a provision addressing situations in which multiple individuals
8 have a claim to parentage of a child. UPA (1973) contained a provision, § 4(b), that provided
9 guidance in such situations, although the guidance it provided was vague. UPA (1973) § 4(b) (“If
10 two or more presumptions arise which conflict with each other, the presumption which on the
11 facts is founded on the weightier considerations of policy and logic controls.”).
12

13 UPA (2002) eliminated that provision and did not expressly address how a court should
14 resolve cases involving competing presumptions or claims of parentage. UPA (2002) did,
15 however, include a provision that implicitly acknowledged the possibility of multiple claimants.
16 UPA (2002), § 608 authorized a court to deny a request for genetic testing in cases in which a
17 party sought to challenge a presumption of parentage. The section provided a list of factors that a
18 court was directed to consider in such cases. The reality is, however, that whether or not the
19 court orders genetic testing, the parties often know what the results of that genetic tests would
20 reveal. In that way, the section concealed the purpose of the provision, which was to provide
21 guidance to a court faced with competing claims of parentage between an alleged genetic parent
22 and a presumed parent.
23

24 UPA (2017) addresses how to resolve cases between competing claimants directly.
25 While UPA (2017) frames the issue differently, this section is consistent with the basic approach
26 of UPA (2002) § 608. Thus, the factors included in this section are largely carried over from
27 UPA (2002) § 608.
28

29 This section also expressly addresses another issue that UPA (2002) did not: whether a
30 court may conclude that a child has more than two parents under the Act. This is a question with
31 which more and more courts have been confronted.
32

33 The Act provides two alternatives. Alternative A provides that a child cannot have more
34 than two legal parents. Alternative B permits a court, in rare circumstances, to find that a child
35 has more than two legal parents.
36

37 Alternative B is consistent with an emerging trend permitting courts to recognize more
38 than two people as a child’s parents. Five jurisdictions expressly permit a court to find that a
39 child has more than two legal parents by statute. *See, e.g.,* Cal. Fam. Code 7612(c); Del. Code
40 Ann. tit. 13, § 8-201(a)(4), (b)(6), (c); D.C. Code § 16-909(e); Me. Rev. Stat. tit. 19-a, § 1853(2).
41 In addition, courts in several other states have reached that conclusion as a matter of common
42 law. *See, e.g., Warren v. Richard*, 296 So.3d 813, 815 (La. 1974). In addition, courts in some
43 states have concluded that a child had two legal parents and one equitable parent who was
44 entitled to at least some rights and duties of a parent. *See, e.g., In Interest of P.S.*, 505 S.W.3d
45 106 (Tex. Ct. App. 2016) (3-way custody and visitation arrangement); *A.B. v. T.V.*, 2015 WL
46 7571451 (Pa. Super. Ct. 2015); *In re Parentage of J.B.R. Child*, 336 P.3d 648, 653 (Wash. App.

1 Ct. 2014) (“The fact that [the child] has two living biological parents does not prohibit [the
2 child’s stepparent] from petitioning for de facto parentage.”); *McAllister v. McAllister*, 779
3 N.W.2d 652 (N.D. 2010).

4
5 Again, Alternative B recognizes and reflects this trend in favor of recognizing the
6 possibility that a child may have more than two legal parents. Alternative B, however, stakes out
7 a narrow, limited approach to the issue by erecting a high substantive hurdle before the court can
8 reach this conclusion: a court can declare that a child has more than two legal parents only when
9 failure to do so would cause detriment to the child.

10
11 **SECTION 614. PRECLUDING ESTABLISHMENT OF PARENTAGE BY**
12 **PERPETRATOR OF SEXUAL ASSAULT.**

13 (a) In this section, “sexual assault” means [insert reference to state’s criminal rape
14 statutes].

15 (b) In a proceeding in which a woman alleges that a man committed a sexual assault that
16 resulted in the woman giving birth to a child, the woman may seek to preclude the man from
17 establishing that he is a parent of the child.

18 (c) This section does not apply if:

- 19 (1) the man has previously been adjudicated to be a parent of the child; or
20 (2) after the birth of the child, the man established a bonded and dependent
21 relationship with the child which is parental in nature.

22 (d) The woman must file a pleading making an allegation under subsection (b) not later
23 than two years after the birth of the child, unless Section 309 or 607 applies, and may file the
24 pleading only in a proceeding to establish parentage.

25 (e) An allegation under subsection (b) may be proved by either:

- 26 (1) evidence that the man was convicted of a sexual assault, or a comparable
27 crime, in a jurisdiction, against the woman, and that the child was born not later than 300 days
28 after the sexual assault; or

1 (2) clear-and-convincing evidence that the man committed sexual assault against
2 the woman, and that the child was born not later than 300 days after the sexual assault.

3 (f) If the court finds that an allegation under subsection (b) has been proved and neither
4 condition of subsection (c) is satisfied, the court shall enter an order:

5 (1) adjudicating that the man is not a parent of the child;

6 (2) requiring that the [agency maintaining birth records] amend the birth
7 certificate as requested by the woman if the court determines that the amendment is in the best
8 interest of the child; and

9 (3) requiring that the man pay child support, birth-related costs, or both, unless the
10 woman requests otherwise and the court determines that the request is in the best interest of the
11 child.

12 **Comment**

13 According to the National Conference of State Legislatures (NCSL), it is estimated that
14 there are between “17,000 and 32,000 rape-related pregnancies in the United States each year.”
15 In 2015, Congress enacted the Rape Survivor Child Custody Act. Title IV of that act provides for
16 increased funding for states that have statutes permitting women who conceived children through
17 rape to seek termination of the perpetrator’s parental rights. According to NCSL, today
18 “[a]pproximately 45 states and the District of Columbia have enacted legislation regarding the
19 parental rights of perpetrators of sexual assault.” Most states that have enacted legislation
20 address the issue in one of two ways: (1) approximately 30 states have statutes that permit a
21 court to terminate the parental rights of the perpetrator; (2) approximately 20 states permit courts
22 to restrict the custodial or visitation rights of the perpetrator.

23 This section permits a court to declare that the perpetrator is not a parent if the person has
24 been convicted of sexual assault or if the sexual assault is proved by clear and convincing
25 evidence in the proceeding and the child was conceived as a result the sexual assault. The latter
26 method of proof must be included to meet the requirements of the federal statute. 42 U.S.C. §
27 14043h-2.

28 In subsection (a), states must decide which criminal rape statutes should be included in
29 this section. A state may, for example, want to exclude from coverage some forms of statutory
30 rape where the individuals are close in age, or incest between consenting adults who do not have
31 a parent-child relationship.

1 In most cases, an allegation that this section applies must be made within two years of the
2 child's birth. This is consistent with several other provisions of UPA 2017 that also impose a
3 two-year statute of limitations. *See, e.g.*, Sections 307, 608, 705. There is one exception to this
4 two-year limitations period. In an action to adjudicate parentage when the child has no presumed,
5 adjudicated, or acknowledged parent, the two-year statute of limitations does not apply.

6 Even if the action is timely filed, a court must deny the request to preclude the man's
7 parentage of the child if the man has developed a bonded and dependent parent-child relationship
8 with the child. This exception is consistent with the Act's focus on the best interest of the child,
9 and with the act's goal of protecting established parent-child bonds.

10 A woman may seek to preclude establishment of parentage of a child by an alleged
11 perpetrator of sexual assault only in a proceeding to adjudicate parentage.

12 Subsection (c) provides that a woman may seek to preclude an establishment of parentage
13 under this section. While most proceedings under this section will be brought by the woman,
14 subsection (c) does not expressly limit such proceedings to ones initiated by the woman because
15 there may be limited circumstances when someone acting on behalf of the woman may be
16 permitted to bring an proceeding under this section. This may be the case, for example, if the
17 woman is very young or if she is incapacitated.

18 [PART] 3

19 HEARING AND ADJUDICATION

20 SECTION 615. TEMPORARY ORDER.

21 (a) In a proceeding under this [article], the court may issue a temporary order for support
22 of a child if the order is consistent with law of this state other than this [act] and the individual
23 ordered to pay support is:

- 24 (1) a presumed parent of the child;
- 25 (2) petitioning to be adjudicated a parent;
- 26 (3) identified as a genetic parent through genetic testing under Section 506;
- 27 (4) an alleged genetic parent who has declined to submit to genetic testing;
- 28 (5) shown by clear-and-convincing evidence to be a parent of the child; or
- 29 (6) a parent under this [act].

30 (b) A temporary order may include provisions for custody and visitation as provided by

1 law of this state other than this [act].

2 **Comment**

3
4 Source: 42 U.S.C. § 666(a)(5)(J); UPA (2002) § 624; UIFSA (1996) § 401.

5
6 This provision is carried over from UPA (2002) § 624. The provision requires that
7 parentage be established by clear and convincing evidence to comply with federal law. *See* 42
8 U.S.C. § 666(a)(5)(J) (requiring states to adopt “[p]rocedures which require that a temporary
9 order be issued, upon motion by a party, requiring the provision of child support pending an
10 administrative or judicial determination of parentage, if there is clear and convincing evidence of
11 paternity (on the basis of genetic tests or other evidence).”).

12
13 The temporary orders referenced in both subsections (a) and (b) include interim orders.

14
15 **SECTION 616. COMBINING PROCEEDINGS.**

16 (a) Except as otherwise provided in subsection (b), the court may combine a proceeding
17 to adjudicate parentage with a proceeding for adoption, termination of parental rights, child
18 custody or visitation, child support, divorce, dissolution, annulment,[legal separation or separate
19 maintenance,] administration of an estate, or other appropriate proceeding.

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

22 **Comment**

23
24 Source: UPA (2002) § 610; UPA (1973) § 8.

25
26 This provision is carried over from UPA (2002), although the prior concept of “joining”
27 proceeding has been replaced with the concept of “combining” various proceedings. As the
28 comment to the UPA (2002) provision explained, it is common to have multiple proceedings
29 regarding a single child pending at the same time, especially when a child-support agency seeks
30 to establish paternity and fix child support.

31 This provision is intended to permit a court to combine such proceedings unless the court
32 would not otherwise have jurisdiction over the proceeding. Accordingly, subsection (b) restricts
33 counterclaims in those instances in which an initiating state sends proceeding to adjudicate
34 parentage to the responding state. Because petitioner is “appearing” in the other forum, to permit
35 counterclaims would serve as a major deterrent to bringing such proceedings. This bar does not
36 prevent a separate proceeding for such matters, but there must be independent jurisdiction not
37 arising from the petitioner’s appearance in the parentage proceeding.

SECTION 617. PROCEEDING BEFORE BIRTH. [Except as otherwise provided in [Article] 8, a][A] proceeding to adjudicate parentage may be commenced before the birth of the child, and an order or judgment may be entered before birth, but enforcement of the order or judgment shall be stayed until the birth of the child.

Legislative Note: A state should include the bracketed phrase on Article 8 if the state wishes to recognize in statute surrogacy agreements and includes Article 8 in this act.

Comment

UPA (2002) provided that an action to determine parentage could be initiated prior to birth, but that it could not be concluded until after the birth of the child. UPA (2002) § 611.

UPA (2017) takes a slightly different position. This section permits a court to issue an order prior to birth, although the judgment is stayed until the birth of the child. This provision is based on a California provision. Cal. Fam. Code § 7633. In some instances, it may be very helpful for the parties to have a determination of parentage prior to birth, even if the order or judgment is not effective until after birth.

SECTION 618. CHILD AS PARTY; REPRESENTATION.

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

(b) The court shall appoint [an attorney, guardian ad litem, or similar person] to represent a child in a proceeding under this [article], if the court finds that the interests of the child are not adequately represented.

Comment

Source: UPA (2002) § 612.

Section 618 follows UPA (2002). Unlike UPA (1973), UPA (2002) and UPA (2017) take the view that the child is not a necessary party. The court, however, is permitted to appoint an attorney or similar person to represent the child if the court finds that the child's interests are not adequately represented.

SECTION 619. COURT TO ADJUDICATE PARENTAGE. The court shall adjudicate parentage of a child without a jury.

1 **Comment**

2 Source: 42 U.S.C. § 666(a)(5)(I); UPA (2002) § 632.

3
4 This provision is carried over from UPA (2002). This provision is consistent with federal
5 law, which provides that “parties to an action to establish paternity are not entitled to a trial by
6 jury.” 42 U.S.C. § 666(a)(5)(I).

7
8 **SECTION 620. HEARING; INSPECTION OF RECORDS.**

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

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

14 **Legislative Note:** *A state should review the state’s open records laws to determine if subsection*
15 *(b) needs to be addressed.*

16
17 **Comment**

18
19 Source: UPA (2002) § 633; UPA (1973) § 20.

20
21 **SECTION 621. DISMISSAL FOR WANT OF PROSECUTION.** The court may
22 dismiss a proceeding under this [act] for want of prosecution only without prejudice. An order of
23 dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a
24 dismissal without prejudice.

25 **Comment**

26 Source: UPA (2002) § 635.

27 A major principle of the UPA--and its predecessors--is that the child’s right to have a
28 determination of parentage is fundamental. This section, which is carried over from UPA (2002),
29 confirms this right by declaring that the delinquency of another person in prosecuting such a
30 proceeding, e.g., the mother or a support enforcement agency, may not permanently preclude the
31 ultimate resolution of a parentage determination.

1 **SECTION 622. ORDER ADJUDICATING PARENTAGE.**

2 (a) An order adjudicating parentage must identify the child in a manner provided by law
3 of this state other than this [act].

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

9 (c) The court may not assess fees, costs, or expenses in a proceeding under this [article]
10 against a child-support agency of this state or another state, except as provided by law of this
11 state other than this [act].

12 (d) In a proceeding under this [article], a copy of a bill for genetic testing or prenatal and
13 postnatal health care for the mother and child, provided to the adverse party not later than 10
14 days before a hearing, is admissible to establish:

15 (1) the amount of the charge billed; and

16 (2) that the charge is reasonable and necessary.

17 (e) On request of a party and for good cause, the court in a proceeding under this [article]
18 may order the name of the child changed. If the order of the court changing the name varies from
19 the name on the birth certificate of the child, the court shall issue an order directing [agency
20 maintaining birth records] to issue an amended birth certificate.

21 **Comment**

22 Source: UPA (2002) § 636; UPA (1973) §§ 15, 16, 23; UIFSA (1996) § 313.
23

1 **SECTION 623. BINDING EFFECT OF DETERMINATION OF PARENTAGE.**

2 (a) Except as otherwise provided in subsection (b):

3 (1) the signatories to an acknowledgment of parentage or denial of parentage are
4 bound by the acknowledgment and denial as provided in [Article] 3; and

5 (2) the parties to an adjudication of parentage by a court acting under
6 circumstances that satisfy the jurisdiction requirements of [cite to this state’s Section 201 of the
7 Uniform Interstate Family Support Act] and the individuals who received notice of the
8 proceeding are bound by the adjudication.

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

10 (1) the determination was based on an unrescinded acknowledgment of parentage
11 and the acknowledgment is consistent with the results of genetic testing;

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

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

17 (c) In a proceeding to dissolve or annul a marriage, the court is deemed to have made an
18 adjudication of parentage of a child if the court acts under circumstances that satisfy the
19 jurisdiction requirements of [cite to this state’s Section 201 of the Uniform Interstate Family
20 Support Act] and the final order:

21 (1) expressly identifies the child as a “child of the marriage” or “issue of the
22 marriage” or includes similar words indicating that both spouses are parents of the child; or

23 (2) provides for support of the child by a spouse unless that spouse’s parentage is

1 disclaimed specifically in the order.

2 (d) Except as otherwise provided in subsection (b) and Section 611, a determination of
3 parentage may be asserted as a defense in a subsequent proceeding seeking to adjudicate
4 parentage of an individual who was not a party to the earlier proceeding.

5 (e) A party to an adjudication of parentage may challenge the adjudication only under law
6 of this state other than this [act] relating to appeal, vacation of judgment, or other judicial review.

7 ***Legislative Note:*** A state should include the bracketed reference to Article 8 if the state wishes to
8 recognize in statute surrogacy agreements and includes Article 8 in this act.

9
10 **Comment**

11
12 Source: UPA (2002) § 637.

13
14 As explained in the comment to UPA (2002) § 637, a considerable amount of litigation
15 involves who is bound by a final order determining parentage. This section codifies rules
16 regarding the effect of such orders. Consistent with UPA (2002), subsection (a) provides that, if
17 the order is issued under standards of personal jurisdiction of UIFSA (2008), the order is binding
18 on all parties to the proceeding.

19
20 Subsection (b) follows UPA (2002) with regard to whether a child is bound by the terms
21 of the order determining parentage. UPA (2017), as did UPA (2002), adopts the rule that a child
22 is not bound during minority unless the order is consistent with the results of genetic testing or
23 the child was represented by an attorney.

24
25 Subsection (c) follows UPA (2002) on whether a divorce decree constitutes a finding of
26 parentage. Subsection (d) follows UPA (2002) by giving protection to third parties who may
27 claim benefit of an earlier determination of parentage.

28
29 As was true of UPA (2002), this section is silent on whether state IV-D agencies are
30 bound by prior determinations of parentage. This controversial issue is left to other law of the
31 state. Similarly, issues of collateral attack on final judgments are to be resolved by recourse to
32 other state law.

33
34 **[ARTICLE] 7**

35 **ASSISTED REPRODUCTION**

36 **Comment**

37 The content of Article 7 is substantively similar to the content of Article 7 of UPA

(2002). The primary changes to Article 7 are intended to update the Article so that it applies equally to same-sex couples.

SECTION 701. SCOPE OF [ARTICLE]. This [article] does not apply to the birth of a child conceived by sexual intercourse[or assisted reproduction under a surrogacy agreement under [Article] 8].

***Legislative Note:** A state should include the bracketed phrase concerning a surrogacy agreement if the state wishes to recognize in statute surrogacy agreements and includes Article 8 in this act.*

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

Comment

Source: UPA (2002) § 702.

SECTION 703. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION. An individual who consents under Section 704 to assisted reproduction by a woman with the intent to be a parent of a child conceived by assisted reproduction is a parent of the child.

SECTION 704. CONSENT TO ASSISTED REPRODUCTION.

(a) Except as otherwise provided in subsection (b), consent given under Section 703 shall be in a record signed by a woman giving birth to a child conceived by assisted reproduction and an individual who intends to be a parent of the child.

(b) Failure to consent in a record as required by subsection (a), before, on, or after birth of the child, does not preclude the court from finding consent to parentage if:

(1) the woman or the individual proves by clear-and-convincing evidence the existence of an express agreement entered into before conception that the individual and the woman intended that they both would be parents of the child; or

(2) the woman and the individual for the first two years of the child's life,

1 including periods of temporary absence, resided together in the same household with the child
2 and both openly held out the child as the individual’s child, unless the individual dies or becomes
3 incapacitated before the child becomes two years of age or the child dies before the child
4 becomes two years of age, in which case a court may find consent to parentage under this
5 subsection if a party proves by clear-and-convincing evidence that the woman and the individual
6 intended to reside together in the same household with the child and both intended that the
7 individual would openly hold out the child as the individual’s child, but that the individual was
8 prevented from carrying out that intent by death or incapacity.

9 **Comment**

10
11 Source: UPA (2002) § 704; UPC (2010) § 2-120(f).
12

13 This section largely follows UPA (2002), in that it provides that an individual is a parent
14 of a child born through assisted reproduction if the individual consents in writing to the assisted
15 reproduction, or, in the absence of consent, if for the first two years of the child’s life, the
16 individual resided together in the same household with the child and both openly held out the
17 child as the individual’s child.
18

19 This section adds two new means by which an individual can establish parentage of a
20 child born through assisted reproduction. In the absence of written consent to the assisted
21 reproduction, parentage can be established under subsection (b)(1) if the woman or the individual
22 proves that the parties entered into an express agreement prior to conception that they intended
23 that they would both be parents of the child. UPA (2017) continues to provide the most
24 protection to those who have written consent. This protection encourages parties to obtain
25 written consent, which helps avoid disputes and litigation.
26

27 Case law and experience make clear, however, that many parties do not consent in
28 writing, even when the statute requires written consent and even when the evidence indicates that
29 the parties intended that they would both be parents to the child. Some courts have relied on
30 equitable or common law doctrines to do justice in such cases. *See, e.g., In re Parentage of M.J.*,
31 203 Ill. 3d 526, 541, 787 N.E.2d 144, 152 (2003) (holding that even though the assisted
32 reproduction statute did not apply in the absence of written consent, a man who consented in fact
33 to the woman’s insemination was a parent under common law principles and that “to hold
34 otherwise would deprive the children of financial support merely because of deception and a
35 technical oversight.”). Some other courts, however, have rigidly applied written consent
36 requirements, often producing results that seem inequitable and harmful to the child.
37

38 In light of this experience, UPA (2017) recognizes some non-written forms of consent.

1 New subsection (b)(1) adds a new method of establishing parentage in the absence of written
2 consent, but this new method imposes a high substantive bar: the express agreement must be
3 proven by clear and convincing evidence.
4

5 In addition, subsection (b)(2) has been expanded to bring UPA (2017) more in line with
6 the Uniform Probate Code. UPA (2002) provided that the failure to sign a written consent did not
7 preclude a determination of parentage if the individual, during the first two years of the child's
8 life, resided together in the same household with the child and openly held out the child as the
9 individual's own. UPA (2017) also permits a determination of parentage where this two-year
10 period is not fulfilled because of the death or incapacity of the individual or the death of the
11 child.
12

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

14 (a) Except as otherwise provided in subsection (b), an individual who, at the time of the
15 child's birth, is the spouse of the woman who gave birth to the child by assisted reproduction
16 may not challenge the individual's parentage of the child unless:

17 (1) not later than two years after the birth of the child, the individual commences a
18 proceeding to adjudicate the individual's parentage of the child; and

19 (2) the court finds that the individual did not consent to the assisted reproduction,
20 before, on, or after birth of the child, or that the individual withdrew consent under Section 707.

21 (b) A proceeding to adjudicate a spouse's parentage of a child born by assisted
22 reproduction may be commenced at any time if the court determines:

23 (1) the spouse neither provided a gamete for, nor consented to, the assisted
24 reproduction;

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

27 (3) the spouse never openly held out the child as the spouse's child.

28 (c) This section applies to a spouse's dispute of parentage even if the spouses' marriage is
29 declared invalid after assisted reproduction occurs.

1 **Comment**

2
3 Source: UPA (2002) § 705.
4

5 The substance of this Section is carried over from UPA (2002). Like UPA (2002) § 705,
6 this section applies even if the parties' marriage is annulled or declared invalid after assisted
7 reproduction occurs, and the term "spouse" includes parties who were in a marriage that was
8 declared invalid after the assisted reproduction occurred.
9

10 **SECTION 706. EFFECT OF DISSOLUTION OF MARRIAGE.** If a marriage of a
11 woman who gives birth to a child conceived by assisted reproduction is annulled or dissolved
12 before transfer of gametes or embryos to the woman, a former spouse of the woman is not a
13 parent of the child unless the former spouse consented in a record that the former spouse would
14 be a parent of the child if assisted reproduction were to occur after a [divorce, dissolution,
15 annulment[, legal separation or separate maintenance]], and the former spouse did not withdraw
16 consent under Section 707.

17 **Comment**

18
19 Source: UPA (2002) § 706(a).
20

21 This section is largely carried over from UPA (2002) § 706(a). This section applies only
22 to married couples and provides that the spouse is not a parent if the gamete or embryo transfer
23 resulting in pregnancy occurs after death or annulment unless the individual consented in a
24 record that the individual would be a parent if assisted reproduction were to occur after divorce
25 or annulment. The only substantive change made by UPA (2017) is to clarify that the principle
26 established in UPA (2002) § 706(a) applies equally to divorces and annulments.
27

28 Like UPA (2002), § 706, UPA (2017) provides rules for determining of parentage.
29 Accordingly, in the event of a dissolution of marriage or the withdrawal of consent, this act does
30 not address under what circumstances a transfer of gametes or embryos may or may not occur, or
31 which party has the right to control any gametes or embryos.
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(b) An individual who withdraws consent under subsection (a) is not a parent of the child under Sections 703 and 704.

Source: UPA (2002) § 706(b).

The substance of UPA (2002) § 706(b), regarding the rules for the withdrawal of consent by any individual, married or unmarried, is addressed in this section. The content of UPA (2002) § 706(a), regarding the effect of a dissolution or annulment of a marriage, is addressed in UPA (2017) § 706.

(a) If an individual who intends to be a parent of a child conceived by assisted reproduction dies during the period between the transfer of a gamete or embryo and the birth of the child, the individual's death does not preclude the establishment of the individual's parentage of the child if the individual otherwise would be a parent of the child under this [act].

(1) the deceased individual consented in a record that if assisted reproduction

were to occur after the death of the deceased individual, the deceased individual would be a parent of the child; or

(2) the deceased individual’s intent to be a parent of a child conceived by assisted reproduction after the individual’s death is established by clear-and-convincing evidence.

(c) Notwithstanding subsection (b), an individual is a parent of a child conceived by assisted reproduction under subsection (b) only if:

(1) the embryo is in utero not later than [36] months after the individual’s death;

or

(2) the child is born not later than [45] months after the individual’s death.

Comment

Source: UPA (2002) § 707; UPC (2008) § 2-120(f).

The rule stated in subsection (a) was implicit in UPA (2002), but UPA (2017) makes the rule explicit. The substance of subsection (b)(1) is carried over from UPA (2002).

Subsection (b)(2) is new to the UPA, but is based on and consistent with the more recently drafted Uniform Probate Code. UPC § 2-120(f) provides that an individual is “treated as the other parent” if it can be shown, “considering all the facts and circumstances,” that the individual consented to the assisted reproduction. Subsection (c) is new to the UPA, but, again, is based on and consistent with the approach of UPC § 2-120(k). *See also* 750 ILCS 46/705.

[[ARTICLE] 8

SURROGACY AGREEMENTS

Legislative Note: A state should include Article 8 if the state wishes to recognize in statute surrogacy agreements.

Comment

UPA (2017) updates the surrogacy provisions of UPA (2002) to reflect developments that have occurred over the last 15 years. UPA (2002) included a bracketed Article 8 that authorized surrogacy agreements. States have been particularly reluctant to enact that article. Eleven (11) states adopted versions of UPA (2000) or UPA (2002). However, of these eleven (11) states, only two (2) – Texas and Utah – enacted the surrogacy provisions based on Article 8 of UPA (2002).

1 The fact that very few states enacted Article 8 of UPA (2002) is likely the result of a
2 confluence of factors. One likely factor is the controversial nature of surrogacy itself. To be
3 clear, however, it is not simply resistance to surrogacy that explains states' reluctance to enact
4 Article 8 of UPA (2002). Indeed, at least five of the 11 states that enacted UPA (2002) enacted
5 statutory provisions permitting surrogacy that are *not* premised on UPA (2002). These states
6 include: Delaware (permitting) (enacted 2013); Illinois (permitting) (enacted 2004); Maine
7 (permitting) (enacted 2015). Thus, there appeared to be a lack of enthusiasm for the substance of
8 the provisions themselves. Moreover, much has changed in this rapidly developing area of law
9 and practice during the last 15 years. More states address surrogacy by statute, and more people
10 are having children through surrogacy. Accordingly, UPA (2017) updates the surrogacy
11 provisions to make them more consistent with current surrogacy practice.

12
13 As was true of UPA (2002), Article 8 of UPA (2017) regulates and permits both genetic
14 (often referred to as "traditional") and gestational surrogacy agreements. But UPA (2017) differs
15 in the way that it regulates these two types of surrogacy agreements. UPA (2002) set forth a
16 single set of requirements that applied equally to genetic and gestational surrogacy agreements.
17 While UPA (2017) continues to permit both types of surrogacy, UPA (2017) imposes additional
18 safeguards or requirements on genetic surrogacy agreements. For example, while gestational
19 surrogacy agreements are binding once the successful transfer has occurred, UPA (2017) allows
20 genetic surrogates to withdraw their consent any time up until 72 hours after birth. This
21 differentiation between genetic and gestational surrogacy is intended to reflect both the factual
22 differences between the two types of surrogacy as well as the reality that policy makers view
23 these two forms of surrogacy as being quite different. Of the states that permit surrogacy, most
24 permit *only* gestational surrogacy agreements.

25
26 While UPA (2017) adds additional requirements that apply only to genetic surrogacy
27 agreements, it simultaneously liberalizes the rules governing gestational surrogacy agreements.
28 For example, UPA (2017) eliminates the requirement imposed under UPA (2002) that parties to
29 a gestational agreement obtain court approval of the agreement prior to any medical procedures.
30 The changes to the rules governing gestational surrogacy agreements are intended to bring UPA
31 (2017) more in line with current practice and law.

32
33 Sections 801 through 807 establish the rules that apply to both types of surrogacy
34 agreements. Sections 808 through 812 include rules that apply only to gestational surrogacy
35 agreements. Sections 813 through 818 include rules that apply only to genetic surrogacy
36 agreements.

37 38 [PART] 1

39 GENERAL REQUIREMENTS

40 SECTION 801. DEFINITIONS. In this [article]:

41 (1) "Genetic surrogate" means a woman who is not an intended parent and who agrees to
42 become pregnant through assisted reproduction using her own gamete, under a genetic surrogacy

1 agreement as described in this [article].

2 (2) “Gestational surrogate” means a woman who is not an intended parent and who
3 agrees to become pregnant through assisted reproduction using gametes that are not her own,
4 under a gestational surrogacy agreement as described in this [article].

5 (3) “Surrogacy agreement” means an agreement under this [article] between one or more
6 intended parents and a woman who is not an intended parent in which the woman agrees to
7 become pregnant through assisted reproduction and which provides that each intended parent is a
8 parent of a child conceived under the agreement. Unless otherwise specified, the term refers to
9 both a gestational surrogacy agreement and a genetic surrogacy agreement.

10 **SECTION 802. ELIGIBILITY TO ENTER GESTATIONAL OR GENETIC**
11 **SURROGACY AGREEMENT.**

12 (a) To execute an agreement to act as a gestational or a genetic surrogate, a woman must:

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

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

15 (3) complete a medical evaluation related to the surrogacy arrangement by a
16 licensed doctor or physician;

17 (4) complete a mental health consultation related to the surrogacy arrangement by
18 a licensed mental health professional; and

19 (5) have independent legal representation of her choice throughout the surrogacy
20 arrangement regarding the terms of the surrogacy agreement and the potential legal
21 consequences of the agreement.

22 (b) To execute a surrogacy agreement, each intended parent, whether or not genetically
23 related to the child, must:

(1) be at least 21 years of age;

(2) complete a medical evaluation related to the surrogacy arrangement by a licensed doctor or physician;

(3) complete a mental health consultation by a licensed mental health professional; and

(4) have independent legal representation of the intended parent's choice regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

Comment

This section is modeled on the more recently adopted surrogacy provisions, including those enacted in Delaware (enacted 2013); Maine (enacted 2015); Nevada (enacted 2013); New Hampshire (enacted 2014); Illinois (enacted 2004); and the District of Columbia (enacted 2017), among other jurisdictions. See, e.g., Del. Stat., tit. 13 §§ 8-801 to 8-809; Me. Rev. Stat. tit. 19-a, §§ 1931 to 1938; Nev. Rev. Stat. §§ 126.500 to 126.810; N.H. Rev. Stat. §§ 168-B:1 to 168-B:22; 750 ILCS 47/1 to 47/75; D.C. Code §§ 16-401 to 16-412.

Most of these recently adopted surrogacy provisions include similar requirements regarding age, medical and mental health evaluations, and independent counsel. See, e.g., D.C. Code § 16-405 (age, medical and mental health evaluations); 16-406(3) (requiring affirmation that all parties had independent legal counsel); Me. Rev. Stat. tit. 19-a, § 1931; Nev. Rev. Code § 126.740; N.H. Rev. Code § 128-B:9. One requirement that is included in some recently adopted statutes that is not included here is the requirement that the surrogate have “given birth to at least one live child.” See, e.g., D.C. Code § 16-405(a)(2). See also Me. Rev. Stat. tit. 19-a, § 1931(1)(B). This requirement was not included in UPA (2002), and has not been included here. See also Nev. Rev. Code § 126.740 (excluding requirement). The intended parents, of course, are permitted to choose a surrogate who has previously given birth to a live child, but that is not a statutory requirement.

SECTION 803. REQUIREMENTS OF GESTATIONAL OR GENETIC

SURROGACY AGREEMENT: PROCESS. A surrogacy agreement must be executed in compliance with the following rules:

(1) At least one party must be a resident of this state or, if no party is a resident of this state, at least one medical procedure under the agreement must occur in this state.

1 (2) A surrogate and each intended parent must meet the requirements of Section 802.

2 (3) Each intended parent, the surrogate, and the surrogate's spouse, if any, must be parties
3 to the agreement.

4 (4) The agreement must be in a record signed by each party listed in paragraph (3).

5 (5) The surrogate and each intended parent must acknowledge in a record receipt of a
6 copy of the agreement.

7 (6) The signature of each party to the agreement must be attested by a notarial officer or
8 witnessed by at least one individual.

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

12 (8) Each intended parent must pay for independent legal representation for the surrogate.

13 (9) The agreement must be executed before a medical procedure occurs related to the
14 surrogacy agreement, other than the medical evaluation required by Section 802.

15 **Comment**

16
17 This section is modeled on a number of recently adopted surrogacy schemes, including
18 those enacted in Delaware (enacted 2013); Maine (enacted 2015); Nevada (enacted 2013); New
19 Hampshire (enacted 2014); Illinois (enacted 2004); and the District of Columbia (enacted 2017),
20 among other jurisdictions. See, e.g., Del. Stat., tit. 13 §§ 8-801 to 8-809; Me. Rev. Stat. tit. 19-a,
21 §§ 1931 to 1938; Nev. Rev. Stat. §§ 126.500 to 126.810; N.H. Rev. Stat. §§ 168-B:1 to 168-
22 B:22; 750 ILCS 47/1 to 47/75; D.C. Code §§ 16-401 to 16-412.

23
24 One issue on which these recently adopted statutory schemes diverge is with regard to
25 payment for the surrogate's counsel. As noted above, most recently adopted statutory schemes
26 require the surrogate and the intended parent or parents to be represented by separate,
27 independent counsel. That said, only a minority of states statutorily require the intended parents
28 to pay for the surrogate's counsel. See Me. Rev. Stat. tit. 19-a, § 1931(1)(D). Contra cf. Nev.
29 Rev. Stat. § 126.750(2) (requiring separate and independent counsel, but not addressing
30 payment); N.H. Rev. Stat. § 168-B:11(III) (same); D.C. Code § 16-406(b) (same). UPA (2017)
31 requires payment for counsel.
32

1 **SECTION 804. REQUIREMENTS OF GESTATIONAL OR GENETIC**

2 **SURROGACY AGREEMENT: CONTENT.**

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

4 (1) A surrogate agrees to attempt to become pregnant by means of assisted
5 reproduction.

6 (2) Except as otherwise provided in Sections 811, 814, and 815, the surrogate and
7 the surrogate's spouse, if any, have no claim to parentage to a child conceived by assisted
8 reproduction under the agreement.

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

11 (4) Except as otherwise provided in Sections 811, 814, and 815, the intended
12 parent or, if there are two intended parents, each one jointly and severally, immediately on birth
13 or delivery will be the exclusive parent or parents of the child regardless of number, gender, or
14 mental or physical condition.

15 (5) Except as otherwise provided in Sections 811, 814, and 815, the intended
16 parent or, if there are two intended parents, each one jointly and severally, immediately on birth
17 or delivery will assume responsibility for the financial support of the child regardless of number,
18 gender, or mental or physical condition.

19 (6) The agreement must include information disclosing how each intended parent
20 will cover the surrogacy-related expenses of the surrogate and the medical expenses of the child.
21 If health-care coverage is used to cover the medical expenses, the disclosure must include a
22 summary of the health-care policy provisions related to coverage for surrogate pregnancy,
23 including any possible liability of the surrogate, third-party liability liens, other insurance

1 coverage, and any notice requirements that could affect coverage or liability of the surrogate.
2 Unless the agreement expressly provides otherwise, the review and disclosure do not constitute
3 legal advice. If the extent of coverage is uncertain, a statement of that fact is sufficient to meet
4 the requirements of this section.

5 (7) The agreement must permit the surrogate to make all health and welfare
6 decisions regarding herself and her pregnancy. This [act] does not enlarge or diminish a
7 woman's right to terminate her pregnancy.

8 (b) A surrogacy agreement may provide for:

9 (1) payment of consideration and reasonable expenses; and

10 (2) reimbursement of specific expenses if the agreement is terminated under this
11 [article].

12 (c) A right created under a surrogacy agreement is not assignable and there is no third
13 party beneficiary of the agreement other than the child.

14 **Comment**

15
16 This section is modeled on a number of recently adopted surrogacy provisions. See, e.g.,
17 D.C. Code § 16-406; Me. Rev. Stat. tit. 19-a, § 1932(J); N.H. Rev. Stat. § 168-B:11.

18
19 Subsection (a)(6) is based on Cal. Fam. Code § 7692(a)(4).

20
21 The first sentence of subsection (a)(7) is modeled on UPA (2002) and the recently
22 adopted provisions in Maine and D.C. See, e.g., UPA (2002) § 801(f) ("A gestational agreement
23 may not limit the right of the gestational mother to make decisions to safeguard her health or that
24 of the embryos or fetus."); Me. Rev. Stat. tit. 19-a, § 1932(5) ("A gestational carrier agreement
25 may not limit the right of the gestational carrier to make decisions to safeguard her health.");
26 D.C. Code § 16-406(c) ("A surrogacy agreement may not limit the right of the surrogate to make
27 decisions to safeguard the surrogate's health or that of the embryo or fetus."). The second
28 sentence of subsection (a)(7) reaffirms that the surrogate has a constitutionally protected right to
29 decide whether to terminate the pregnancy within the limits of the law. Cf. D.C. Code § 16-
30 406(4)(C) ("Agree that at all times during the pregnancy and until delivery, regardless of
31 whether the court has issued an order of parentage, the surrogate shall maintain control and
32 decision-making authority over the surrogate's body.").

33 Subsection (b) carries over the position of UPA (2002) by permitting compensated

1 surrogacy agreements. Most states that permit surrogacy agreements by statute likewise permit
2 compensated as well as uncompensated agreements.

3
4 **SECTION 805. SURROGACY AGREEMENT: EFFECT OF SUBSEQUENT**
5 **CHANGE OF MARITAL STATUS.**

6 (a) Unless a surrogacy agreement expressly provides otherwise:

7 (1) the marriage of a surrogate after the agreement has been signed by all parties
8 does not affect the validity of the agreement, her spouse's consent to the agreement is not
9 required, and her spouse is not a presumed parent of a child conceived by assisted reproduction
10 under the agreement; and

11 (2) the [divorce, dissolution, annulment[, legal separation, or separate
12 maintenance]] of the surrogate after the agreement has been signed by all parties does not affect
13 the validity of the agreement.

14 (b) Unless a surrogacy agreement expressly provides otherwise:

15 (1) the marriage of an intended parent after the agreement has been signed by all
16 parties does not affect the validity of a surrogacy agreement, the consent of the spouse of the
17 intended parent is not required, and the spouse of the intended parent is not a parent of a child
18 conceived by assisted reproduction under the agreement based on the agreement; and

19 (2) the [divorce, dissolution, annulment[, legal separation, or separate
20 maintenance]] of an intended parent after the agreement has been signed by all parties does not
21 affect the validity of the agreement, and except as otherwise provided in Section 814, the
22 intended parents are the parents of the child.

23 **Comment**

24
25 Source: UPA (2002) § 808; D.C. Code § 16-410.

26
27 In some states, the statutes address the effect of a subsequent marriage of the surrogate

only. *See, e.g.*, Me. Rev. Stat. tit. 19-a, § 1937; Nev. Rev. Stat. § 126.770; N.H. Rev. Stat. § 168-B:14. *See also* UPA (2002) § 808. To avoid ambiguity and unnecessary litigation, UPA (2017) expressly addresses the effect of any subsequent marriage or divorce by any party to the surrogacy agreement.

SECTION 806. INSPECTION OF DOCUMENTS. Unless the court orders otherwise, a petition and other documents related to a surrogacy agreement filed with the clerk of the court under this [part] are not open to inspection by any individual other than the parties to the proceeding, a child conceived by assisted reproduction under the agreement, their attorneys, and [the relevant state agency]. A judge of the [court having jurisdiction] may not authorize an individual to inspect a document related to the agreement, except if required by exigent circumstances. The individual seeking to inspect the documents may be required to pay the expense of preparing copies of the documents to be inspected.

Legislative Note: *A state should review the state’s open records law to determine if this section needs to be included.*

Comment

Source: UPA (2002) § 804; Cal. Fam. Code § 7962(h); Nev. Rev. Stat. § 126.730.

In some states, family law matters are not open for inspection. In such a jurisdiction, this provision may be unnecessary. If, however, family law matters generally are open for inspection, a state may consider enacting Section 806.

SECTION 807. EXCLUSIVE, CONTINUING JURISDICTION. During the period from the execution of a surrogacy agreement until 90 days after the birth of a child conceived by assisted reproduction under the agreement, the court of this state conducting a proceeding under this [act] has exclusive, continuing jurisdiction over all matters arising out of the agreement until 90 days after the birth of the child. This section does not give the court jurisdiction over a child-custody or child-support proceeding if jurisdiction is not otherwise authorized by law of this state other than this [act].

1 **Comment**

2
3 Source: UPA (2002) § 805; Me. Rev. Stat. tit. 19-a, § 1935.
4

5 **[PART] 2**

6 **SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENT**

7 **Comment**

8 As noted above, UPA (2002) applied the same substantive rules to gestational and genetic
9 surrogacy agreements. Among other things, UPA (2002) required all agreements to be validated
10 by a court prior to any medical treatments. UPA (2002) also required a home study of the
11 intended parents unless waived by the court. These rules were not widely adopted by states, and
12 they are not consistent with contemporary practice. Part 2, providing special rules for gestational
13 surrogacy agreements, modernizes the rules regarding gestational surrogacy to make them more
14 consistent with contemporary surrogacy practice and the laws in the states that permit surrogacy
15 agreements.
16

17 **SECTION 808. TERMINATION OF GESTATIONAL SURROGACY**

18 **AGREEMENT.**

19 (a) A party to a gestational surrogacy agreement may withdraw consent to a medical
20 procedure and may terminate the agreement at any time before an embryo transfer by giving
21 notice of termination in a record to all other parties. If an embryo transfer does not result in a
22 pregnancy, a party may withdraw consent any time before a subsequent embryo transfer.

23 (b) Unless a gestational surrogacy agreement provides otherwise, on proper termination
24 of the agreement under subsection (a), the parties are released from the obligations recited in the
25 agreement except that each intended parent remains responsible for expenses that are
26 reimbursable under the agreement and incurred by the gestational surrogate through the date of
27 termination.

28 (c) Except in a case involving fraud, neither a surrogate nor the surrogate's spouse, if any,
29 is liable to the intended parent or parents for a penalty, including liquidated damages, for
30 terminating the agreement under this section.

1 **Comment**

2
3 Source: UPA (2002) § 808; Me. Rev. Stat. tit. 19-a, § 1936.
4

5 Subsection (a) is largely carried over from UPA (2002). Subsection (a) permits a party to
6 terminate the agreement before a successful transfer. This allows the parties some time to change
7 their minds, but within a limited window that does not unduly prejudice the interests of other
8 parties to the agreement.
9

10 Subsection (b) is new. The substance of subsection (b) is consistent with the implicit but
11 unstated rule of UPA (2002). UPA (2017) states expressly that if a party properly terminates the
12 agreement under this provision, that termination releases the parties from the obligations recited
13 under the agreement—most importantly rights and duties with regard to the child—except with
14 regard to expenses that are reimbursable under the agreement.
15

16 Subsection (c) clarifies that, except in cases involving fraud, the gestational carrier and
17 her spouse, if any, are not liable for any penalties other than any expenses that are reimbursement
18 under the agreement.
19

20 **SECTION 809. PARENTAGE UNDER GESTATIONAL SURROGACY**

21 **AGREEMENT.**

22 (a) Except as otherwise provided in subsection (c) and Section 812, on birth or delivery
23 of a child conceived by assisted reproduction under a gestational surrogacy agreement, each
24 intended parent is, by operation of law, a parent of the child.

25 (b) Except as otherwise provided in subsection (c) and Section 812, neither a gestational
26 surrogate, nor the surrogate's spouse, if any, nor the surrogate's former spouse, if any, is a parent
27 of the child.

28 (c) If a child is alleged to be a genetic child of the woman who agreed to be a gestational
29 surrogate, the court shall order genetic testing of the child. If the child is a genetic child of the
30 woman who agreed to be a gestational surrogate, parentage must be determined based on
31 [Articles] 1 through 6.

32 (d) Except as otherwise provided in subsection (c) and Section 812, if, due to a clinical or
33 laboratory error, a child conceived by assisted reproduction under a gestational surrogacy

1 agreement is not genetically related to the intended parent or parents, or if due to a clinical or
2 laboratory error the child is not genetically related to a donor who donated to the intended parent
3 or parents, each intended parent, and not the gestational surrogate and the surrogate's spouse, if
4 any, is a parent of the child, subject to other claims of parentage.

5 **Comment**

6
7 Source: Me. Rev. Stat. tit. 19-a, § 1933; Me. Rev. Stat. tit. 19-a, § 1938(4).
8

9 Subsections (a) and (b) expressly clarify the legal parentage of a child born through an
10 enforceable gestational surrogacy agreement.
11

12 Subsection (c) clarifies how parentage should be determined if the child was not
13 conceived through assisted reproduction. UPA (2002) § 807 acknowledged that possibility and
14 provided for the ordering of genetic testing, but did not expressly state how parentage should be
15 determined in such cases. UPA (2017) includes a clear rule for determining parentage.
16

17 UPA (2002) did not expressly address cases involving clinic error. While such cases are
18 rare, they have occurred. UPA (2017) addresses such cases expressly in subsection (d). The
19 substance of subsection (d) is based on the newly adopted provision in Maine.
20

21 **SECTION 810. GESTATIONAL SURROGACY AGREEMENT: PARENTAGE** 22 **OF DECEASED INTENDED PARENT.**

23 (a) Except as otherwise provided in Section 812, on birth or delivery of a child conceived
24 by assisted reproduction under a gestational surrogacy agreement, each intended parent is, by
25 operation of law, a parent of the child, notwithstanding that an intended parent died during the
26 period between the transfer of a gamete or embryo and the birth of the child.

27 (b) Except as otherwise provided in Section 812, an intended parent is not a parent of the
28 child if the intended parent dies before the transfer of a gamete or embryo unless:

29 (1) the agreement provides otherwise; and

30 (2) the transfer of a gamete or embryo occurs not later than [36] months after the
31 death of the intended parent, or birth of the child occurs not later than [45] months after the death

1 of the intended parent.

2 **Comment**

3
4 Source: UPC (2010) § 2-121; D.C. Code § 16-409.

5
6 UPA (2002) did not specifically address the issue of parentage if an intended parent died
7 during the arrangement. To avoid uncertainty and unnecessary litigation, UPA (2017) addresses
8 this issue specifically. The principle stated in subsection (a) is implicit with other provisions in
9 Article 8. Subsection (b) is based on the relevant UPC provision, and is consistent with the
10 analogous provision in Article 7 of this Act.

11
12 **SECTION 811. GESTATIONAL SURROGACY AGREEMENT: ORDER OF**
13 **PARENTAGE.**

14 (a) Except as otherwise provided in Sections 809(c) and 812, before or after the birth of a
15 child conceived by assisted reproduction under a gestational surrogacy agreement, a party to the
16 agreement may commence a proceeding in the [appropriate court] for an order or judgment:

17 (1) declaring that each intended parent is the parent of the child and ordering that
18 parental rights and duties vest immediately on the birth of the child exclusively in each intended
19 parent;

20 (2) declaring that the gestational surrogate and the surrogate's spouse, if any, are
21 not the parents of the child;

22 (3) designating the content of the birth record in accordance with [cite applicable
23 law of this state other than this [act]] and directing the [agency maintaining birth records] to
24 designate each intended parent as a parent of the child; and

25 (4) sealing the court record from the public to protect the privacy of the child and
26 the parties.

27 (b) The court may issue an order or judgment described in subsection (a) before the birth
28 of the child. The court shall stay enforcement of that order or judgment until the birth of the

1 child.

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

4 **Comment**

5
6 Source: D.C. Code § 16-408(d); Me. Rev. Stat. tit. 19-a, § 1934; N.H. Rev. Stat. § 168-
7 B:12.

8
9 **SECTION 812. EFFECT OF GESTATIONAL SURROGACY AGREEMENT.**

10 (a) A gestational surrogacy agreement that complies with Sections 802, 803, and 804 is
11 enforceable.

12 (b) If a child was conceived by assisted reproduction under a gestational surrogacy
13 agreement that does not comply with Sections 802, 803, and 804, the court must determine the
14 respective rights and duties of the parties to the agreement consistent with the intent of the
15 parties at the time of execution of the agreement. Each party to the agreement has standing to
16 maintain a proceeding to adjudicate parentage under this section.

17 (c) Except as expressly provided in a gestational surrogacy agreement and subsections (d)
18 and (e), if the agreement is breached by the gestational surrogate or one or more intended
19 parents, the gestational surrogate or the intended parent or parents are entitled to the remedies
20 available at law or in equity.

21 (d) Specific performance is not a remedy available for breach by a gestational surrogate
22 of a provision in the agreement that the gestational surrogate be impregnated, terminate or not
23 terminate a pregnancy, or submit to medical procedures.

24 (e) Except as otherwise provided in subsection (d), if the intended parents are determined
25 to be the legal parents of the child specific performance is a remedy available for:

26 (1) breach of the agreement by a gestational surrogate which prevents an intended

parent from exercising immediately on birth of the child the full rights of parentage; or
(2) breach by an intended parent which prevents the intended parent's acceptance immediately on birth of a child conceived by assisted reproduction under the agreement of the duties of parentage.

Comment

Source: Me. Rev. Stat. tit. 19-a, § 1938(3), (5); Nev. Rev. Stat. § 126.790(1), (2); N.H. Rev. Stat. § 168-B:18(I), (II).

Subsection (a) expressly declares that a gestational surrogacy agreement that complies with the requirements of this Article is enforceable.

Subsection (b), setting forth the rules for determining parentage in the event of a noncompliant agreement, is based on Me. Rev. Stat. tit. 19-a, § 1938(2); Nev. Rev. Stat. § 126.780(2). In such cases, a court must determine parentage by looking to the intent of the parties at the time of execution.

UPA (2002) did not address the rules that apply in the event of a breach of a surrogacy agreement. New subsection (c) follows the approach taken by several of the recently enacted comprehensive surrogacy statutes, providing that the parties are entitled to remedies available at law or in equity. *See, e.g.*, Me. Rev. Stat. tit. 19-a, § 1938(3); Nev. Rev. Stat. § 126.790(1), (2) (providing that, in the event of a breach, the intended parents or the gestational surrogate, as appropriate, are entitled to “any remedy available at law or equity.”); N.H. Rev. Stat. § 168-B:18(I), (II) (providing that, in the event of a breach, the intended parents or the gestational surrogate, as appropriate, are entitled to “all remedies available at law or equity”).

Subsection (d) clarifies that certain forms of specific performance are precluded, including a court order requiring a surrogate be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures. Such an order may violate the constitutional rights of the surrogate. *See also* Me. Rev. Stat. tit 19-a, § 1938(5) (addressing impregnation and termination, but not submission to medical procedures); Nev. Rev. Stat. § 126.780 (“There must be no specific performance remedy available for breach of the gestational agreement by the gestational carrier that would require the gestational carrier to be impregnated.”).

Subsection (e) provides some forms of specific performance that can be ordered.

1 [PART] 3

2 SPECIAL RULES FOR GENETIC SURROGACY AGREEMENT

3 Comment

4 UPA (2002) imposed the same rules on gestational and genetic surrogacy agreements.
5 UPA (2017) departs from this approach. While there are some common requirements, UPA
6 (2017) imposes additional requirements or safeguards on genetic surrogacy agreements. Among
7 other things, UPA (2017) allows a genetic surrogate to withdraw her consent up until 72 hours
8 after birth.
9

10 Currently, only a very small minority of states expressly permit genetic surrogacy
11 through a comprehensive statutory scheme. These states include Florida, Maine (for close
12 relatives only), Virginia, and the District of Columbia. The statutes in these states distinguish
13 between genetic and gestational arrangements and a number of these jurisdictions permit genetic
14 surrogates to withdraw consent after pregnancy has occurred. *See, e.g.*, Fla. Stat. Ann. § 63.213
15 (48 hours after birth); D.C. Code § 16-411(4) (48 hours after birth). *Cf.* Vir. Code Ann. § 20-
16 161(B) (providing that in cases where the “surrogate ... is also a genetic parent” the surrogate
17 may “terminate the agreement ... [w]ithin 180 days after the last performance of any assisted
18 conception”).
19

20 SECTION 813. REQUIREMENTS TO VALIDATE GENETIC SURROGACY

21 AGREEMENT.

22 (a) To be enforceable, a genetic surrogacy agreement must be validated by [the
23 appropriate] court. The proceeding to validate the agreement must be commenced before assisted
24 reproduction related to the surrogacy agreement.

25 (b) The court shall issue an order validating a genetic surrogacy agreement if the court
26 finds that:

27 (1) the requirements of Sections 802, 803, and 804 are satisfied; and

28 (2) all parties have entered into the agreement voluntarily and understand its
29 terms.

30 (c) An individual who terminates a genetic surrogacy agreement under Section 814 shall
31 file notice of the termination with the court. On receipt of the notice, the court shall vacate the

1 order under subsection (b). An individual who does not notify the court of the termination of the
2 agreement is subject to sanctions.

3 **Comment**

4
5 Source: UPA (2002) § 803, § 806(c).
6

7 As noted above, UPA (2002) required pre-pregnancy validation for all agreements. This
8 requirement is now imposed only on genetic surrogacy agreements. Section 813 makes changes
9 to the requirements of UPA (2002). First, Section 813 eliminates the prior requirement of a home
10 study of the intended parents unless waived by a court. Given that it was waivable by the court,
11 in practice it often was not required of the parties. The inclusion in the provision, however,
12 created uncertainty for the parties. Second, UPA (2002) provided that a court “may” issue an
13 order validating the agreement upon a finding that the requirements were fulfilled. Thus, even if
14 the parties complied with all of the statutory requirements, their right to obtain an order
15 validating their agreement was within the discretion of the court. Again, this added uncertainty to
16 the process. Accordingly, UPA (2017) requires the court to issue the order validating the
17 agreement if the court finds that the requirements have been fulfilled.
18

19 **SECTION 814. TERMINATION OF GENETIC SURROGACY AGREEMENT.**

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

21 (1) An intended parent who is a party to the agreement may withdraw consent to
22 and may terminate the genetic surrogacy agreement at any time before the use of assisted
23 reproduction that results in a pregnancy by giving notice of termination in a record to all other
24 parties. The notice of termination must be attested by a notarial officer or witnessed by at least
25 one individual.

26 (2) A genetic surrogate who is a party to the agreement may withdraw consent to
27 the agreement any time before 72 hours after the birth of a child conceived by assisted
28 reproduction under the agreement. To withdraw consent, any time before 72 hours after the birth
29 of the child, the genetic surrogate must execute a notice of termination in a record of the
30 surrogate’s intent to terminate the agreement. The notice of termination must be attested by a
31 notarial officer or witnessed by at least one individual and delivered to each intended parent any

1 time before 72 hours after the birth of the child.

2 (b) On termination of the genetic surrogacy agreement under subsection (a), the parties
3 are released from all obligations under the agreement except that each intended parent remains
4 responsible for all expenses incurred by the surrogate through the date of termination which are
5 reimbursable under the agreement. Unless the agreement provides otherwise, the surrogate is not
6 entitled to keep any non-expense related compensation paid for serving as a surrogate.

7 (c) Except in a case involving fraud, neither a genetic surrogate nor the surrogate's
8 spouse, if any, is liable to the intended parent or parents for a penalty, including liquidated
9 damages, for terminating a genetic surrogacy agreement as provided in this section.

10 **Comment**

11
12 Source: Fla. Stat. Ann. § 63.213 (providing that a genetic surrogacy agreement must
13 permit "a right of rescission by the volunteer mother any time within 48 hours after the birth of
14 the child, if the volunteer mother is genetically related to the child"); D.C. Code § 16-411(4)
15 (providing that a genetic surrogate may withdraw consent "within 48 hours after the birth of the
16 child").

17
18 UPA (2002) did not permit a genetic surrogate to withdraw her consent after validation of
19 the agreement. No state, however, enacted a version of UPA (2002) that authorized genetic
20 surrogacy agreements. Currently, only a very small minority of states expressly permit genetic
21 surrogacy through a comprehensive statutory scheme. These states include Florida, Maine (for
22 close relatives only), Virginia, and the District of Columbia. The statutes in a number of these
23 jurisdictions similarly provide that the genetic surrogate can withdraw her consent up until some
24 period shortly after the birth of the child. *See, e.g.*, Fla. Stat. Ann. § 63.213 (48 hours after birth);
25 D.C. Code § 16-411(4) (48 hours after birth). *Cf.* Vir. Code Ann. § 20-161(B) (providing that in
26 cases where the "surrogate ... is also a genetic parent" the surrogate may "terminate the
27 agreement ... [w]ithin 180 days after the last performance of any assisted conception").
28

29 **SECTION 815. PARENTAGE UNDER VALIDATED GENETIC SURROGACY**

30 **AGREEMENT.**

31 (a) Unless a genetic surrogate exercises the right under Section 814 to terminate a genetic
32 surrogacy agreement, each intended parent is the parent of a child conceived by assisted
33 reproduction under an agreement validated under Section 813.

1 (b) Unless a genetic surrogate exercises the right under Section 814 to terminate the
2 genetic surrogacy agreement, on proof of a court order issued under Section 813 validating the
3 agreement, the court shall make an order:

4 (1) declaring that each intended parent is the parent of a child conceived by
5 assisted reproduction under the agreement and ordering that parental rights and duties vest
6 exclusively in the intended parent or parents;

7 (2) designating the contents of the birth certificate in accordance with [cite to
8 applicable law of the state other than this [act]] and directing [the agency maintaining birth
9 records] to designate each intended parent as a parent of the child;

10 (3) [sealing] the record from the public to protect the privacy of the child and the
11 parties;

12 (4) if necessary, that the child be surrendered to the intended parent or parents;
13 and

14 (5) for other relief the court determines necessary and proper.

15 (c) If a genetic surrogate withdraws consent under Section 814(a)(2), parentage of the
16 child must be determined under [Articles] 1 through 6 of this [act].

17 (d) If a child born to a genetic surrogate is alleged not to have been conceived by assisted
18 reproduction, the court shall order genetic testing to determine the genetic parentage of the child.
19 If the child was not conceived by assisted reproduction, parentage must be determined under
20 [Articles] 1 through 6 of this [act]. Unless the genetic surrogacy agreement provides otherwise,
21 the surrogate is not entitled to keep any non-expense related compensation paid for serving as a
22 surrogate if the child was not conceived by assisted reproduction.

23 (e) Unless a genetic surrogate exercises the right under Section 814 to terminate the

1 agreement, if an intended parent fails to file notice required under Section 814(a), the genetic
2 surrogate or [the appropriate state agency] may file notice with the court not later than 60 days
3 after the birth of a child conceived by assisted reproduction under the agreement that the child
4 has been born to the genetic surrogate. Unless the genetic surrogate has properly exercised the
5 right to withdraw consent to the agreement under Section 814, on proof of a court order issued
6 under Section 813 validating the agreement, the court shall order that each intended parent is a
7 parent of the child and is financially responsible for the child.

8 **Comment**

9
10 Source: UPA (2002) § 807.

11
12 The substance of this section is largely carried over from UPA (2002). The content of this
13 section does reflect, however, that UPA (2017) permits a genetic surrogate to withdraw consent
14 any time up until 72 hours after the child's birth. Accordingly, new subsection (c) sets forth how
15 parentage should be determined in the event the genetic surrogate withdraws consent within that
16 time period.

17 **SECTION 816. EFFECT OF NONVALIDATED GENETIC SURROGACY**

18 **AGREEMENT.**

19
20 (a) A genetic surrogacy agreement, whether or not in a record, that is not validated under
21 Section 813 is not enforceable.

22 (b) If all parties agree, a court may validate a genetic surrogacy agreement after assisted
23 reproduction has occurred but before the birth of a child conceived by assisted reproduction
24 under the agreement.

25 (c) If a child conceived by assisted reproduction under a genetic surrogacy agreement that
26 is not validated under Section 813 is born and the genetic surrogate withdraws her consent to the
27 agreement before 72 hours after the birth of the child, the court must adjudicate the parentage of
28 the child based on [Articles] 1 through 6.

(d) If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under Section 813 is born and a genetic surrogate does not withdraw her consent to the agreement before 72 hours after the birth of the child, the genetic surrogate is not automatically a parent and the court shall adjudicate parentage of the child based on the best interest of the child, taking into account the factors in Section 613(a) and the intent of the parties at the time of the execution of the agreement.

(e) All of the parties to the agreement have standing to maintain a proceeding to adjudicate parentage under this section.

Comment

This section sets forth the rules for determining parentage of children born through genetic surrogacy where the genetic surrogacy agreement was not properly validated.

Under subsection (b), even if the parties did not validate the agreement prior to pregnancy as required by Section 813, a court is authorized to validate the agreement thereafter if all parties are still in agreement.

Subsections (c) and (d) set forth the rules for determining parentage if the agreement is never validated. Subsection (c) confirms that a genetic surrogate retains the right to withdraw her consent up until 72 hours after the birth of the child, even if the agreement is not validated. If the genetic surrogate withdraws her consent within this time period, parentage is determined based on Articles 1 through 6 of the act. In cases involving an unvalidated genetic surrogacy agreement where the genetic surrogate does not withdraw her consent within that period, subsection (d) provides that the court must determine parentage based on the best interest of the child. In such cases, the genetic surrogate may or may not be determined to be the child's parent.

SECTION 817. GENETIC SURROGACY AGREEMENT: PARENTAGE OF A DECEASED INTENDED PARENT.

(a) Except as otherwise provided in Sections 815 and 816, on birth or delivery of a child conceived by assisted reproduction under a genetic surrogacy agreement, each intended parent is, by operation of law, a parent of the child, notwithstanding the death of an intended parent during the period between the transfer of a gamete or embryo and the birth of the child.

1 (b) Except as otherwise provided in Sections 815 and 816, an intended parent is not a
2 parent of a child conceived by assisted reproduction under a genetic surrogacy agreement if the
3 intended parent dies before the transfer of a gamete or embryo unless:

4 (1) the agreement provides otherwise; and

5 (2) the transfer of the gamete or embryo occurs not later than [36] months after
6 the death of the intended parent, or birth of the child occurs not later than [45] months after the
7 death of the intended parent.

8 **Comment**

9
10 Source: UPC (2010) § 2-121; D.C. Code § 16-409.

11
12 UPA (2002) did not specifically address parentage in the event of the death of an
13 intended parent. To avoid uncertainty and unnecessary litigation, UPA (2017) expressly
14 addresses this scenario. The principle stated in subsection (a) is implicit in other provisions in
15 Article 8, but UPA (2017) states the rule expressly.

16
17 Subsection (b) is based on the relevant UPC provision, and is consistent with the
18 analogous provision in Article 7 of this act.

19 20 **SECTION 818. BREACH OF GENETIC SURROGACY AGREEMENT.**

21 (a) Subject to Section 814(b), a genetic surrogate or an intended parent is entitled to the
22 remedies available at law or in equity for breach of a validated or non-validated genetic
23 surrogacy agreement.

24 (b) Specific performance is not a remedy available for breach by a genetic surrogate of a
25 requirement of a validated or non-validated genetic surrogacy agreement that the surrogate be
26 impregnated, terminate or not terminate a pregnancy, or submit to medical procedures.

27 (c) Except as otherwise provided in subsection (b), specific performance is a remedy
28 available for:

29 (1) breach of a validated genetic surrogacy agreement by a genetic surrogate of a

1 requirement which prevents an intended parent from exercising the full rights of parentage 72
2 hours after the birth of the child; or

3 (2) breach by an intended parent which prevents the intended parent’s acceptance
4 of duties of parentage 72 hours after the birth of the child.]

5 **Comment**

6 Source: Me. Rev. Stat. tit. 19-a, § 1938(3), (5); Nev. Rev. Stat. § 126.790(1), (2); N.H.
7 Rev. Stat. § 168-B:18(I), (II).

8
9 UPA (2002) did not address the applicable rules in the event of a breach of the
10 agreement. New subsection (a) follows the approach taken by several of the recently enacted
11 comprehensive surrogacy statutes, and provides that the parties are entitled to remedies available
12 at law or in equity. *See, e.g.*, Me. Rev. Stat. tit. 19-a, § 1938(3); Nev. Rev. Stat. § 126.790(1), (2)
13 (providing that, in the event of a breach, the intended parents or the gestational surrogate, as
14 appropriate, are entitled to “any remedy available at law or equity.”); N.H. Rev. Stat. § 168-
15 B:18(I), (II) (providing that, in the event of a breach, the intended parents or the gestational
16 surrogate, as appropriate, are entitled to “all remedies available at law or equity”).

17
18 New subsection (b) expressly states that a court cannot order that a surrogate be
19 impregnated, terminate or not terminate a pregnancy, or submit to medical procedures. Such an
20 order may violate the constitutional rights of the surrogate. *See also* Me. Rev. Stat. tit 19-a, §
21 1938(5) (addressing impregnation and termination, but not submission to medical procedures);
22 Nev. Rev. Stat. § 126.780 (“There must be no specific performance remedy available for breach
23 of the gestational agreement by the gestational carrier that would require the gestational carrier to
24 be impregnated.”).

25 **[ARTICLE] 9**

26 **INFORMATION ABOUT DONOR**

27 **Comment**

28
29 Article 9 is a new addition to the UPA. The content of this Article was not included in
30 UPA (2002). Article 9 is intended to implement the resolution approved by the Executive
31 Committee directing the Drafting Committee to address “the right of a child to genetic
32 information.” The content of new Article 9 is premised on a Washington State provision. Wash.
33 Rev. Code § 26.26.750.

34 **SECTION 901. DEFINITIONS.** In this [article]:

35
36 (1) “Identifying information” means:

1 (A) the full name of a donor;

2 (B) the date of birth of the donor; and

3 (C) the permanent and, if different, current address of the donor.

4 (2) “Medical history” means information regarding any:

5 (A) present illness of a donor;

6 (B) past illness of the donor; and

7 (C) social and family history pertaining to the health of the donor.

8 **SECTION 902. APPLICABILITY.** This [article] applies only to gametes that are
9 collected after [the effective date of this [act]].

10 **SECTION 903. COLLECTION OF INFORMATION.** A gamete bank or fertility
11 clinic licensed in this state shall collect from a donor the donor’s identifying information and
12 medical history. If the gametes of a donor are sent to another gamete bank or fertility clinic, a
13 sending gamete bank or fertility clinic also shall forward any identifying information and
14 medical history of the donor, including the donor’s signed declaration under Section 904
15 regarding identity disclosure, to a receiving gamete bank or fertility clinic. A receiving gamete
16 bank or fertility clinic licensed in this state must collect and retain the information about the
17 donor and the sending gamete bank or fertility clinic.

18 **SECTION 904. DECLARATION REGARDING IDENTITY DISCLOSURE.**

19 (a) A gamete bank or fertility clinic licensed in this state that collects gametes from a
20 donor shall:

21 (1) provide the donor with information in a record about the donor’s choice
22 regarding identity disclosure; and

23 (2) obtain a declaration from the donor regarding identity disclosure.

1 (b) The gamete bank or fertility clinic shall give the donor the choice to sign either:

2 (1) a declaration, attested by a notarial officer or witnessed by at least one
3 individual, agreeing to disclose the donor's identity to a child conceived by assisted reproduction
4 with the donor's gametes on request once the child becomes 18 years of age; or

5 (2) a declaration, attested by a notarial officer or witnessed by at least one
6 individual, that the donor presently does not agree to disclose the donor's identity to the child.

7 (c) The gamete bank or fertility clinic shall permit a donor who has signed a declaration
8 under subsection (b)(2) to withdraw the declaration by signing a declaration under subsection
9 (b)(1) at any time.

10 **Comment**

11
12 Article 9 permits a donor to withdraw a declaration of non-disclosure and replace it with
13 a declaration of identity disclosure. The Article does not permit, however, a donor to withdraw a
14 declaration of identity disclosure. UPA (2017) makes this distinction because the recipients of
15 identity disclosure gametes often chose those gametes at least in part because the donor had
16 agreed to identity disclosure. While some donors may change their minds, the equities weigh in
17 favor of holding the donor to his or her original position permitting identity disclosure.
18

19 **SECTION 905. DISCLOSURE OF IDENTIFYING INFORMATION AND**
20 **MEDICAL HISTORY.**

21 (a) On request of a child conceived by assisted reproduction who is at least 18 years of
22 age, a gamete bank or fertility clinic licensed in this state which collected, stored, or released for
23 use the gametes used in the assisted reproduction shall make a good-faith effort to provide the
24 child with identifying information of the donor who provided the gametes, unless the donor
25 signed and did not withdraw a declaration under Section 904(b)(2). If the donor signed and did
26 not withdraw the declaration, the gamete bank or fertility clinic must make a good-faith effort to
27 notify the donor, who may elect to withdraw the donor's declaration under Section 904(c).

28 (b) Regardless of whether a donor signed a declaration under Section 904(b)(2), on

1 request by a child conceived by assisted reproduction who is at least 18 years of age, or, if the
2 child is a minor, by a parent or guardian of the child, the gamete bank or fertility clinic shall
3 make a good faith effort to provide the child or, if the child is a minor, the parent or guardian of
4 the child, access to nonidentifying medical history of the donor.

5 **SECTION 906. RECORDKEEPING.** A gamete bank or fertility clinic licensed in this
6 state which collects, stores, or releases gametes for use in assisted reproduction shall collect and
7 maintain identifying information and medical history about each gamete donor. The gamete
8 bank or fertility clinic shall collect and maintain records of gamete screening and testing and
9 comply with reporting requirements, in accordance with federal law and applicable law of this
10 state other than this [act].

11 **[ARTICLE] 10**

12 **MISCELLANEOUS PROVISIONS**

13 **SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
14 applying and construing this uniform act, consideration must be given to the need to promote
15 uniformity of the law with respect to its subject matter among states that enact it.

16 **SECTION 1002. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
17 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the
18 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
19 does not modify limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
20 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
21 U.S.C. Section 7003(b).

22 **SECTION 1003. TRANSITIONAL PROVISION.** This [act] applies to a pending
23 proceeding to adjudicate parentage commenced before [insert the effective date of this [act]] for

1 issues on which a judgment has not been entered.

2 **[SECTION 1004. SEVERABILITY.** If any provision of this [act] or its application to
3 any person or circumstance is held invalid, the invalidity does not affect other provisions or
4 applications of this [act] which can be given effect without the invalid provision or application,
5 and to this end the provisions of this [act] are severable.]

6 ***Legislative Note:** Include this section only if this state lacks a general severability statute or a*
7 *decision by the highest court of this state stating a general rule of severability.*
8

9 **SECTION 1005. REPEALS; CONFORMING AMENDMENTS.** The following are
10 repealed:

11 (1) [Uniform Act on Paternity (1960)];

12 (2) [Uniform Parentage Act (1973)];

13 (3) [Uniform Putative and Unknown Fathers Act (1988)];

14 (4) [Uniform Status of Children of Assisted Conception Act (1988)];

15 (5) [Uniform Parentage Act (2002)]; and

16 (6) [other inconsistent statutes].

17 **SECTION 1006. EFFECTIVE DATE.** This [act] takes effect on
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1 (iii) Paternity establishment services.

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

4 (II) Regulations.

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

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

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

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

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

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

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

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

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

35 (I) 60 days; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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