

DRAFT
FOR DISCUSSION ONLY

**PROPOSED REVISION OF THE
UNIFORM PARENTAGE ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MARCH 10-12, 2000

WITH PREFATORY NOTE AND REPORTER'S NOTES

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By

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PROPOSED REVISION OF THE UNIFORM PARENTAGE ACT

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PROPOSED REVISION OF THE UNIFORM PARENTAGE ACT

PREFATORY NOTE

The National Conference of Commissioners on Uniform State Laws addressed the subject of parentage as early as 1922. Several Acts on the subject have been adopted throughout the 20th Century addressing the special needs of a nonmarital child. In 1973, the Conference approved the Uniform Parentage Act (hereafter UPA, 1973), which has been adopted in 19 states stretching from Delaware to California; in addition, many states have enacted portions of the Act. This landmark Act declared equality for parents and children without regard to marital status of the parents. The Act set forth a set of rules for presumption of parentage, shunned the term “illegitimate,” and chose instead to employ the term “child with no presumed father.” The Act has contributed much to bringing about a more enlightened approach to some sensitive issues that can divide people of goodwill.

Case law has not been so kind. Widely differing treatment on subjects not dealt with by the Act has been common. For example, California holds that a nonmarital father does not have standing to sue an intact family to assert his rights of fatherhood. Two other UPA states, Colorado and Texas, have declared that under their state constitutions the father may not be denied such rights. Similarly, the binding effect of a judgment on the child or on others seeking to claim a benefit of the judgment or collaterally attack that judgment is very confused in the case law. UPA (1973) was entirely silent as to the relationship between a divorce and a determination of parentage.

Other major developments include the fact that genetic testing has undergone a sea change since 1973. Further, the federal government initiated an ever-expanding Title IV-D program mandating some quite prescriptive rules in this area if the state is to retain the substantial federal subsidy for child support enforcement. Beginning in the 1980s, states began to adopt paternity registries in an attempt to deal with late claims of parentage when the mother wishes to relinquish the child for adoption. The Conference adopted the Uniform Putative and Unknown Fathers Act in 1989 (UPUFA) to deal with the rights of such men, but the Act has not been enacted in a single state. In 1989 the Conference also adopted the Uniform Status of Children of Assisted Conception Act (USCACA). Assisted reproduction and gestational agreements have become commonplace in the 1990s, long after the promulgation of UPA (1973). USCACA more closely resembled a model act in that it provided two diametrically opposed options regarding “surrogacy agreements.” To date, only two states have enacted the Act, with each choosing a different option.

The current draft attempts to integrate the best of UPA (1973), along with provisions covered by UPUFA (1989) and USCACA (1989). Article 2, Parent-Child Relationship, will look familiar to past users of the Act. Article 3, Voluntary Acknowledgment of Paternity, is entirely new and is driven by federal mandates in an effort to force states to adopt nonjudicial means to achieve early determination of paternity. Article 4, Paternity Registry, is entirely new and is an attempt to write a well-considered registry law that states may consider. Article 5, Genetic Testing, comprehensively covers that subject in nine separate sections [UPA (1973) had but one section]. Article 6, Proceeding to Determine Parentage, is the traditional litigation section. Article 7, Child of Assisted Reproduction, recodifies the same subjects covered in UPA (1973) and

USCACA (1989) without much change. Article 8, Gestational Agreement, closely follows USCACA (1989).

Our mission is to write workable and sound rules for determining the parentage of a child. This Act does not approve or condemn behavior that some people might find troubling. Most observers are alarmed by the high nonmarital birthrate in this country, but our goal is to resolve serious issues concerning parentage. The primary focus remains on protecting the child, who had no voice in often complex circumstances giving rise to the child's birth. The Act does not deal with reproductive rights or attempt to regulate assisted reproduction activities. This Act does not attempt to list the rights of parents; that is left to other state law. Finally, in contrast to UPA (1973), issues of custody, visitation, and support are avoided because existing state law amply covers these issues.

The Drafting Committee has met five times to produce this draft. We have been fortunate to have the past Chairs of UPUFA (Arthur Peterson) and USCACA (Robert Robinson) to serve on the Committee. We have also had very valuable input from our advisors and observers from the child support community, prosecutors, matrimonial lawyers, genetic testing laboratories, and the federal Office of Child Support Enforcement, Department of Health and Human Services.

1 **PROPOSED REVISIONS OF THE**
2 **UNIFORM PARENTAGE ACT**

3
4 **ARTICLE 1**

5 **GENERAL PROVISIONS**

6
7
8 **SECTION 101. SHORT TITLE.** This [Act] may be cited as the Uniform Parentage Act.
9

10 **SECTION 102. DEFINITIONS.** In this [Act]:

11 (1) “Acknowledged father” means a man who has established a father-child relationship
12 under Section 302.

13 (2) “Adjudicated father” means a man who has been determined to be the father of a child
14 by a court of competent jurisdiction.

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

18 (A) a presumed father;

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

20 (C) a male donor.

21 (4) “Assisted reproduction” means a pregnancy resulting from means other than sexual
22 intercourse. The term includes:

23 (A) artificial insemination;

24 (B) donation of eggs;

25 (C) donation of embryos;

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

27 (E) intracytoplasmic sperm injection.

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

30 (6) “Commence,” with respect to the initiation of a proceeding for relief under this [Act],
31 means to file the initial [pleading or request for a determination of parentage] in [the appropriate
32 forum].

1 (7) “Determination of parentage” means the establishment of the parent-child relationship
2 by an adjudication of a court of competent jurisdiction or an acknowledgment under Article 3.

3 (8) “Donor” means an individual who produces eggs or sperm used for assisted
4 reproduction without the intent to be a parent, whether or not for consideration. The term does
5 not include:

6 (A) an individual who provides eggs or sperm with the intent of becoming the parent
7 of a resulting child; or

8 (B) a woman who gives birth to a resulting child [, except as otherwise provided in
9 [Article] 8].

10 (9) “Ethnic or racial group” means, for purposes of genetic testing, a recognized group
11 that an individual identifies as all or part of his or her ancestry or that is so identified by other
12 information.

13 (10) “Genetic testing” means an analysis of genetic markers to determine parentage. The
14 term includes one or a combination of the following:

15 (A) analysis of deoxyribonucleic acid;

16 (B) determination of the presence or absence of common blood-group antigens, red-
17 blood-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell
18 enzymes.

19 (11) “Gestational mother” means the woman who gives birth to a child.

20 (12) “Intended parents” means a married couple who enter into an agreement providing
21 that they will be the parents of a child born to a gestational mother through assisted reproduction,
22 irrespective of whether either or both of the married couple has a genetic relationship with the
23 child.

24 (13) “Man” means a male individual of any age.

25 (14) “Parent” of a child means:

26 (A) the woman who is the gestational mother of a child [, except a gestational mother
27 under the circumstances described in [Article] 8];

28 (B) an adoptive mother or father; or

29 (C) a man who is:

30 (i) a presumed father;

1 (ii) an acknowledged father; or

2 (iii) an adjudicated father.

3 (15) “Parent-child relationship” means the legal relationship between a child and a parent
4 of the child. The term includes the mother-child relationship and the father-child relationship.

5 (16) “Paternity index” means the likelihood of paternity calculated by computing the ratio
6 between:

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

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

14 (17) “Presumed father” means a man who, by operation of law under Section 204, is
15 recognized to be the father of a child until that status is rebutted or confirmed in a judicial
16 proceeding.

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

21 (19) “State” means a State of the United States, the District of Columbia, Puerto Rico,
22 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
23 the United States. The term includes an Indian tribe or band, or Alaskan native village, which is
24 recognized by federal law or formally acknowledged by a State.

25 (20) “Support-enforcement agency” means a public official or agency authorized to seek:

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

27 (B) establishment or modification of child support;

28 (C) determination of parentage; or

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

30 *Reporter’s Notes*

1 *Source: UIFSA §102; Uniform Child Custody Jurisdiction and Enforcement Act §102(6). State*
2 *courts that are authorized to determine parentage vary enormously, i.e. district, superior,*
3 *chancery, surrogate, county, family, probate, etc. Identifying the appropriate courts is left to each*
4 *enacting jurisdiction.*
5

6 **SECTION 105. PROTECTION OF PARTY AND CHILD.** This [Act] is subject to other
7 law of this **State** governing the health, safety, and liberty of a **child** or other individual that could
8 be jeopardized by disclosure of identifying information, including address, telephone number, place
9 of employment, and if appropriate, the **child**'s day-care facility and school.

10 *Reporter's Notes*
11 *Source: Uniform Child Custody Jurisdiction and Enforcement Act §209(e).*
12

13 **SECTION 106. REQUIREMENT OF WRITING.** The use of the term “writing” in a
14 provision of this [Act] signifies that the requirements of the provision may only be satisfied by a
15 writing on paper, and that it may not be satisfied by a record in any other medium [even if the
16 record ultimately may be displayed on paper].
17

18 **ARTICLE 2**
19 **PARENT-CHILD RELATIONSHIP**

20
21 **SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.**

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

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

25 (2) a determination of the woman's maternity of the **child** by a court; [or]

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

27 (4) the woman's status as an intended **parent** of a **child** born pursuant to an approved
28 gestational agreement under [Article] 8].

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

30 (1) an un rebutted presumption of the **man's** paternity of the **child** as provided in
31 Section 204;

- 1 (2) the **man’s** signing an unrescinded acknowledgment of paternity as provided under
2 [Article] 3;
3 (3) a determination of the **man’s** paternity of the **child** by a court;
4 (4) the adoption of the **child** by the **man**; [or]
5 (5) the **man’s** consent to **assisted reproduction** by his wife under [Article] 7[; or
6 (6) the **man’s** status as an intended **parent** of a **child** born pursuant to an approved
7 gestational agreement under [Article] 8].

8 *Reporter’s Notes*

9 *Derived from UPA (1973), § 4, and expanded to include all possible bases of the parent-child*
10 *relationship*

11
12 **SECTION 202. NO DISCRIMINATION BASED ON MARITAL STATUS.** A **child** born
13 to parents who are not married to each other has the same rights and is entitled to the same
14 protections of the law as a **child** whose parents are or were married to each other.

15 *Reporter’s Notes*

16 *Derived from Massachusetts Gen. Laws ch. 209C, § 1. The broad statement according equal*
17 *treatment to a nonmarital child is not to be construed to extend similar equality to parental rights. For*
18 *example, Uniform Probate Code § 2-705(b) prohibits inheritance by a parent of a nonmarital child*
19 *through intestate succession if the parent has not lived with the child as a regular member of the*
20 *household.*

21
22 **SECTION 203. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE.** Unless
23 parental rights are terminated, the **parent-child relationship** established by this [Act] applies for
24 all purposes except as otherwise provided under other law of this **State**.

25 *Reporter’s Notes*

26 *Derived from USCACA § 10. This may seem to state the obvious, but both the statement and*
27 *the qualifier are necessary because a literal reading of §§ 201-203 could lead to erroneous*
28 *constructions without further explanation. The basic statement of the section is to make clear that a*
29 *birth mother is not a parent once her parental rights have been terminated. Similarly, a man whose*
30 *paternity has been established by acknowledgment or by court determination may subsequently have*
31 *his parental rights terminated. The qualifier is necessary because other statutes may restrict other the*
32 *rights of a parent. For example, Uniform Probate Code § 2-114(c) precludes a parent of a child (and*
33 *the parent’s family) from inheriting from the child by intestate succession “unless that natural parent*
34 *has openly treated the child as his [or hers] and has not refused to support the child.”*

SECTION 204. PRESUMPTION OF PATERNITY IN CONTEXT OF MARRIAGE.

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

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

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

(3) before the birth of the **child**, he and the mother of the **child** married each other in apparent compliance with law, even if the attempted marriage is, or could be, declared invalid and the **child** is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(4) after the birth of the **child**, he and the mother of the **child** have married each other in apparent compliance with law, whether or not the marriage is, or could be declared, invalid, and he voluntarily:

(A) asserted his paternity of the **child** in writing [filed with the **state** agency responsible for maintaining birth records];

(B) agreed to be named as the **child’s** father on the **child’s** birth certificate; or

(C) promised to support the **child** as his own in a written agreement.

(b) A father-child relationship established by this section may be contested only as provided in [Article] 6.

Reporter’s Notes

Source: UPA § 4 (1973). The presumptions established in subsections (a)(1)-(4) of the 1973 Act are virtually unchanged, but the two nonmarital presumptions found in (a)(5), (6) have been eliminated. The presumptions based on the marital status of the parties are readily ascertainable by proof of a valid or attempted marriage. The nonmarital presumptions were totally fact driven and required time-consuming inquiries. Genetic testing is a far more economical method to resolve the question of the paternity of a nonmarital child.

ARTICLE 3

VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

Introductory Comment

1 *Although voluntary acknowledgment of paternity has long been an alternative to the*
2 *contested paternity suit, action by the U.S. Congress has fundamentally changed the procedure.*
3 *Under UNIF. PARENTAGE ACT § 4 (1973) the inclusion of a man's name on the child's birth*
4 *certificate merely created a presumption of paternity. In enacting the Personal Responsibility at*
5 *Work Opportunity Reconciliation Act in 1996 (PRWORA, also known as the Welfare Reform Act)*
6 *Congress tied federal child support enforcement funds to a requirement that all states to enact*
7 *laws that greatly strengthen the effect of a man's voluntary acknowledgment of paternity. In*
8 *brief, a completed valid acknowledgment is to be considered the equivalent of a judicial*
9 *determination of paternity. This article provides a comprehensive version for the states to comply*
10 *with this quasi-mandate of Congress (quasi because it is not a substantive mandate, but given the*
11 *fact that it is tied to a federal subsidy has virtually an identical effect to a substantive mandate).*
12 *That is, all states are sure to comply with federal law in order to keep federal money flowing.*

13 *A comprehensive approach is required because the congressional act is badly flawed in*
14 *many respects. Primary among these flaws is the fact that Congress did not take into account the*
15 *fact that a mother who, in cooperation with the actual father of the child, seeks to have the man*
16 *acknowledged the child may be married to another man. By virtue of the laws in universal effect,*
17 *including this version of the parentage act, the husband of the mother is the presumed father of*
18 *the child, see § 204, supra. Thus, by ignoring the real possibility that there will be both an*
19 *acknowledged father and a presumed father, Congress inadvertently left it to the states to sort out*
20 *the difficulties inherent in such a fact situation. Moreover, Congress directed that the*
21 *acknowledgment could both be rescinded within a particular timeframe and challenged—without*
22 *stating a timeframe. This too is dealt with in Article 3.*

23 *The congressional language creating the challenge to the drafting committee is as*
24 *follows:*

25 **§ 666. Requirement of Statutorily Prescribed Procedures To Improve Effectiveness of Child**
26 **Support Enforcement.**

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

31 ***

32 *(5) Procedures concerning paternity establishment.*

33 ***

34 *(C) Voluntary paternity acknowledgment.*

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

41 ***

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

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

1 (i) *Inclusion in birth records. Procedures under which the name of the father shall be*
2 *included on the record of birth of the child of unmarried parents only if—*

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

4 (II) *a court or an administrative agency of competent jurisdiction has issued an*
5 *adjudication of paternity.*

6 *Nothing in this clause shall preclude a State agency from obtaining an admission of*
7 *paternity from the father for submission in a judicial or administrative proceeding, or*
8 *prohibit the issuance of an order in a judicial or administrative proceeding which bases a*
9 *legal finding of paternity on an admission of paternity by the father and any other*
10 *additional showing required by State law.*

11 (ii) *Legal finding of paternity. Procedures under which a signed voluntary*
12 *acknowledgment of paternity is considered a legal finding of paternity, subject to the right of*
13 *any signatory to rescind the acknowledgment within the earlier of—*

14 (I) *60 days; or*

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

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

23 (E) *Bar on acknowledgment ratification proceedings. Procedures under which judicial or*
24 *administrative proceedings are not required or permitted to ratify an unchallenged*
25 *acknowledgment of paternity.*
26

27 **SECTION 301. ACKNOWLEDGMENT OF PATERNITY.** The mother of a **child** and a
28 **man** claiming to be the father of the **child** may execute an acknowledgment of paternity to
29 establish the **man's** paternity.
30

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

32 (a) An acknowledgment of paternity must:

33 (1) be in writing;

34 (2) be signed under penalty of perjury by the mother and by a **man** seeking to establish
35 his paternity;

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

37 (i) has or does not have a **presumed father**; and

38 (ii) does not have an **adjudicated father**; and

39 (4) state whether there has been genetic testing and whether the acknowledgment is
40 consistent with the results of **that testing, if any**.

1 (b) If the mother or the acknowledging **man** declares in the acknowledgment that a
2 different **man** is a **presumed father**, the acknowledgment must be accompanied by a denial of
3 paternity signed by the **presumed father** or the acknowledgment is void.

4 *Reporter's Notes*

5 *Federal law, 42 U.S.C. 666(a)(5)(C), mandates that in order to retain the subsidy for child*
6 *support enforcement, state law must provide procedures for the voluntary acknowledgment of*
7 *paternity. This is simple to mandate, but the application is quite complicated. Problems apparently not*
8 *foreseen by Congress include fact situations in which the mother is married to someone other than the*
9 *man who is willing to admit to paternity. Federal law gives no guidance. Recognizing that a large*
10 *number of births will occur under such circumstances, several states have passed laws allowing the*
11 *presumed father to sign a denial of paternity, which must be filed as part of the acknowledgment. The*
12 *draft adopts this common sense solution; otherwise the acknowledgment would have no legal*
13 *consequence because it cannot affect the legal rights of the presumed father.*
14

15 **SECTION 303. DENIAL OF PATERNITY.**

16 (a) A **presumed father** of a **child** may execute a denial of his paternity of the **child**.

17 (b) A denial of paternity must be in writing, and signed by the **presumed father** under penalty of
18 perjury.

19 (c) A **denial of paternity** signed by a **man** who has previously been adjudicated to be the
20 father of a **child** is not valid. A challenge to the previous adjudication may be made only under
21 law of this **State** other than this [Act] relating to appeal and vacation of judgments.
22

23 **SECTION 304. SPECIAL RULES FOR ACKNOWLEDGMENT OR DENIAL OF**
24 **PATERNITY.**

25 (a) An acknowledgment or denial of paternity may be contained in a single document and
26 may be signed in counterparts.

27 (b) An acknowledgment or denial of paternity may be signed before the birth of the **child**.
28 An acknowledgment or denial takes effect on the birth of the **child** or the filing of the document,
29 whichever occurs later.

30 (c) An acknowledgment or denial of paternity signed by a minor in compliance with this
31 [Act] is valid notwithstanding the minority of the signatory.
32

33 **SECTION 305. EFFECT OF ACKNOWLEDGMENT AND DENIAL OF PATERNITY.**

1 (a) Except as otherwise provided in Sections 307 and 308, a valid acknowledgment or
2 denial of paternity filed with the [agency maintaining birth records] is equivalent to a judicial
3 determination of paternity of a **child**, and confers upon the **acknowledged father** all of the rights
4 and imposes all of the duties of a **parent** .

5 (b) An acknowledgment of paternity in which the signatories falsely deny the existence of
6 a **presumed or adjudicated father** is void.

7 (c) Except as otherwise provided in Sections 307 and 308, a denial of paternity signed by
8 a **presumed father** filed with the [agency maintaining birth records] in conjunction with an
9 acknowledgment of paternity signed by the mother and the **acknowledged father** constitutes is
10 equivalent to a judicial determination of nonpaternity of the **presumed father** and discharges the
11 **presumed father** from all the rights and duties of a **parent**.

12
13 **SECTION 306. NO FILING FEE .** The [agency maintaining birth records] may not charge a
14 fee for the filing of an acknowledgment or denial of paternity.

15
16 **SECTION 307. PROCEEDING FOR RESCISSION.**

17 (a) Subject to the requirements of subsection (b), a signatory may maintain a proceeding
18 for rescission of an acknowledgment or denial of paternity.

19 (b) A proceeding for rescission of an acknowledgment or denial of paternity must be
20 **commenced** before the earlier of:

21 (1) the expiration of 60 days after the filing of the acknowledgment or denial of
22 paternity with the [agency maintaining birth records]; or

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

25
26 **SECTION 308. CHALLENGE AFTER EXPIRATION OF TIME FOR RESCISSION.**

27 (a) A signatory of an acknowledgment or denial of paternity may **commence** a proceeding
28 to challenge the acknowledgment or denial. A proceeding to challenge an acknowledgment or
29 denial of paternity **commenced** after the period for rescission provided in Section 307 may be

1 brought only on the basis of fraud, duress, or material mistake of fact. The party challenging the
2 acknowledgment or denial bears the burden of proof.

3 (b) A proceeding to challenge an acknowledgment or denial of paternity may not be
4 **commenced** more than [two years] after the acknowledgment or denial is filed with the [agency
5 maintaining birth records].

6 *Reporter's Notes*

7 *This section reflects the decision of the Drafting Committee to require an adjudicatory process*
8 *to rescind a voluntary acknowledgment of paternity. A federal statute, 42 U.S.C. 666(a)(5)(c)(D)(ii),*
9 *mandates that in order to retain the federal child support subsidy, state law must provide a right of*
10 *rescission to signatories of an acknowledgment of paternity. However, the federal statute does not*
11 *prescribe the method for the rescission. Because an acknowledgment of paternity (or a denial) is an*
12 *act of significant legal consequence, the proposed adjudicatory requirement will result in a legal*
13 *determination of the child's parentage. The Drafting Committee believes that a system that allows a*
14 *signatory to merely file a rescission with the state bureau of vital statistics would be an unwise policy*
15 *choice. The adjudicatory procedure may be either judicial or administrative, at the option of the state*
16 *legislature. Appendix to Section 307, infra, provides a table identifying the methods with which*
17 *various states currently address the issue.*
18

19 **SECTION 309. PROCEDURE FOR RESCISSION OR CHALLENGE.**

20 (a) Every signatory to an acknowledgment or denial of paternity must be made a party to a
21 proceeding to rescind or challenge the acknowledgment or denial.

22 (b) Except for good cause shown, during the pendency of a proceeding to rescind or
23 challenge an acknowledgment or denial of paternity, the court may not suspend the legal
24 responsibility of a signatory arising from an acknowledgment, including the duty to pay **child**
25 support.

26 (c) A court that has determined paternity shall direct the [agency maintaining birth records]
27 to amend the birth record of the **child** in accordance with the court's determination.

28 (d) A proceeding to rescind or to challenge an acknowledgment or denial of paternity must
29 be conducted in the same manner as a proceeding to determine parentage under [Article] 6.
30

31 **SECTION 310. RATIFICATION BARRED.** A court or administrative entity conducting a
32 judicial or administrative proceeding is neither required nor permitted to ratify an unchallenged
33 acknowledgment of paternity.
34

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

3 *Reporter's Notes*

4 *Beginning with Stanley v. Illinois, 405 U.S. 545 (1972) and continuing through the 1970s and*
5 *early 1980s the Supreme Court of the United States recognized the rights of nonmarital fathers with*
6 *respect to their nonmarital children. In 1983, the Court upheld the constitutionality of the New York*
7 *paternity registry in the case of Lehr v. Robertson, 463 U.S. 248 (1983). The New York statute requires*
8 *fathers of children born out of wedlock to register if they wish to be notified of any termination of*
9 *parental rights or adoption proceeding. Following a series of well-publicized adoption cases wherein*
10 *nonmarital fathers had not been given proper notice, legislatures began responding to these cases by*
11 *enacting paternity registries similar to the New York statute. As of May, 1999, at least 28 states had*
12 *enacted legislation creating paternity registries. This draft accepts the concept, but with some*
13 *significant differences from the New York model.*

14 *In Lehr, the father was actually already in litigation seeking to establish his parental rights,*
15 *but still did not prevail because he had failed to register his claim. This Act excepts from registration*
16 *those persons who initiate a proceeding for paternity, notwithstanding the failure to register. In*
17 *addition, the Act applies only to children under one year of age at the time of the proceeding, see*
18 *Section 405, infra. This recognizes the need to expedite infant adoptions, while properly protecting the*
19 *rights of nonmarital fathers who may have had some informal relationship with the child following*
20 *birth. Finally, this Act requires those who register and who are served with notice of a proceeding for*
21 *termination of parental rights or adoption to respond to such a proceeding, by either admitting*
22 *paternity or cross-action for paternity. Section 404. This gives the nonmarital father the opportunity to*
23 *step forward to accept responsibility of parenthood, but failing to do so, will not derail the termination*
24 *or adoption proceeding.*

25 *See Appendix to Section 401, infra.*
26

27 **SECTION 402. REGISTRATION OF CLAIM OF PATERNITY.**

28 (a) Except as otherwise provided in subsection (b), a **man** who wishes to be notified of a
29 proceeding for termination of his parental rights to, or for adoption of, a **child** that he may have
30 fathered, must register in the registry of paternity.

31 (b) A **man** is not required to register in the registry of paternity if:

32 (1) a father-**child** relationship between the **man** and the **child** has been established
33 under [Article] 2, 3, 6, or 7; or

34 (2) the **man commences** a proceeding to determine his parentage before the court has
35 terminated his parental rights.

36 (c) A **man** may register before the birth of the **child** and must register no later than 30
37 days after the birth.

38 (d) A **man** who registers a claim of paternity in the registry of paternity shall promptly
39 notify the registry in writing of any change in the information registered. The [agency maintaining

1 registry of paternity] shall incorporate all new information received into its records, but need not
2 affirmatively seek to obtain current information for incorporation in the registry.

3 *Reporter's Notes*

4 *Although often advertised as being designed to protect the claims of paternity from arbitrary*
5 *elimination, in truth the primary purpose of such a registry is to facilitate infant adoptions by licensed*
6 *agencies. Therefore, limiting the consequence of a failure to register with a registry of paternity to*
7 *termination of paternal rights in cases of infant adoption seems appropriate. If an infant adoption is*
8 *not consummated in the first year of the child's life, throughout the minority of the child the*
9 *nonmarital father and the mother remain responsible for support and eligible for custody or visitation.*
10 *The latter fact situation distinguishes it from an infant adoption in which both parents lose those right*
11 *and duties for the benefit of the child.*
12

13 **SECTION 403. NOTICE OF PROCEEDING TO REGISTRANT.** Notice of a proceeding
14 for termination of parental rights, or adoption of, a **child** must be given to a **man** who has timely
15 registered his claim of paternity to the affected child. Notice must be given in a manner prescribed
16 for service of process in a civil action.

17 *Reporter's Notes*

18 *This section is the logical conclusion to the legal rationale for establishing a paternity*
19 *registry. In a termination of parental rights or adoption proceeding, the registry provides a clear*
20 *procedure for resolving whether a nonmarital father intends to assert his rights with regard to the*
21 *child. If he registers, termination of his rights and adoption of his child may not proceed without*
22 *notice to him, thereby affording him the opportunity to assert his paternity and claims for custody or*
23 *visitation.*
24

25 **SECTION 404. TERMINATION OF PARENTAL RIGHTS OR ADOPTION: CHILD**
26 **LESS THAN ONE YEAR OF AGE.** The parental rights of a **man** who may have fathered a
27 **child** who has not attained one year of age at the time of the hearing may be terminated without
28 notice if:

29 (1) he failed to register timely with the [agency maintaining registry of paternity] under
30 this [article]; and

31 (2) he is not exempt from registration under Section 402(b).

32 *Reporter's Notes*

33 *This section is the obverse logical conclusion to the legal rationale for establishing a paternity*
34 *registry. In a termination of parental rights or adoption proceeding, the registry provides a clear*
35 *procedure for resolving that a man does not intend to assert parental rights with regard to the child.*
36 *Although the registry protects a man's right to notice in a termination or adoption proceeding, his*
37 *failure to register waives those rights. Thus, the registry is both a first step for claiming parental rights*
38 *and the end of those rights for those persons who do not register. If a man fails to register with the*

1 *paternity registry, a termination and adoption may proceed without fear of a belated claim, most*
2 *particularly a claim coming after adoptive parents have received custody of the child. This expedited*
3 *procedure greatly facilitates infant adoption, which in truth explains the existence – and popularity –*
4 *of the registries and their strong support by the adoption community.*
5

6 **SECTION 405. TERMINATION OF PARENTAL RIGHTS OR ADOPTION: CHILD**
7 **AT LEAST ONE YEAR OF AGE.**

8 (a) If a **child** without a **presumed father** has attained one year of age, notice of a
9 proceeding for termination of parental rights to, or adoption of, the child must be giv en to a **man**
10 who may be the **child’s father** whether or not he has registered in the registry of paternity under
11 this [article].

12 (b) Notice must be given in a manner prescribed for service of process in a civil action.

13 *Reporter’s Notes*

14 *With the exception of children under one year of age, this section reaffirms Stanley v. Illinois,*
15 *supra, and its progeny by requiring notice to the nonmarital father of a termination of parental rights*
16 *or adoption proceeding. This section is derived from Uniform Putative and Unknown Fathers Act § 3*
17 *(1989). This protects those fathers who may have had some informal nonlegal relationship with the*
18 *child or mother for some time and prevents unilateral action to adversely affect the father’s rights.*
19 *Although Stanley involved a nonmarital father who had established a long-term parental relationship*
20 *with his children, the principle of notice to such men is expanded to apply to all fathers of nonmarital*
21 *toddlers to teenagers.*
22

23 *[Sections 406-410 reserved for expansion]*
24

25 **PART 2**

26 **OPERATION OF REGISTRY**

27
28 **SECTION 411. INFORMATION TO BE PROVIDED TO REGISTRANT BY FORM**
29 **FOR REGISTRATION.**

30 (a) The [agency maintaining registry of paternity] shall prepare a form for registering with
31 the agency. The form shall give notice that a man claiming paternity must sign the form under
32 penalty of perjury. The form must also provide notice to the **man who registers** that:

33 (1) a timely registration entitles the **man** to be served in a proceeding for termination
34 of parental rights or for adoption until the **child** attains one year of age;

1 (2) he has a right to **commence** a proceeding for paternity to establish a father -**child**
2 relationship, which may be forfeited if he does not register timely;

3 (3) the information disclosed on the form may be used to establish an obligation of
4 **child** support;

5 (4) he may seek to be awarded custody of or visitation with the **child**;

6 (5) services to assist in establishing paternity are available to him through the **State's**
7 **support-enforcement agency**;

8 (6) he should register in another **State** if conception or birth of the **child** occurred in
9 the other **State**; and

10 (7) information on registries of other **States** is available from [appropriate **state**
11 agency or agencies].

12 (b) A registration must be filed on the form described in subsection (a).
13

14 **SECTION 412. FURNISHING OF INFORMATION: CONFIDENTIALITY.**

15 (a) The [agency maintaining the registry] need not seek to locate the mother but, if the
16 mother's address has been provided, the [agency maintaining registry of paternity] shall send a
17 copy of the notice of a **man's** registration to her at that address.

18 (b) Information contained in the registry of paternity is confidential and may be released
19 on request only to:

20 (1) the court;

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

22 (3) an authorized agency;

23 (4) a licensed **child**-placing agency;

24 (5) a **support-enforcement agency**;

25 (6) an attorney of record participating in a proceeding under this [Act] or in a
26 proceeding for termination of parental rights to, or adoption of, a **child**; and

27 (7) the registry of paternity in another **State**.

28 (c) The [agency maintaining registry of paternity] shall furnish information regarding the
29 registry of paternity by electronic data exchange or any other available means to [other
30 appropriate agencies].

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SECTION 413. PENALTY FOR RELEASING INFORMATION. A person commits a [appropriate level misdemeanor] if the person intentionally releases information from the registry to a person not identified as authorized to receive the information under Section 412.

SECTION 414. REVOCATION OF REGISTRATION. A **man** who registers under this [article] may revoke the registration at any time by sending to the registry of paternity a written revocation signed by him and witnessed or notarized. The revocation must **state** that, to the best of the **man's** knowledge and belief:

- (1) he is not the father of the **child**; or
- (2) an individual other than the registrant has **acknowledged** paternity under [Article] 3 or has been **adjudicated father**.

SECTION 415. REMOVAL OF REGISTRANT'S NAME. If a court determines that the registrant is not the father of the **child**, the court shall direct the [agency maintaining registry of paternity] to remove the registrant's name from the registry of paternity.

SECTION 416. UNTIMELY REGISTRATION. If a **man** registers with the registry of paternity more than 30 days after the birth of the **child** or the [agency maintaining registry of paternity] receives notice of an order terminating the rights of a registrant with regard to a **child** from the clerk of the court, the [agency] shall notify the registrant that:

- (1) his registration was not filed timely; or
- (2) the registry has received an order terminating his rights.

SECTION 417. FEES FOR REGISTRY.

- (a) A fee may not be charged for filing a registration.
- (b) [Except as otherwise provided in subsection (c), the] [The] [agency maintaining registry of paternity] may charge a reasonable fee for making a search of the registry of paternity and for furnishing a certificate.

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

3 *[Sections 418-420 reserved for expansion]*
4

5 **PART 3**
6 **SEARCH OF REGISTRIES**

7
8 **SECTION 421. SEARCH OF APPROPRIATE REGISTRY.**

9 (a) If a **child** does not have a father -**child** relationship established under [Article] 2, 3, or
10 6, [a petitioner] for adoption of the **child** must obtain a certificate of diligent search of the registry
11 of paternity of this **State**.

12 (b) If the [petitioner] for adoption has reason to believe that the conception of the **child**
13 may have occurred in another **State**, the [petitioner] must also obtain a certificate of diligent
14 search from the registry of paternity in that **State**, if any.

15
16 **SECTION 422. CERTIFICATE OF SEARCH OF REGISTRY.**

17 (a) On request, the [agency maintaining registry of paternity] shall furnish a certificate
18 attesting to the results of a search of the registry of paternity regarding a claim of paternity to:

- 19 (1) the court;
20 (2) the mother of a **child**;
21 (3) an authorized agency;
22 (4) a licensed **child**-placing agency;
23 (5) a **support-enforcement agency**; or
24 (6) an attorney of record participating in a proceeding for termination of parental
25 rights to, or adoption of, a **child** who is the subject of the search.

26 (b) A certificate provided by the [agency maintaining registry of paternity] must be signed
27 by [appropriate individual or officer] and **state** that:

- 28 (1) a diligent search has been made of the registry of paternity maintained by the
29 [agency]; and
30 (2) a registration containing the information required to identify the registrant:

1 (A) has been found pertaining to a **man** who may be **alleged** to be the **father** of
2 the **child** who is the subject of a proceeding for termination of parental rights or adoption; or

3 (B) has not been found pertaining to a **man** who may be **alleged** to be the **father**
4 of a **child** who is the subject of the proceeding for termination of parental rights or adoption.

5
6 **SECTION 423. FILING CERTIFICATE OF SEARCH.**

7 (a) A [petitioner] must file the certificate of search with the court before a hearing on the
8 merits in a proceeding for termination of parental rights or adoption may be completed.

9 (b) If a **child** who has not attained one year of age is the subject of a proceeding for
10 termination of parental rights or adoption, filing a certificate of search of the registry stating that a
11 registration has not been found pertaining to a **man** making a claim of paternity regarding the
12 **child** dispenses with the necessity of personal or constructive service on the **alleged father**.

13
14 **SECTION 424. ADMISSIBILITY OF REGISTERED INFORMATION.** A certificate of
15 search of an appropriate registry of paternity is admissible in a proceeding for termination of
16 parental rights or adoption, and, if relevant, in other legal proceedings.

17
18 **ARTICLE 5**
19 **GENETIC TESTING**

20
21 **SECTION 501. APPLICATION OF ARTICLE.** This [article] applies to **genetic testing** of
22 an individual who:

- 23 (1) submits voluntarily to testing; or
24 (2) is tested pursuant to an order of a court or the **support-enforcement agency**.

25 *Reporter's Notes*

26 *This section is intended to avoid problems with regard to the admissibility of the result of*
27 *genetic testing voluntarily submitted to such as those encountered in Catawba County v. Khatod, 479*
28 *S.E. 2d 270 (N.C. App 1997) and Yokley v. Townsend, 849 S.W. 2d 722 (Mo. App. W.D. 1993).*
29

30 **SECTION 502. ORDER FOR TESTING.**

1 (a) Except as otherwise provided in this [article] and [Article] 6, the court shall order the
2 mother, an **alleged father**, and the **child** to submit to **genetic testing** if the request for testing is
3 supported by the sworn statement of the mother, an **alleged father**, or other party to the
4 proceeding:

5 (1) alleging paternity and stating facts establishing a reasonable probability of the
6 requisite sexual contact between the individuals; or

7 (2) denying paternity.

8 (b) A **support-enforcement agency** may order **genetic testing** under subsection (a) only
9 if there is no **presumed** or **adjudicated father**, unless the order for **genetic testing** also includes
10 an order to test the **presumed** or **adjudicated father**.

11 **SECTION 503. REQUIREMENTS FOR GENETIC TESTING.**

12 (a) **Genetic testing** must be of a type generally acknowledged to be scientifically reliable
13 and performed in a testing laboratory accredited by:

14 (1) the American Association of Blood Banks, or a successor to its functions;

15 (2) the American Society for Histocompatibility and Immunogenetics, or a successor
16 to its functions; or

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

19 (b) If a request for **genetic testing** of a **child** is made before birth, the court or **support-**
20 **enforcement agency** shall order the testing of the **child** as soon as medically practicable after
21 birth, but it may not order the mother to submit to testing before birth.

22 (c) If two or more men are identified as an **alleged father** of a **child**, the court may order
23 sequential or concurrent **genetic testing** of the men.

24 (d) If there is no **presumed father** and the [respondent] admits paternity, the parties may
25 waive or the court may dispense with **genetic testing**.

26 (e) A specimen used in genetic testing may be a sample of one or a combination of blood,
27 buccal cells, bone, hair, or other body tissue or fluid taken from an individual for **genetic testing**.
28 The **specimen** used in the testing need not be of the same kind for each individual undergoing
29 **genetic testing**.
30

1 (f) Based on the **ethnic or racial group** of an individual, the testing laboratory shall
2 determine the databases from which to select frequencies for use in the calculations. If there is
3 disagreement as to the testing laboratory's choice, the following rules apply:

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

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

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

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

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

15 (g) If, after recalculation using a different **ethnic or racial group**, the genetic test does
16 not create a presumption of paternity under Section 505, an individual who has been tested may
17 be required to submit to additional **genetic testing**.

18
19 *Reporter's Notes*

20 *Subsections (a) and (b) conform to the mandates of 42 U.S.C. § 666(a)(5)(B)(i)(I)(II) and*
21 *§ 666(a)(5)(F)(i)(I)(II), see Appendix A, Relevant Federal Statute.*

22 *As of the date of this writing, the Secretary of Health and Human Services has not officially*
23 *designated any accreditation bodies as referenced in subsection (b)(3). However, Information*
24 *Memorandum O.C.S.E.-IM-97-03, April 10, 1997, from the Deputy Director of O.C.S.E. identifies the*
25 *American Association of Blood Banks and American Society for Histocompatibility and*
26 *Immunogenetics as meeting this requirement.*
27

28 **SECTION 504. RESULTS OF GENETIC TESTING**

29 (a) The results of **genetic testing** must be in writing and signed under penalty of perjury
30 by a designee of the testing laboratory.

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

- 1 (1) the names and photographs of the individuals whose **specimens** have been taken;
- 2 (2) the name of the person who collected the **specimens**;
- 3 (3) the place and date the **specimens** were collected;
- 4 (4) the name of the person who received the **specimens** in the testing laboratory; and
- 5 (5) the date the **specimens** were received.

6 *Reporter's Notes*

7 *Subsection (b) is designed to indicate that in these civil trials only a minimal showing of*
8 *reliability of the chain of custody is needed. This section is to avoid evidentiary problems, such as*
9 *finding that the report of the results of genetic testing is not admissible in a paternity case because the*
10 *pilot of the airplane that transported the specimens did not testify, reversed in Dotson v. Petty, 359*
11 *S.E. 2d 403 (Va. App. 1987). Most jurisdictions apparently do not have this problem. See State v.*
12 *Brashear, 841 S.W. 2d 754 (Mo. App. 1992); DeLaGarza v. Salazar, 851 S.W. 2d 380 (Tex.App. —San*
13 *Antonio 1993, no writ).*

14
15 **SECTION 505. GENETIC TESTING: GENETIC PRESUMPTION.**

16 (a) A **man** is **presumed** to be the **father** of a **child** tested if the **genetic testing** complies
17 with current scientific standards and the results disclose that:

- 18 (1) the **man** has at least a 99% **probability of paternity**, using a prior probability of
19 0.50, as calculated by using the **paternity index** obtained in the testing; and
- 20 (2) a combined **paternity index** of at least 100 to 1.

21 (b) A presumption of paternity established by a genetic test as provided in subsection (a)
22 may be rebutted only by an additional genetic test satisfying the requirements of this [article]
23 which:

- 24 (1) excludes the **man** as a **possible genetic father** of the **child**; or
- 25 (2) identifies another **man** as a **possible genetic father** of the **child**.

26 (c) Except as otherwise provided in Section 510, if another **man** is identified by a second
27 genetic test as a **possible genetic father** of the **child**, the court shall order both men to submit to
28 additional **genetic testing** that satisfies the requirements of this [article].

29 *Reporter's Notes*

30 *The selection of a probability of paternity of 99.0% and a combined paternity index of 100 to*
31 *1 as a genetic presumption is consistent with the current standard of practice in the genetic-testing*
32 *community. Because all states except Texas use one or the other or both, there will be a minimum*
33 *impact on legal precedents. Accrediting agencies require the reporting of both of these numbers.*
34 *Currently, 27 states have established a presumption at less than this genetic level. However, for*
35 *several years the standard of practice in the scientific community has been 99.0%. Therefore, raising*
36 *the genetic presumption to the 99.0% level should have no impact on those states. This number*

1 *represents a reasonable level of testing, given the breadth of the Act and potential difficulty of working*
2 *with some specimens in a probate case. It is not intended as a standard of practice for the*
3 *laboratories, but as a legal presumption given the legal standard of proof. The standard of practice in*
4 *paternity laboratories may change, which is safeguarded by the requirement that laboratories be*
5 *accredited in order to perform testing under the Act. If the accrediting organizations change the*
6 *standard of practice, the legal significance of the genetic presumption stated in this section will be*
7 *unaffected.*

8 *Genetic testing results will often exceed the statutory minimum. During the drafting meetings*
9 *several statutory presumptions were considered, i.e., 95%, 99%, 99.9% and 99.99%. Genetic testing*
10 *laboratory representatives presented quite persuasive arguments for a variety of choices. The Drafting*
11 *Committee ultimately chose 99% because:*

12 *(1) The 99% standard reflects the current standard of the American Association of Blood*
13 *Banks (Standards for Parentage Testing Laboratories, 3rd Edition);*

14 *(2) The standards promulgated by the various accrediting bodies (American Association of*
15 *Blood Banks and the American Society for Histocompatibility and Immunogenetics) will, in reality, set*
16 *the benchmark for genetic testing;*

17 *(3) The 99% status represents the plurality of American jurisdictions;*

18 *(4) At present, a standard higher than 99% could cause evidentiary problems in probate*
19 *proceedings because of degraded specimens. Similarly, cases involving one or more missing persons,*
20 *e.g., the mother is not available, but the child and alleged father are available;*

21 *(5) The percentage is an evidentiary presumption that the respondent may always challenge by*
22 *requesting a second test under Section 507; and*

23 *(6) A proceeding to determine paternity is a civil action based on a preponderance of the*
24 *evidence, not a criminal action based on evidence beyond reasonable doubt.*

25 *Given the rapid progress of science in this subject matter, it is likely that accrediting standards*
26 *will rise over time.*

27 *See table in Appendix to Section 505, infra.*
28

29 **SECTION 506. COSTS OF GENETIC TESTING.**

30 (a) The cost of an initial genetic test must be paid:

31 (1) by the **support-enforcement agency** in a proceeding **commenced** by that agency;

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

33 (3) as agreed upon by the parties; or

34 (4) as ordered by the court.

35 (b) The court or **support-enforcement agency** may order reimbursement from an
36 individual or agency if the result of the genetic test is contrary to the position of that individual or
37 agency.

38 *Reporter's Notes*

39 *Source: UPA (1973) § 11; 42 U.S.C. § 666(a)(5)(B)(ii)(I); see Little v. Streater, 454 U.S. 1, 101*
40 *S. Ct. 2202, 68 L. Ed. 2d 627 (1981).*
41

1 *is involved. The bracket for filling in appropriate court rules should be tailored to local court*
 2 *structure. For example some jurisdictions have special rules for family court, surrogate court, etc.*

3 *Drawing on medieval English precedent, many states originally treated determination of*
 4 *paternity as a criminal or quasi-criminal prosecution. The impetus for suits for bastardy, filiation, or*
 5 *paternity, was to transfer the financial burden of the support of a nonmarital child from the taxpayers*
 6 *of the county or the parish to the child's biological father. Early bastardy prosecutions often granted*
 7 *the alleged father procedural advantages adapted from criminal law, including the option of refusing*
 8 *to testify, sharply limiting discovery, and requiring of proof beyond a reasonable doubt. These*
 9 *strategic advantages aided the alleged father in avoiding an erroneous paternity finding, but came at*
 10 *the cost of a greatly increased risk to the mother and child of an erroneous finding of nonpaternity. All*
 11 *remnants of this unfortunate history are swept away by the simple declaratory sentence that a suit for*
 12 *parentage is a civil proceeding.*

13 *Henceforth, a determination of paternity is governed by the ordinary rules of civil procedure.*
 14 *The party seeking to establish paternity is entitled to full discovery, to compel the testimony of all*
 15 *witnesses, and to have the case tried by a preponderance of the evidence. "The equipoise of the*
 16 *private interests that are at stake in a paternity proceeding supports the conclusion that the standard*
 17 *of proof normally applied in private litigation is also appropriate for these cases." Rivera v. Minnich,*
 18 *483 U.S. 574, 581 (1987).*

19 *As first promulgated in 1969, UNIF. PROBATE CODE, § 2-114. parent and Child, provided for*
 20 *inheritance by a deceased father's nonmarital child on proof of paternity by clear and convincing*
 21 *evidence. Until that time, most states adhered to the rule derived from the common law of England*
 22 *which absolutely prohibited paternal inheritance by an illegitimate child, no matter how conclusive*
 23 *the proof of paternity might be. One such categorical prohibition was sustained in Labine v. Vincent,*
 24 *401 U.S. 532 (1971). Thus, the Uniform Probate Code was ahead of its time in allowing inheritance*
 25 *from the paternal side. The procedure in the current version of the Uniform Probate Code was added*
 26 *in 1978. Section 2-114 provides for parentage to be established under the provision of the UPA (1973)*
 27 *or other comparable state law. Under this provision, a parentage determination in probate*
 28 *proceedings will be treated as a civil suit in a state that has adopted the UPA (1973), and similarly in*
 29 *other states that have adopted comparable provisions. This provision was not the exclusive alternative*
 30 *provided by the 1978 amendments, however. Because a handful of states had adopted the clear and*
 31 *convincing evidence requirements of the original version of the Uniform Probate Code, this more*
 32 *onerous provision was retained as a secondary alternative.*

33 *The Uniform Probate Code was again revised to its current version in 1990. By that time,*
 34 *imposing discriminatory burdens on children born out of wedlock seeking paternal inheritance had*
 35 *been recognized as illogical and unjust, and had been ruled unconstitutional by application of the*
 36 *intermediate scrutiny test formulated under the 14th Amendment. Reed v. Campbell, 476 U.S. 852*
 37 *(1986). Moreover, by 1990 the preponderance of the evidence standard had been adopted by a*
 38 *number of states for determinations of paternity and probate proceedings. Some of these states*
 39 *adopted the preferred alternative of the 1978 Uniform Probate Code, while others adopted the*
 40 *preponderance standard independently without reference to that act. Against this background, the*
 41 *committee revising the Uniform Probate Code in 1990 abandoned the clear and convincing evidence*
 42 *alternative for determining paternal relationships.*
 43

44 **SECTION 602. STANDING TO MAINTAIN PROCEEDING.** Subject to Sections 604 and
 45 605, a proceeding to determine the existence or nonexistence of a **parent-child relationship** may
 46 be maintained by:

- 1 (1) the **child**;
- 2 (2) the mother of the **child**;
- 3 (3) a **presumed father**;
- 4 (4) an **acknowledged father**;
- 5 (5) an **alleged father** of the **child**;
- 6 (6) the **support-enforcement agency** [or other authorized governmental entity];
- 7 (7) an authorized adoption agency or licensed **child**-placing agency; [or]
- 8 (8) a representative authorized by law to act for an individual who would otherwise be
- 9 entitled to maintain a proceeding but who is deceased, incapacitated, or a minor[; or
- 10 (9) an **intended parent** under [Article] 8].

11 *Reporter's Notes*

12 *Source: UPA (1973) § 6.*

14 **SECTION 603. PARTIES TO PROCEEDING.**

15 The following individuals must be joined as parties in a proceeding to determine
16 parentage:

- 17 (1) the mother of the **child**;
- 18 (2) a **presumed father** of the **child**;
- 19 (3) an **acknowledged father** of the **child**; and
- 20 (4) an **alleged father** of the **child**.

22 *Reporter's Notes*

23 *Source: UPA (1973) § 9. This section partially follows, and partially rejects, the original requirements*
24 *regarding who must be named as parties. First, contra to UPA (1973), the child is not a necessary*
25 *party. Few states require children as necessary parties; with the widespread use of DNA testing, such a*
26 *requirement has outlived its usefulness. On the other hand, failure to join a child as a party may result*
27 *in a later successful collateral attack on the original determination of paternity to be filed by the*
28 *child, see Lalli v. Lalli, 977 P.2d 776 (Ariz. 1999).*

29 *Second, as far as can be determined, no state requires the children to be named as parties in*
30 *every divorce proceeding; and, those decrees serve as res judicata if a later attack on a prior*
31 *determination is mounted.]*

33 **SECTION 604. NO LIMITATION: CHILD WITHOUT PRESUMED FATHER.**

1 A proceeding to determine paternity of a **child** having no **presumed father** may be
2 **commenced** at any time, even after:

- 3 (1) the **child** becomes an adult; or
4 (2) an earlier proceeding was dismissed based on the application of a statute of
5 limitation then in effect.

6
7 *Reporter's Notes*

8 *Source: UPA (1973) §§ 6, 7. In order for a state to retain the federal child support*
9 *enforcement subsidy, 42 U.S.C. 666(a)(5)(A)(i) mandates that the states must have laws to “permit the*
10 *establishment of the paternity of a child at any time before the child attains 18 years of age.” States*
11 *have chosen a wide range of age options: age 18 (20 states), age 19 (6 states), age 20 (2 states), age*
12 *21 (10 states), age 22 (2 states), age 23 (2 states), and no limitation (9 states). Several states limit the*
13 *establishment of parental rights to a shorter time period. The Drafting Committee believes that an*
14 *individual’s right to determine his or her own parentage is a very important right and should not be*
15 *subject to limitation except when an estate has been closed. Accordingly, this section allows a*
16 *proceeding to determine parentage at any time. Anecdotally, there appear to be no reported problems*
17 *encountered in states without a statute of limitations for such actions. See Appendix to Section 604,*
18 *infra, for a table of the state laws on this issue.*

19
20 **SECTION 605. LIMITATION: CHILD HAVING PRESUMED FATHER.**

21 (a) Except as otherwise provided in subsection (b), a proceeding seeking to determine
22 paternity of a **child** having a **presumed father** by rebutting the presumption of paternity
23 established under Section 204 must be **commenced** not later than two years after the birth of the
24 **child**.

25 (b) A proceeding seeking to negate the father -**child** relationship between a **child** and the
26 **child’s presumed father** may be maintained at any time if the court determines that:

27 (1) the **presumed father** and the mother of the **child** neither cohabited nor engaged in
28 sexual intercourse with each other during the probable time of conception; and

29 (2) the **presumed father** never openly held out and treated the **child** as his own.

30
31 *Reporter's Notes*

32 *Source: UPA (1973) § 6. This section represents an attempt to deal with difficult issues. First,*
33 *the right of a mother or the presumed father to challenge the presumption of paternity established by*
34 *Section 204—basically, the age-old presumption that marriage creates a presumption that the*
35 *mother’s husband is the father of a child born to her (with some additional complexities). Second, the*

1 *right, if any, of a third-party male to claim paternity of a child who has an existing presumed father*
2 *must be clarified.*

3 *The UPA (1973) places a five-year limitation on the former issue [Section 6(a)]. Ten states*
4 *have denied standing to a man claiming to be the father when the mother was married to another at*
5 *the time of the child's birth. In some of these states, even though a presumed father may seek to rebut*
6 *his presumed paternity, a third-party male will be denied standing to raise that same issue.*

7 *The right of an "outsider" to claim paternity of a child born to a married woman varies*
8 *considerably among the states. Thirty-three states allow a man alleging himself to be the father of a*
9 *child with a presumed father to rebut the marital presumption. Some states have granted this right*
10 *through legislation. In other states, courts have recognized the alleged father's right to rebut the*
11 *presumption and establish his paternity. Further, in some states there is both statutory and common*
12 *law support for the standing of a man alleging himself to be the father to assert his paternity of a child*
13 *born to a married woman.*

14 *This draft attempts a middle ground on these exceedingly complex issues. A limitation on*
15 *rebutting the presumption of paternity established under Section 204 is set at two years if the mother*
16 *and presumed father were cohabiting at the time of conception. But, the statute is open ended if the*
17 *mother did not live with the presumed father or engage in sexual intercourse with him at the probable*
18 *time of conception. This distinction is based on the belief that a two-year period allows an adequate*
19 *time period to resolve the status of a child within the context of an intact family unit; a longer period*
20 *may have severe consequences for the **child**. On the other hand, if the family is not intact, the issue of*
21 *nonpaternity of the presumed father is, in fact, generally assumed by all the parties concerned under*
22 *those facts, it is inappropriate to assume a presumption known by those concerned to be untrue.*
23 *Appendix to Section 605, infra, provides a table listing the limitation periods of the various states.*
24

25 **SECTION 606. PERSONAL JURISDICTION.**

26 (a) A court of this **State** having jurisdiction to determine parentage may exercise personal
27 jurisdiction over a nonresident individual, or the guardian or conservator of that individual, if the
28 conditions prescribed in [Section 201 of the Uniform Interstate Family Support Act] are fulfilled.

29 (b) Lack of jurisdiction over one individual does not preclude the court from making a
30 final determination of parental rights binding on a different individual over whom the court has
31 personal jurisdiction.
32

33 **SECTION 607. VENUE.** Venue for a proceeding to determine parentage is in the [county] of
34 this **State** in which:

- 35 (1) the **child** resides or is found;
36 (2) the [respondent] resides or is found if the **child** does not reside in this **State**; or
37 (3) a proceeding for probate of the **presumed** or **alleged father's** estate has been
38 **commenced**.

39 *Reporter's Notes*

1 (b) If an **alleged** or **presumed father** declines to submit to **genetic testing**, that fact may
2 be admitted as evidence.

3 (c) The court may issue a **determination of parentage** against a [respondent] if the
4 [respondent] declines to submit to **genetic testing** as ordered by the court.

5 (d) **Genetic testing** of the mother of a **child** is not a condition precedent to testing the
6 **child** and an alleged father. If the mother declines to submit to **genetic testing**, the court may
7 proceed with testing of the **child** and any **alleged father**.

8 *Reporter's Notes*

9 *Source: UPA (1973) § 10.*
10

11 **SECTION 623. ADMISSION OF PATERNITY AUTHORIZED.**

12 (a) A [respondent] in a proceeding to determine paternity may admit to the paternity of a
13 **child** by filing a pleading to that effect or by admitting paternity under oath when making an
14 appearance or during a hearing.

15 (b) The court shall issue an order determining the **child** to be the **child** of the **man**
16 admitting paternity if the court finds that the admission of paternity was made pursuant to this
17 section and finds that there is no reason to question the admission.

18 *Reporter's Notes*

19 *Source: 42 U.S.C. 666(a)(5)(D)(i)(II). This section is intended to clarify that a formal*
20 *acknowledgment of paternity under Article 3 is not required when a respondent admits the paternity of*
21 *the alleged father. The admission may be made by either the mother or alleged father. However, this*
22 *section is not designed to be used by a petitioner to determine paternity. In that instance, a proceeding*
23 *to determine parentage as provided in Part 1, Article 6, is appropriate.*
24

25 **SECTION 624. TEMPORARY ORDERS.**

26 (a) In a proceeding under this [article], the court shall issue temporary orders for support
27 of the **child** if the individual ordered to pay support:

28 (1) is a **presumed father**;

29 (2) is petitioning to have his paternity determined or has admitted paternity in
30 pleadings filed with the court;

31 (3) is **presumed** to be the father through **genetic testing** under Section 505;

32 (4) has declined to submit to **genetic testing**;

1 (5) is shown to be the father of the **child** by clear and convincing evidence; or
2 (6) is the mother.

3 (b) A temporary order may include provisions for custody and visitation as provided by
4 other **state** law.

5 *Reporter's Notes*

6 *Source: UIFSA § 401; 42 U.S.C. 666(a)(5)(J).*

7
8 *[Sections 625-630 reserved for expansion]*
9

10 **PART 3**

11 **HEARINGS AND FINAL ORDER**

12
13 **SECTION 631. RESOLUTION OF CLAIM OF PATERNITY.**

14 (a) A **presumed father's** paternity may be rebutted only by clear and convincing evidence.

15 (b) If two or more men claim or are alleged to be the father of a **child**, the presumption of
16 parentage established as the result of **genetic testing** under Section 505 prevails.

17 (c) If no evidence of an additional genetic test is presented to rebut a genetic -test
18 presumption of paternity of a **man** under Section 505, the court shall issue an order determining
19 the **man** to be the father of the **child**.

20 (d) If the court finds that the **genetic testing** fails to establish a genetic-test presumption
21 under Section 505, the court may not dismiss the proceeding. The results of **genetic testing**,
22 along with other evidence, are admissible to resolve the issue of paternity.

23 (e) Subject to a party's right to additional **genetic testing** as provided in Section 507, the
24 court shall issue a judgment of nonpaternity in a proceeding to determine paternity of a **man** if
25 **genetic testing** excludes the **man** as the father of the **child**.

26 *Reporter's Notes*

27 *Source: UPA (1973) § 14.*

28 *Subsection (d) is intended to indicate that on occasion a genetic test may not reach the level*
29 *required to establish a presumption of paternity. In modern paternity testing, this is a very rare*
30 *occurrence when living persons are tested. On the other hand, this may present a problem in probate*
31 *matters, which often must rely on the use of non-traditional specimens, such as bone and hair. In this*
32 *context, the amount of testing may be limited by the specimen available. This section is designed to*
33 *indicate that if the result of the genetic testing is less than the presumption, the probability of paternity*
34 *is not an indicator of nonpaternity. A probability of paternity percentage and a combined paternity*
35 *index that do not exclude the alleged father but also do not establish a presumption of paternity as*

1 provided by Section 505 are to be considered as indicators of paternity and weighed along with all the
2 other evidence produced in the proceeding.

3 The inclusion of the first clause in subsection (e) indicates that although a genetic testing
4 exclusion can be absolute, errors may occur in testing. Some courts have imposed a rule that a party
5 must first show the test is in error before ordering another test. This imposes an impossible burden
6 because the only accurate method to show that a test is in error is to repeat the testing. Without this
7 clause some litigants have argued that once an exclusion is obtained it is absolute and no other test
8 can be ordered, even when the first test is shown to be wrong, see *Cable v. Anthou*, 674 A.2d 732 (Pa.
9 Super. 1996), affirmed, 699 A.2d 722 (Pa. 1997); *In re Paternity of Bratcher*, 551 N.E.2d 1160 (Ind.
10 App. 1st Dist. 1990).

11
12 **SECTION 632. JURY PROHIBITED.** The court shall decide a claim or allegation of
13 paternity without a jury.

14
15 **SECTION 633. HEARINGS AND RECORDS: CONFIDENTIALITY.**

16 (a) On request of a party, the court may close a proceeding under this [article] for good
17 cause.

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

21 *Reporter's Notes*

22 *Source: UPA (1973) § 20.*

23
24 **SECTION 634. ORDER ON DEFAULT.** The court shall issue an order determining paternity of
25 a **man** who:

- 26 (1) after service of process, is in default; and
27 (2) is found by the court to be the father of a **child**.

28
29 *Reporter's Notes*

30 *Source: 42 U.S.C. 666(a)(5)(H). While federal law mandates the issuance of a default*
31 *judgment in a paternity case, there is no mention of the procedures authorized for use for setting aside*
32 *such judgments. This draft makes no attempt to deal with the innumerable local variations for setting*
33 *aside such judgments. That subject is left to each state's own rules of civil procedure.*

34
35 **SECTION 635. FINAL ORDER REGARDING PARENTAGE.**

1 (a) The court shall issue an order declaring whether a **man alleged** or claiming to be the
2 **father** is the **parent** of the **child**.

3 (b) An order determining parentage must identify the **child** by name.

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

9 (d) The court may not assess fees, costs, or expenses against the **support-enforcement**
10 **agency** of this **State** or another **State**, except as provided by other law.

11 (e) If the order of the court is at variance with the **child**'s birth certificate, the court shall order
12 that an amended birth certificate be issued.

13
14 *Reporter’s Notes*

15 *Sources: UIFSA § 313; UPA (1973) §§ 15, 16*
16

17 **SECTION 636. BINDING EFFECT OF ORDER.**

18 (a) Except as otherwise provided in subsection (b), a **determination of parentage** that
19 satisfies the jurisdictional requirements of [Section 201 of the Uniform Interstate Family Support
20 Act] is binding on all parties.

21 (b) A **child** is not bound by a **determination of parentage** under this [article] unless:

22 (1) the **determination of parentage** was based on a finding consistent with the results
23 of **genetic testing** and that fact is declared in the determination or is otherwise shown; or

24 (2) the **child** was represented in the previous proceeding by an [attorney ad litem].

25 (c) In a proceeding to dissolve a marriage, the court is deemed to have made a
26 **determination of parentage** of a **child** if the court is acting under circumstances that satisfy the
27 jurisdictional requirements of [Section 201 of the Uniform Interstate Family Support Act], and the
28 final order:

29 (1) expressly identifies a **child** as a “**child** of the marriage,” “issue of the marriage,” or
30 similar words indicating that the husband is the father of the **child**; or

1 (2) provides for support of the **child** or awards custody of or visitation with the **child**
2 to the **man**.

3 ~~(d) A support enforcement agency and any other state agency is not bound by an earlier~~
4 ~~determination or acknowledgment of paternity unless the state was a party to the proceeding or~~
5 ~~the earlier determination or acknowledgment was based on a finding consistent with the results of~~
6 ~~genetic testing.~~

7 (d) A **determination of parentage** is binding in a subsequent proceeding, even if asserted
8 by an individual who was not a party to the first proceeding.

9 *Reporter's Notes*

10 *This section codifies rules regarding the effect of a final order determining parentage. A*
11 *considerable amount of litigation involves just exactly who is bound and who is not bound by such*
12 *orders. Subsection (a) provides that, if the order is entered under standards of personal jurisdiction of*
13 *the UIFSA, the order is binding on all parties to the proceeding. This solves the problem of an order*
14 *rendered without the appropriate jurisdiction, as would be the case of a divorce based on status*
15 *jurisdiction in which the court lacked the requisite personal jurisdiction over a nonresident party.*

16 *Subsection (b) partially resolves the question as to whether a child is bound by the terms of*
17 *the order. UPA (1973) required the child to be made a party to a parentage proceeding, and therefore*
18 *would be bound. However, the 1973 Act did not address whether a divorce decree had a the legal*
19 *impact on paternity. A majority of jurisdictions holds that the child is not bound by the divorce decree*
20 *because the child was not a party to the proceeding. See, Nadine E. Roddy, The Preclusive Effect of*
21 *Paternity Findings in Divorce Decrees, DIVORCE LITIGATION (1998). A minority of states hold that the*
22 *child is bound to the order and that the child is in privity with the actions of the parents. In its present*
23 *formulation, this subsection adopts the majority rule and which does not bind the child during*
24 *minority unless the parentage order is based on genetic testing, or the child was represented by an ad*
25 *litem.*

26 *Subsection (c) resolves whether a divorce decree constitutes a finding of paternity. This*
27 *subsection provides that a decree is a determination of paternity if the decree states that the child was*
28 *born of the marriage or grants the husband visitation, custody or orders support. This is the majority*
29 *rule in American jurisprudence. See Roddy, supra.*

30 *Subsection (d) provides that state agencies are not bound by an earlier parentage order. This*
31 *is the majority view; most states hold that because the state agency was not a party to the earlier*
32 *proceeding, it should not be bound. Roddy, supra. Some observers from the child support enforcement*
33 *community urged that the Act take the position that agencies should be bound because the state's right*
34 *to sue is based on an assignment of rights from an applicant. Therefore the state's interest is derivative*
35 *of the applicant's ability to sue. If the applicant is bound by the earlier order, then the state should*
36 *also be bound. They argue further that valuable state resources should not be spent relitigating an*
37 *issue already decided.*

38 *Subsection (e) gives protection to third parties who may claim benefit of an earlier*
39 *determination of parentage*

40
41 **ARTICLE 7**

42 **CHILD OF ASSISTED REPRODUCTION**

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SECTION 701. HUSBAND’S PATERNITY OF CHILD RESULTING FROM ASSISTED REPRODUCTION. If a husband consents to **assisted reproduction** pursuant to Section 702, he is deemed to be the father of any **child** resulting from:

- (1) the artificial insemination of his wife;
- (2) providing his sperm to fertilize a **donor**’s eggs that are placed in the uterus of his wife;

or

(3) the implanting of an embryo in the uterus of his wife, whether the donated embryo is the result of separate donations of sperm and eggs or the donated embryo is created for the purpose of **assisted reproduction**.

Reporter’s Notes

Sources: UPA § 5; USCACA §§ 1, 3

SECTION 702. CONSENT TO ASSISTED REPRODUCTION.

(a) Each participant in **assisted reproduction** must consent to that participation, including, as applicable:

- (1) a husband and wife;
- (2) the **donor** of sperm if other than the husband;
- (3) the **donor** of eggs if other than the wife; and
- (4) a woman who intends to be the **gestational mother** on behalf of the **intended**

parents.

(b) The consent must be in writing, and be signed by the participant.

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

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

(2) confer rights or impose duties on a **donor** as a **mother** or father of the **child** if the donation of reproductive material was made under circumstances demonstrating an intent that the **assisted reproduction** would not impose parental responsibility upon anyone other than the husband and wife.

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SECTION 703. LIMITATION ON HUSBAND’S DISPUTE OF PATERNITY.

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

- (1) within two years after learning of the birth of the **child** he **commences** a proceeding to contest his **presumed** paternity; and
- (2) the court determines he did not consent to the **assisted reproduction**.

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

(c) A husband who does not consent in writing to **assisted reproduction** by his wife may challenge the presumption of paternity of the resulting **child**, subject to Section 605.

Reporter’s Notes

Source: USCACA § 3

SECTION 704. PARENTAL STATUS OF DECEASED INDIVIDUAL. An individual who dies before implantation of an embryo or before a **child** is conceived through **assisted reproduction** using the individual’s eggs or sperm is not a **parent** of the resulting **child** unless the decedent consented in writing to continue the donation posthumously.

Reporter’s Notes

Source: USCACA § 4

SECTION 705. EFFECT OF DISSOLUTION OF MARRIAGE. If a husband and wife dissolve their marriage before implantation of an embryo or before a **child** is conceived by use of the husband’s sperm, his earlier consent to **assisted reproduction** is void.

Reporter’s Notes

This section is entirely new, but is derived from the policy stated in Section 704, supra. If there is to be no liability for a child conceived after death, then there should be no liability for a child conceived or implanted after divorce. This Act does not attempt to resolve issues as to control of frozen embryos following dissolution of marriage. Those matters are left to other state laws, usually in the context of settlement of divorce and regulation of health care facilities.

SECTION 706. PARENTAL STATUS OF DONOR.

1 (a) A **donor** of sperm is not the father of a **child** conceived through **assisted**
2 **reproduction** if the mother is:

3 (1) married, whether or not her husband consented to the **assisted reproduction**; or

4 (2) unmarried at the time of conception, unless the **donor** and the mother of the **child**
5 acknowledge the **donor**'s paternity pursuant to [Article] 3.

6 (b) [Except as otherwise provided in [Article] 8, a] [A] **donor** of eggs or embryos is not a
7 **parent** of a **child** borne by the donee.

8
9 **ARTICLE 8**

10 **GESTATIONAL AGREEMENT**

11
12 *Reporter's Notes*

13 *The subject of gestational agreements was last addressed by the Conference in 1989 with the*
14 *adoption of the Uniform Status of Children of Assisted Conception Act (USCACA). That Act offers two*
15 *alternatives on the subject: to regulate such activities through a judicial review process or to void*
16 *such contracts. Only two states have adopted either version of the Act; Virginia chose to regulate such*
17 *agreements, while North Dakota opted to void them.*

18 *The Drafting Committee recognizes that there are strongly held differences on this subject.*
19 *Nonetheless, the Committee has concluded that the advances of science and the wide use of such*
20 *reproductive agreements virtually demand that provisions for judicial supervision of gestational*
21 *agreements be enacted. For this reason, Article 8 is included as an option in the Act. However, the*
22 *Committee includes this [article] without a recommendation either for or against its adoption. The*
23 *Uniform Parentage Act, as revised, contains too many important changes to jeopardize its passage*
24 *because of opposition to this [article]. If the inclusion of Article 8 is so controversial in a state*
25 *considering adoption of this Act to cause a risk of failure, the article may be omitted entirely.*

26 *Childless couples may choose modern science over traditional adoption in hopes of having a*
27 *child of their own genetic making. Voiding or criminalizing gestational agreements will force*
28 *individuals to find friendly legal forums for the process, which raises a host of legal issues. For*
29 *example, a couple returning to their home state with a child born as the consequence of a gestational*
30 *agreement entered into in a state recognizing that agreement presents a full faith and credit question if*
31 *their home state has a statute declaring gestational agreements to be void. One thing is clear; a child*
32 *born under these circumstances is surely entitled to have its status clarified.*

33 *In the opinion of the Drafting Committee, entering into a gestational agreement is a*
34 *significant legal act that should be reviewed by a court, just as an adoption is judicially reviewed. This*
35 *draft generally follows the 1989 Act but departs in two important ways. First, unapproved gestational*
36 *agreements are void, thereby providing a strong incentive for the participants to seek judicial scrutiny.*
37 *Second, persons who enter into unapproved gestational agreements and later refuse to adopt the*
38 *resulting child may be liable for support of the **child**.*

39 *Assisted reproduction facilities and numerous other entities are involved in the subject.*
40 *Internet sites are omnipresent promoting the activity. Currently states take a variety of approaches to*
41 *the issue: eleven states allow such agreements by statutes or caselaw; six states void such agreements*

1 *by statute; eight states statutorily ban compensation to the gestational mother; and two states have*
2 *judicially refused to recognize such agreements. See Appendix to Article 8, infra.*
3

4 **SECTION 801. EFFECT OF NONVALIDATED GESTATIONAL AGREEMENT.**

5 (a) A gestational agreement, whether in writing or not, which is not validated by a court is
6 not enforceable.

7 (b) If a birth results under a gestational agreement that is not enforceable in this **State**, the
8 **gestational mother** is the mother of the **child**, and paternity of the **child** is determined under this
9 [Act].

10 (c) The individuals who are parties to a nonvalidated gestational agreement are **intended**
11 **parents** may be held liable for support of the resulting **child even if the agreement is**
12 **unenforceable.**
13

14 **[SECTION 802. VALIDATION OF GESTATIONAL AGREEMENT AUTHORIZED.]**

15 [(a) A **gestational mother**, her husband if she is married, a **donor** or the **donors**, and the
16 **intended parents** may enter into a written agreement providing that:

17 (1) the **gestational mother**, her husband if she is married, and the **donors** relinquish
18 all rights and duties as the **parents** of a **child** to be conceived through **assisted reproduction**; and

19 (2) the **intended parents** become the **parents** of the **child**.

20 (b) The **intended parents must be** married, and both spouses must be parties to the
21 gestational agreement.

22 (c) A gestational agreement is enforceable only if validated as provided in Section 803.]
23

24 **[SECTION 803. REQUIREMENTS OF PETITION.]**

25 [(a) The **intended parents** and the **gestational mother** may file a petition in the
26 [appropriate court] to validate a gestational agreement.

27 (b) A petition for validation of the gestational agreement may not be maintained unless
28 either the mother or **intended parents** have been residents of this **State** for at least [90] days.

29 (c) The **gestational mother**'s husband, if she is married, must join in the petition.

30 (d) A copy of the agreement must be attached to the petition.

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[SECTION 804. REPRESENTATION OF INTENDED CHILD. The court may name a [guardian ad litem] to represent the interests of a **child** to be conceived by the **gestational mother** through **assisted reproduction** and may appoint counsel to represent the **gestational mother**.]

[SECTION 805. HEARING TO VALIDATE GESTATIONAL AGREEMENT.]

(a) The court shall hold a hearing on the petition and, if the requirements of subsection (c) are satisfied, may enter an order declaring the **intended parents** to be the **parents** of a **child** conceived through **assisted reproduction** pursuant to the agreement.

(c) The court may issue an order under subsection (b) only on finding that:

(1) the parties have submitted to jurisdiction of the court in accordance with the jurisdictional standards of this [Act];

(2) medical evidence shows that the intended **mother** is unable to bear a **child** or is unable to do so without unreasonable risk to her physical or mental health or to the unborn **child**;

(3) unless waived by the court, the [relevant **child**-welfare agency] has made a home study of the **intended parents** and the **intended parents** meet the standards of fitness applicable to adoptive **parents**;

(4) all parties have voluntarily entered into the agreement and understand its terms;

(5) the **gestational mother** has had at least one pregnancy and delivery and her bearing another **child** will not pose an unreasonable health risk to the unborn **child** or to the physical or mental health of the **gestational mother**; and

(6) adequate provision has been made for all reasonable health-care expense associated with the gestational agreement until the birth of the **child**, including responsibility for those expenses if the agreement is terminated.]

[SECTION 806. CONFIDENTIALITY.]

[(a) The court may close all proceedings under this [article]. All records of a proceeding are confidential and subject to inspection only under the standards applicable to adoptions. At the request of a party to the agreement, the court shall take steps necessary to ensure that the

1 identities of the individuals are not disclosed. The ruling of the court to validate or not validate a
2 gestational agreement is within the discretion of the court, subject only to showing an abuse of
3 discretion.

4 (b) The court conducting the proceedings has exclusive and continuing jurisdiction of all
5 matters arising out of the gestational agreement until a **child** born to the **gestational mother**
6 during the period governed by the agreement attains the age of 180 days.]

7
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9 **[SECTION 807. TERMINATION OF GESTATIONAL AGREEMENT.]**

10 [(a) After entry of an order under this [a rticle], but before the **gestational mother**
11 becomes pregnant through **assisted reproduction**, the **gestational mother**, her husband, or the
12 **intended parents** may terminate the gestational agreement by giving written notice of termination
13 to all other parties. The court also may terminate the gestational agreement for good cause
14 shown.

15 (b) An individual who terminates an agreement shall file notice of the termination with the
16 court. On receipt of the notice, the court shall vacate the order entered under this [art icle]. An
17 individual who does not notify the court of the termination of the agreement is subject to
18 appropriate sanctions.

19 (c) A **gestational mother** is not liable to the **intended parents** for terminating an
20 agreement pursuant to this section.]

21
22 **[SECTION 808. PARENTAGE UNDER VALIDATED GESTATIONAL AGREEMENT.]**

23 Upon birth of a **child** to a **gestational mother**, the **intended parents** shall file a written notice
24 with the court that a **child** has been born to the gestational mother within 300 days after **assisted**
25 **reproduction**. Thereupon, the court shall enter an order;

26 (1) determining the **intended parents** to be the **parents** of the **child**; and

27 (2) directing the [department of vital statistics] to issue a new birth certificate naming the
28 **intended parents** as **parents** and to seal the original birth certificate in the records of the
29 [department of vital statistics].

30

[SECTION 809. GESTATIONAL AGREEMENT: MISCELLANEOUS PROVISIONS.]

1 [(a) A gestational agreement that is the basis for an order under this [article] may provide
2 for payment of consideration.
3

4 (b) A gestational agreement may not limit the right of the **gestational mother** to make
5 decisions to safeguard her health or that of the embryo or fetus.

6 (c) After the entry of an order under this [article], marriage of the **gestational mother**
7 does not affect the validity of the agreement, and her husband’s consent to the gestational
8 agreement is not required, nor is her husband a **presumed father** of the resulting **child**.

9 (d) A **child** born to a **gestational mother** within 300 days after **assisted reproduction**
10 pursuant to an approved gestational agreement is **presumed** to result from the **assisted**
11 **reproduction**. A proceeding to rebut the presumption must be **commenced** not later than two
12 years after the birth of the **child**.

13 (e) A proceeding to rebut the presumption established in subsection (d) must name the
14 parties to the agreement and the **child** as parties to the proceeding. The **child** must be represented
15 by an [attorney ad litem].
16
17

ARTICLE 9

MISCELLANEOUS PROVISIONS

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21 **SECTION 901. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
22 applying and construing this Uniform Act, consideration must be given to the need to promote
23 uniformity of the law with respect to its subject matter among **States** that enact it.
24

25 **SECTION 902. SEVERABILITY CLAUSE.** If any provision of this [Act] or its application
26 to an individual or circumstance is held invalid, the invalidity does not affect other provisions or
27 applications of this [Act] which can be given effect without the invalid provision or application,
28 and to this end the provisions of this [Act] are severable.
29

30 **SECTION 903. TIME OF TAKING EFFECT.** This [Act] takes effect on _____.

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SECTION 904. [REPEAL]. The following acts and parts of acts are repealed:

- (1) [Uniform Act on Paternity, 1960]
- (2) [Uniform Parentage Act, 1973]
- (3) [Uniform Putative and Unknown Fathers Act, 1989]
- (4) [Uniform Status of Children of Assisted Conception Act, 1989]

SECTION 905. TRANSITIONAL PROVISION. A proceeding to determine parentage that was **commenced** before the effective date of this [Act] is governed by the law in effect at the time the proceeding was **commenced**.

APPENDIX TO SECTION 307

**METHODOLOGY FOR RESCINDING
ACKNOWLEDGMENT OF PATERNITY**

As Reported by Office of Inspector General,
U.S. Dept. of Health & Human Services, as of May 3, 1999

9	State	Rescission Process
10		
11	Alaska	No answer
12	Alabama	Other: Procedures not yet developed by IV -D agency
13	Arkansas	No answer
14	Arizona	Fully-administrative process
15	California	Judicial process
16	Colorado	Not applicable
17	Connecticut	Fully-administrative process
18	D.C.	Judicial process
19	Delaware	Judicial process
20	Florida	No answer
21	Georgia	Judicial process
22	Hawaii	Not applicable
23	Iowa	Fully-administrative process
24	Idaho	Quasi-administrative process (limited court involvement)
25	Illinois	Fully-administrative process
26	Indiana	Judicial process
27	Kansas	Judicial process
28	Kentucky	Judicial process
29	Louisiana	Fully-administrative process
30	Massachusetts	Judicial process
31	Maryland	Fully-administrative process
32	Maine	Quasi-administrative process (limited court involvement)
33	Michigan	Judicial process
34	Minnesota	Fully-administrative process
35	Missouri	Quasi-administrative process (limited court involvement)
36	Mississippi	No answer
37	Montana	Other: From either parent within 60 days of signing paternity
38	North Carolina	Judicial process
39	North Dakota	Fully-administrative process
40	Nebraska	Not applicable
41	New Hampshire	Fully-administrative process
42	New Jersey	Fully-administrative process
43	New Mexico	Quasi-administrative process (limited court involvement)
44		

1 State	Rescission Process
2	
3 Nevada	Other: Written request to rescind the paternity. If the father is to be
4	removed, a court order is necessary.
5 New York	Judicial process
6 New York City (NYC)	Judicial process
7 Ohio	Fully-administrative process
8 Oklahoma	Not applicable
9 Oregon	Fully-administrative process
10 Pennsylvania	Quasi-administrative process (limited court involvement)
11 Rhode Island	Judicial process
12 South Carolina	Quasi-administrative process (limited court involvement)
13 South Dakota	Judicial process
14 Tennessee	Fully-administrative process
15 Texas	Judicial process
16 Utah	Fully-administrative process
17 Virginia	Other: Awaiting instructions from CSE
18 Vermont	Fully-administrative process
19 Washington	Fully-administrative process
20 Wisconsin	Fully-administrative process
21 West Virginia	Judicial process
22 Wyoming	Fully-administrative process

APPENDIX TO SECTION 401

PATERNITY REGISTRY STATUTES

(As of May 3, 1999)

State	Statutory Citations
Alabama	ALA Code § 26-10C-2
Arizona	ARIZ. REV. STAT. ANN. § 8-106.01
Arkansas	ARK. STAT. ANN. § 9-9-212
Georgia	GA. DOM. REL. CODE §§ 15-11-82 and 15-11-83 (1998)
Idaho	(1985) IDAHO CODE § 16-1513
Illinois	750 ILLS 50/12.1
Indiana	IND. CODE ANN. § 31-3-1.5-1-21
Iowa	(1994) IOWA CODE ANN. § 144.12A
Kansas	KAN. STAT. ANN. § 59-2136
Louisiana	LA. CH. CODE ART. § 1103
Massachusetts	MASS. ANN. LAWS CH. 210 § 4A
Michigan	MI. ST. 552.1201
Minnesota	1998 MINN. LAWS CH. 6 § 354
Missouri	(1988) MO. STAT. ANN. § 192.016
Montana	MONTANA § 42-2-201 et. seq.
New Hampshire	N.H. RAS 546-B:3
New Mexico	(1993) N.M. STAT. ANN. § 32A-5-20
New York	N.Y. SOC. SERV. LAW § 372-C
Ohio	OHIO REV. CODE ANN. § 3107.062
Oklahoma	OKLA. STAT. ANN. § 7506-1.1
Oregon	OR. REV. STAT. § 109.096(3) and § 109.225
South Dakota	S.D. COD. LAWS ANN. § 25-6-1 and § 25-6-1.1
Tennessee	(1996) TENN. CODE ANN. § 36-2-209
Texas	C.F.C. § 160.250 et. seq.
Utah	(1995) Tit. 78, Ch. 30, Adoption, Vital Records
Vermont	VT. STAT. ANN. TIT. 15A § 3-404
Wisconsin	WISC. STAT. § 48.41
Wyoming	WYO. STAT. § 1-22-110 through 117

Source: National Adoption Information Clearinghouse, U.S. Dept; Health and Human Services;
Adoption Law and Practice (Matthew Bender & Co. 1998)

APPENDIX TO SECTION 505**TABLE OF PATERNITY PRESUMPTION STATUTES ***

The following table contains the statistical presumptions adopted by the District of Columbia and the fifty states. The table also indicates other statistics that the states may require if more than one is needed to establish the presumption. The next -to-last column indicates whether the statistical presumption is rebuttable (R), or conclusive (C). In the last column, if there is a statement in the paternity statutes about how to rebut the presumption, the mechanism or evidence level is indicated. The common evidence levels are indicated as C & C for Clear, Cogent and Convincing and P of E for preponderance of the evidence. Note that some jurisdictions have more than one statistical value; if so, both values are given.

State	Statute	Probability of paternity	Prior Probability	Probability of Exclusion	Combined Paternity index	Rebuttable or Conclusive	Rebutted by
Alabama	§ 26-17-13	97				R	C & C
Alaska	§ 25.20.050	95				R	C & C
Arizona	§ 25-807	95				R	C & C
Arkansas	§ 9-10-108	95				R	
California	§ 7555				100	R	P of E
Colorado	§ 13-25-126	97				R	
Connecticut	§ 46b-168	99				R	
District of Columbia	§ 16-909	99				C	
Delaware	§ 804	99				R	C & C
Florida	§ 742.12	95				R	
Georgia	§ 19-7-46	97				R	Competent Evidence
Hawaii	§ 584-11			99.0	500		
Idaho	§ 7-1116	98				R	
Illinois	§ 45/11				500	R	C & C
Indiana	§ 31-6-6.1-9	99				R	
Iowa	§ 600B.41	95				R	C & C
Kansas	§ 38-1114	97				R	C & C
Kentucky	§ 406.111	99			100	R	P of E
Louisiana	§ 397.3	99.9				R	
Maine	§ 280	97				R	C & C
Maryland	§ 5-1029	99		97.3		R	
Massachusetts	§ 17	97				R	
Michigan	§ 25.496	99				R	C & C
Minnesota	§ 257.62(5)(a)	92	No more than 0.5			R**	
Minnesota	§ 257.62(5)(b)	99	No more than 0.5			R	C & C
Mississippi	§ 93-9-27	98				R	P of E
Missouri	§ 210.822	98	0.5			R	C & C
Montana	§ 40-5-234	95				R	P of E
Nebraska	§ 43-1415	99				R	

State	Statute	Probability of paternity	Prior Probability	Probability of Exclusion	Combined Paternity index	Rebuttable or Conclusive	Rebutted by
Nevada	§ 126.051	99				R	C & C
New Hampshire	§ 522:4	97				R	C & C
New Jersey	§ 9:17-48	99***				C	
New Mexico	§ 40-11-5	99				R	
New York	§ 418	95				R	
North Carolina	§ 8-50.1	97				R	C & C
North Dakota	§ 14-17-04	95				R	C & C
Ohio	§ 3111.03	99				R	C & C
Oklahoma	§ 505	98				C	
Oklahoma	§ 505	95				R	C & C
Oregon	§ 416.430				99	R	
Pennsylvania	§ 4343	99				R	C & C
Rhode Island	§ 15-8-3	97				C	
South Carolina	§ 20-7-956	95				R	
South Dakota	§ 25-8-58	99				R	
Tennessee	§ 24-7-112	95				R	
Texas	§ 160.110			99		R	
Utah	§ 78-45a-10				150	R	Second Genetic test
Vermont	§ 308	98				R	
Virginia	§ 20-49.1	98				R	
Washington	§ 26.26.040	98				R	C & C
West Virginia	§ 48A-6-3	98				C	
Wisconsin	§ 767.48	99				R	
Wyoming	§ 14-2-109	97				R	C & C

**Compiled and provided courtesy of George Maha, Ph.D., Laboratory Corporation of America.*

*** In Minnesota at a probability of paternity of 92% or greater the court “shall” order the alleged father to pay temporary child support*

**** New Jersey’s statute reads “. . . specific threshold probability as set by the State . . .”. The level given is their current probability as set by the State.*

APPENDIX TO SECTION 604**STATUTE OF LIMITATIONS FOR PATERNITY ESTABLISHMENT,
CHILD WITHOUT PRESUMED FATHER**

State	Statute of Limitation	State	Statute of Limitation
Alabama	Age 19	Montana	Age 18
Alaska	Age 18	Nebraska	Age 18
Arkansas	None	Nevada	Age 18
Arizona	Age 18	N. Hampshire	Age 19
California	None (IV-D agency enforces to age 18)	New Jersey	Age 23
Colorado	Age 21	N. Mexico	Age 21
Connecticut	Age 18	New York	Age 21
Delaware	Age 18	N. Carolina	Age 18
D.C.	Age 21	N. Dakota	Age 21
Florida	Age 22	Ohio	Age 23
Georgia	None	Oklahoma	Age 19
Hawaii	Age 21	Oregon	None
Idaho	Age 18	Pennsylvania	Age 18
Illinois	Age 20	Puerto Rico	Age 22
Indiana	Not available	Rhode Island	None
Iowa	Age 19	S. Carolina	Age 18
Kansas	Age 18	S. Dakota	None
Kentucky	Age 18	Tennessee	Age 19
Louisiana	Age 19	Texas	Age 20
Massachusetts	None	Utah	Age 18
Maine	Age 18	Vermont	Age 21
Maryland	Age 18	Virgin Is.	None
Michigan	None	Virginia	Age 18
Minnesota	Age 18	Washington	Age 18
Missouri	Age 21	W. Virginia	Age 21
Mississippi	Age 18	Wisconsin	Age 19
		Wyoming	Age 21

Source: Office of Child Support Enforcement, U.S. Department of Health and Human Services, website as of February 23, 1999.

APPENDIX TO SECTION 605

STANDING TO CHALLENGE THE
MARITAL PRESUMPTION OF PATERNITY

State	Standing	Statutes/Case
Alabama	No	ALA. CODE § 26-17-6(a) (1992) Ex Parte Presse, 554 So. 2d 406 (Ala. 1989)
Alaska		Unknown
Arizona	Yes	ARIZ. REV. STAT. § 25-803 (Supp. 1997) <i>R.A.J. v. L.B.V.</i> , 817 P.2d 37 (Ariz. Ct. App. 1991)
Arkansas	Yes	<i>Willmon v. Hunter</i> , 761 S.W. 2d 924 (Ark. 1988)
California	No	CAL. FAM. CODE ANN. § 7630 (West 1998)
Colorado	Yes	<i>R. McG. v. J.W.</i> , 615 P.2d 666 (Colo. 1988)
Connecticut	Yes	<i>Weldenbacher v. Duclos</i> , 661 A.2d 988 (Conn. 1995)
Delaware	Yes	DEL. CODE ANN. tit. 13, § 805(a) (1993)
Florida	No	<i>G.F.C. V. S.G.</i> , 686 So. 2d 1382 (Fla. Dist. Ct. App. 1997)
Georgia	Yes	GA. CODE ANN. § 19-7-43 (1991)
Hawaii	Yes	HAW. REV. STAT. ANN. § 584-6(a) (Michie 1997)
Idaho	Yes	<i>Johnson v. Studley-Preston</i> , 812 P.2d 1216 (Idaho 1991)
Illinois	Yes	750 ILL. COMP. STAT. 45/7 (West 1993)
Indiana	Yes	IND. CODE § 31-14-4-1 (1997) <i>K. S. v. R. S.</i> , 669 N.E. 2d 399 (Ind. 1996)
Iowa	Yes	<i>Callender v. Skiles</i> , No. 276/98-308 (Iowa 1999)
Kansas	Yes	<i>D.B.S. by & through P.S. v. M.S.</i> , 888 P.2d 875 (Kan. App. 1995)
Kentucky	No	KY. REV. STAT. ANN. § 406.021 (Banks-Baldwin)
Louisiana	Yes	<i>Green v. Green</i> , 666 So.2d 1192 (La. Ct. App. 1995)
Maine	Yes	ME. REV. STAT. ANN. tit. 19 -A, § 1562 (West 1998)
Maryland	Yes	<i>Turner v. Whisted</i> , 607 A.2d 935 (Md. 1992)
Massachusetts	Yes	<i>C.C. v. A.B.</i> , 550 N.E.2d 365 (Mass. 1990)
Michigan	No	MICH. COMP. LAWS ANN. § 722.714 (West Supp. 1997) <i>Hauser v. Reilly</i> , 536 N.W. 2d 865 (Mich. Ct. App. 1995)
Minnesota	No	MINN. STAT. § 257.57 <i>Market v. Behm</i> , 394 N.W. 2d 239 (Minn. Ct. App. 1986)
Mississippi	Yes	<i>Ivy v. Harrington</i> , 644 So. 2d 1218 (Miss. 1994)
Missouri		Unknown
Montana	Yes	MONT. CODE ANN. § 40-6-107(1) (1997)
Nebraska	Yes	NEB. REV. STAT. § 43-1411 (1993)
Nevada	Yes	NEV. REV. STAT. § 126.071 (1997)
New Hampshire	Yes	N.H. REV. STAT. ANN. § 168-A:2 (Supp. 1997)
New Jersey	Yes	<i>M.F. v. N.H.</i> , 599 A.2d 1297 (N.J. Super. Ct. App. Div. 1991) (Subject to a “best interest” finding)
New Mexico	Yes	N.M. STAT. ANN. § 40-11-7 (Michie 1994)
New York		Unknown

State	Standing	Statutes/Case
North Carolina	Unclear	N.C. GEN. STAT. § 49-16 (1984)
North Dakota	No	<i>B.H. v. K.D.</i> , 506 N.W. 2d 368 (N.D. 1993)
Ohio	Yes	OHIO REV. CODE ANN. § 3111.04 (Banks-Baldwin Supp. 1998) <i>Crawford County Child Support Enforcement Agency v. Sprague</i> , 1997 WL 746770 (Ohio Ct. App. 1997)
Oklahoma	Yes	OKLA. STAT. ANN. tit. 10, § 3 (West 1998)
Oregon	Yes	OR. REV. STAT. § 109.125 (1)(e) (1997)
Pennsylvania	No	<i>Brinkley v. King</i> , 701 A.2d 176 (Pa. 1997)
Rhode Island	Unclear	R.I. GEN. LAWS § 15-8-2 (1996)
South Carolina	Yes	S.C. CODE ANN. § 20-7-952 (Lawyers Co-op 1985)
South Dakota		Unknown
Tennessee	Yes	TENN. CODE ANN. § 36-2-305 (Supp. 1996)
Texas	Yes	TEX. FAM. CODE ANN. § 160.110 (West 1997) <i>In re J.W.T.</i> , 872 S.W.2d 189 (Tex. 1994)
Utah	Yes	UTAH CODE ANN. § 78-45a-2 (1996)
Vermont		Unknown
Virginia	Yes	VA. CODE ANN. § 20-49-2 (Michie 1995)
Washington	Yes	<i>McDaniels v. Carlson</i> , 738 P.2d 254 (Wash. 1987)
West Virginia	Yes	<i>State ex. rel. Roy Allen S. v. Stone</i> , 474 S.E.2d 554 (W. Va. 1996)
Wisconsin	Yes	WIS. STAT. § 767.45 (1993) <i>In re Paternity of C.A.S.</i> , 468 N.W.2d 719 (Wis. 1991)
Wyoming	No	WYO. STAT. ANN. § 14-2-104 (Michie 1997) <i>A v. X, Y, & Z</i> , 641 P.2d 1222 (Wyo. 1982)

*Compiled by Jenny L. Womack, Austin, Texas (Advanced Family Law Seminar 1998, Univ. of Texas School of Law).

APPENDIX TO ARTICLE 8

TABLE OF GESTATIONAL AGREEMENT LAWS*

State	Status of Gestational Agreements	Statute
Alabama	Specifically “not covered” in prohibition against payment to parent for adoption of child	Code of Ala. § 26-10A-34 (1997)
Arizona	No, by statute	Ariz. Rev. Stat. Ann. § 25-218 (1996)
Arkansas	Yes, by statute	Ark. Code Ann. § 9-10-201 <i>et seq.</i> (Michie 1995)
California	Yes, by case law	<i>Marriage of Balduzzi</i> , 72 Cal. Rptr. 2d 280 (1998)
D.C.	No, by statute	D.C. Code Ann. §§ 16-401, 402 (1996)
Florida	Yes, by statute	Fla. Stat. Ann. §§ 63.212, 742.15 (West 1997)
Indiana	No, by statute	Ind. Code Ann. § 31-8-2.1 <i>et seq.</i> (Burns Cum. Supp. 1994)
Iowa	Yes, by statute	Iowa Code Ann. § 710.11 (West 1997)
Kentucky	No, compensation prohibited	Ky. Rev. Stat. Ann. § 199.590 (Michie/Bobbs-Merrill 1995)
Louisiana	No, compensation prohibited	La. Rev. Stat. Ann. § 2713 (West 1991)
Massachusetts	No, by case law	<i>RR v. MH</i>
Michigan	No, compensation prohibited	Mich. Comp Laws Ann. § 722.853 <i>et seq.</i> (West 1997)
Nebraska	No, compensation prohibited	Neb. Rev. Stat. § 25-21, 200 (1989)
Nevada	Yes, by statute	Nev. Rev. Stat. Ann. §§ 126.045, 126.051 (Michie 1995)
New Hampshire	Yes, by statute	N.H. Rev. Stat. Ann. § 168-B:16 <i>et seq.</i> (1996)
New Jersey	No, by case law	<i>Baby M</i> , 537 A.2d 1227 (1988)
New Mexico	No, compensation prohibited	Cite not available
New York	No, compensation prohibited	N.Y. Dom. Rel. Law § 121 <i>et seq.</i> (McKinney 1997)
North Dakota	No, by statute	N.D. Cen. Code § 14-18-05 (1991)
Ohio	Yes, by case law	<i>Balsito v. Clark</i> , 644 N.E.2d 760
Tennessee	Yes, by statute (vague)	Tenn. Code Ann. 36-1-102 (1996)
Utah	No, compensation prohibited	Utah Code Ann. § 76-7-204 (1997)
Virginia	Yes, by statute	Va. Code Ann. § 20-160 (Michie 1997)
Washington	No, compensation prohibited	Wash. Rev. Code Ann. § 26.26.210 (West 1997)

State	Status of Gestational Agreements	Statute
West Virginia	Yes, by statute	W. Va. Code § 48-4-16 (1997)
Wisconsin	Yes, by statute	Wis. Stat. Ann. § 69.14 (West 1997)

* Remaining jurisdictions have no statutory or case law on the subject. However, Illinois House of Representatives has bill to allow surrogacy (information as of May 1, 1999).

Source: The American Surrogacy Center, Inc. www.surrogacy.com; Organization of Parents Through Surrogacy www.opts.com. The Institute for Science, Law & Technology, Illinois Institute of Technology, “Changing Conceptions” by Lori B. Andrews, J.D. and Nanette Elster, J.D., M.P.H. (December 5, 1997).

Disclaimer: Information as represented in this chart has not been independently verified on a state by state search.

ARTICLE 7
PARENTAGE BASED ON EQUITABLE ESTOPPEL

SECTION 701. COURT AUTHORIZED TO REFUSE GENETIC TESTING.

(a) ~~On motion of the mother or the presumed father, a court may deny genetic testing of the mother, the child, and the presumed father if the court determines that:—~~

~~(1) the conduct of the mother or the presumed father creates an equitable estoppel;—~~
and

~~(2) an order for genetic testing may cause an inequitable result by negating the father-child relationship between the child and the presumed father.~~

(b) ~~In determining whether to grant or deny genetic testing based on equitable estoppel, the court shall consider the best interest of the child, including the following factors:—~~

~~(1) the length of time between the proceeding to contest his paternity and the time that the presumed father was placed on notice that he might not be the genetic father;—~~

~~(2) the length of time during which the presumed father has assumed the role of father of the child;~~

~~(3) the facts surrounding the presumed father's discovery of his possible nonpaternity;~~

~~(4) the nature of the father-child relationship;~~

~~(5) the age of the child;~~

~~(6) the harm to the child which may result if presumed paternity is successfully disproved;~~

~~(7) the extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and~~

~~(8) other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed father or the chance of other harm to the child.~~

(c) ~~In a proceeding involving the application of this article, the child must be represented by a guardian ad litem [who is an attorney].—~~

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

SECTION 702. ORDER BASED ON EQUITABLE ESTOPPEL. ~~If the court denies genetic testing, it shall issue an order determining that the presumed father is the father of the child.~~

Reporter's Notes

~~—See, Marilyn Ray Smith, *Paternity Litigation Involving Presumed Versus Putative Fathers: Conflicting Rights and Results*.~~