

DRAFT
FOR DISCUSSION ONLY
REVISION OF UNIFORM PARENTAGE ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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REVISION OF UNIFORM PARENTAGE ACT

With Prefatory Note and Reporter's Notes

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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1 **ARTICLE 1.**

2 **GENERAL PROVISIONS**

3 **SECTION 101. SHORT TITLE.** This [Act] may be cited as the “Uniform Parentage Act.”

4
5 **SECTION 102. DEFINITIONS.** In this [Act]:

6 (1) “Assisted reproduction” means a pregnancy resulting by means other than sexual
7 intercourse. The term includes:

8 (A) artificial insemination;

9 (B) donation of eggs;

10 (C) donation of an embryo;

11 (D) in vitro fertilization, commonly known as IVF, and transfer of an embryo; or

12 (E) intracytoplasmic sperm injection, commonly known as ICSI.

13 (2) “Child” means an individual of any age whose parentage may be determined under
14 this [Act].

15 (3) “Commencement” means the filing of the first pleading in a proceeding to
16 determine parentage.

17 (4) “Determination of parentage” means the establishment under this [Act] of the
18 parent-child relationship.

19 (5) “Donor” means an individual who produces eggs or sperm used for assisted
20 reproduction, whether or not a payment is made. The term does not include[:

21 (A)] an individual who provides eggs or sperm with the intent of becoming the
22 parent of a resulting child[; or

23 (B) a woman who gives birth to a resulting child except as provided in Article 9].

24 (6) “Ethnic or racial group” means a recognized group that an individual identifies as
25 his or her ancestry or that is so identified.

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

28 (A) analysis of deoxyribonucleic acid, commonly known as DNA;

29 (B) determination of the presence or absence of common blood-group antigens, red-blood-
30 cell antigens, human-leukocyte antigens, commonly known as HLA, serum enzymes, serum
31 proteins, or red-cell enzymes.

32 (8) “Gestational mother” means the woman who gives birth to the child.

1 (9) “Intended parent” means an individual, whether married or not, who enters into an
2 agreement under this [Act] providing that he or she will be the parent of a child born to a
3 surrogate through assisted reproductive technology irrespective of a genetic relationship.

4 (10) “Man” means a male individual of any age.

5 (11) “Parent” of a child means:

6 (A) the mother [excluding a gestational mother as defined in Article 9];

7 (B) an adoptive mother or father; or

8 (C) a man who is:

9 (i) presumed to be the father as provided in Section 204;

10 (ii) acknowledged to be the father as provided in Section 303; or

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

12 (12) “Parent-child relationship” means the legal relationship between a child and a
13 parent of the child.

14 (13) “Paternity index” means the ratio of the chance that the mother and a man of the
15 putative father’s ethnic or racial group conceived the child compared with the chance that the
16 mother and a man selected at random from that group conceived the child.

17 (14) “Presumed father” means a man who, by operation of law, is recognized to be the
18 father of a child under the factual circumstances described in Section 204 unless he is
19 determined not to be the father of that child under other provisions of this [Act] or a similar
20 law.

21 (15) “Probability of paternity” means the measure, for the ethnic or racial group of the
22 putative father, of the probability that the individual in question is the genetic father of the
23 child, expressed as a percentage incorporating the paternity index and a prior probability.

24 (16) “Putative father” means a man who claims to be, or is alleged to be, the genetic
25 father, or a possible genetic father, of a child, but whose paternity has not been determined.

26 The term does not include:

27 (A) a man presumed to be the father under Section 204;

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

29 (C) a male donor.

30 (17) “Specimen” means a sample of one or a combination of blood, buccal cells,
31 bone, hair, or other body tissue or fluid taken from each individual to be genetically tested.

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

5 (19) “Support-enforcement agency” means a public official or agency authorized to
6 seek:

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

8 (B) establishment or modification of child support;

9 (C) determination of parentage; or

10 (D) the location of obligors and their income and assets.

11 (20) “Tribunal” means a court, administrative agency, or quasi-judicial entity authorized
12 to determine parentage.

13 *Reporter’s Note*

14 *Sources: subsection (2) is derived from Uniform Child Custody Jurisdiction and*
15 *Enforcement Act § 102(2); subsection (7) is derived from Ohio Rev Code Section 3111.09*
16 *(E); subsection (16) is based on UCCJEA §§ 102(15), (16).*

17 *Although subsection (7)(A) seems to imply that either DNA testing or the alternatives*
18 *listed in (7)(B) are acceptable methods of genetic testing, DNA testing will always be*
19 *necessary to reach the level of certainty identified in § 504 for creating a presumption of*
20 *paternity in a proceeding. But, combinations of DNA and traditional testing can and are*
21 *used by some laboratories, and such combinations are included within the definition of*
22 *“genetic testing.”*

23 *The definition of “specimen” in subsection (15) lists constituent element of “body*
24 *tissue and fluids” in order to clarify biological terminology for the legal profession. In*
25 *states with statutes employing only the broad terms, courts and lawyers have evidenced*
26 *confusion about the fact that that buccal cells, bone, etc. are “body tissues.”*

27 **SECTION 103. APPLICATION OF [ACT].**

29 This [Act] governs every proceeding in this State in which the parentage of a child is at
30 issue.

31 *Reporter’s Note*

32 *This section makes clear that the Act applies not just in so-called “paternity suits,” but*
33 *in all disputes of parentage, whether by divorce, paternity, probate, or any other proceeding.*
34 *In contrast to Sections 17, 18, 22-25 of the Uniform Parentage Act of 1973, this Act does not*
35 *provide any significant substantive rules regarding enforcement, modification, support, birth*
36 *records, adoption, or termination of parental rights. Except for references to unspecified*
37 *rights and duties regarding custody, visitation, and child support, these matters are left to*
38 *other provisions in each state’s statutory scheme.*

1 **SECTION 104. TRIBUNAL OF STATE.** The [court, administrative agency, quasi-judicial
2 entity, or combination] [is the tribunal] [are the tribunals] of this State.

3 *Reporter's Note*

4 *Source: UIFSA § 102.*

6 **ARTICLE 2**

7 **PARENT-CHILD RELATIONSHIP**

8
9 **SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.**

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

12 (1) the woman's having given birth to the child [except as otherwise provided in
13 Article 9];

14 (2) a determination of the woman's maternity by a tribunal of competent
15 jurisdiction; [or]

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

17 (4) the woman's status as an intended parent of a child born pursuant to an
18 approved gestational agreement as provided in Article 9].

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

20 (1) a presumption of the man's paternity of the child as provided in Section 204;

21 (2) the man's jointly signing with the mother an unchallenged acknowledgment of
22 paternity under Article 3;

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

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

25 (5) the man's consent to assisted reproduction of the child under Article 8[; or

26 (6) the man's status as an intended parent of a child born pursuant to a to an
27 approved gestational agreement as provided in Article 9].

28 *Reporter's Note*

29 *Derived from § 4 U.P.A. (1973), and expanded to include all possible bases of the*
30 *parent-child relationship. Subsections (a)(4) and (b)(6) are in brackets to recognize the fact*
31 *that the Drafting Committee anticipates some states may choose not to enact Article 9 of this*
32 *act.*

1 (A) he has acknowledged his paternity of the child in a writing filed with
2 the [appropriate tribunal or state agency responsible for maintaining birth records] before
3 the effective date of Article 3;

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

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

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

11 ARTICLE 3

12 VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

13
14 **SECTION 301. JOINT ACKNOWLEDGMENT OF PATERNITY.** The mother and the
15 putative father of a child may jointly sign an acknowledgment of paternity as provided in this
16 article without regard to their marital status before or after the birth of the child.

17 *Reporter’s Note*

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

19
20 **SECTION 302. FORM OF ACKNOWLEDGMENT OF PATERNITY.** The [appropriate
21 state agency] shall prepare a form entitled “acknowledgment of paternity” to comply with this
22 article. The form must contain provisions for rescission of the acknowledgment.

23 *Reporter’s Note*

24 *Source: 42 U.S.C. Section 666(a)(5)(C)(i); 42 U.S.C. Section 666(a)(D)(ii). The Office*
25 *of Child Support Enforcement, U.S. Dept. Health and Human Services, has prescribed the*
26 *minimum requirements for an acknowledgment, Federal Register, January 23, 1998. GET*
27 *CFR CITE.*

28
29 **SECTION 303. EFFECT OF ACKNOWLEDGMENT OF PATERNITY.**

30 (a) Subject to the effect of a rescission of the acknowledgment or denial of paternity as
31 provided in Section 308, an acknowledgment of paternity signed after the effective date of
32 this [Act] by both the mother and a putative father is:

33 (1) equivalent to a determination of paternity by a tribunal; and

1 (2) subject to the rights of a signatory to rescind the acknowledgment and to
2 contest the determination as provided in this article.

3 (b) If the acknowledgment of paternity states that there is a presumed father of the child
4 under Section 204, the acknowledgment is effective only if the presumed father signs a denial
5 of paternity.

6 *Reporter's Note*

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

8
9 **SECTION 304. FORM OF DENIAL OF PATERNITY.** The [appropriate state agency]
10 shall prepare a form entitled “denial of paternity” to comply with this article.

11
12 **SECTION 305. EFFECT OF DENIAL OF PATERNITY.** Subject to the effect of a
13 rescission of an acknowledgment of paternity as provided in Section 308, a denial of
14 paternity signed by a presumed father and filed as a part of, or in conjunction with, an
15 acknowledgment of paternity signed by the mother and a putative father is a legal
16 determination of:

- 17 (1) the paternity of the putative father; and
18 (2) the nonpaternity of the presumed father.

19
20 **SECTION 306. ADDITIONAL PROVISIONS RELATING TO FORMS.**

21 (a) Defects or omissions in a form of acknowledgment of paternity or denial of paternity is
22 not a basis for voiding the acknowledgment or denial if the tribunal determines that:

23 (1) the form for acknowledgment of paternity informs the signatory that the putative
24 father, by signing the acknowledgment of paternity with the consent of the mother:

- 25 (A) becomes the father of the child;
26 (B) is under a legal duty to support the child; and
27 (C) may be granted rights of custody or visitation; or

28 (2) the form for denial of paternity informs the signatory that the presumed father, by
29 signing the denial of paternity with the consent of the mother:

- 30 (A) denies that he is the genetic father of the child;
31 (B) is not under a legal duty to support the child; and
32 (C) may not be granted rights of custody or visitation.

1 (b) An acknowledgment and denial of paternity may be contained in a single document
2 and may be signed in counterparts.

3 (c) An acknowledgment and a denial of paternity may be signed before the birth of the
4 child..

5
6 **SECTION 307. VALIDITY OF FORMS.** The validity of an acknowledgment or denial of
7 paternity is not affected by changes to the form occurring after the date of signing if it met the
8 requirements of state law at the time it was signed.

9
10 **SECTION 308. RESCISSION OF ACKNOWLEDGMENT OF PATERNITY.**

11 (a) An acknowledgment of paternity may be rescinded in a writing, signed by the
12 rescinding signatory, and witnessed or notarized, before the earlier of:

13 (1) the expiration of 60 days; or

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

16 (b) An acknowledgment of paternity may be contested in a tribunal after the 60-day period
17 for rescission and not later than two years after the time for rescission has expired. The contest
18 may be based only on fraud, duress, or material mistake of fact. The burden of proof is on the
19 contestant. The legal responsibility, including child support, of a signatory arising from the
20 acknowledgment is not suspended during the contest, except for good cause shown.

21 (c) If the acknowledgment of paternity was signed before the birth of the child, the 60-
22 day period for rescission is measured from the birth of the child.

23 (d) Rescission of an acknowledgment of paternity voids the acknowledgment and places
24 the parties in the same legal position as if the acknowledgment had never been signed.

25 *Reporter's Note*

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

27
28 **SECTION 309. PROCEDURE FOR RESCISSION OF ACKNOWLEDGMENT.**

29 (a) To effectuate rescission of an acknowledgment of paternity, the writing rescinding the
30 acknowledgment must be filed with the [state agency for maintaining birth records] within the
31 time prescribed in Section 308(a).

32 (b) Upon timely filing of a rescission, the [state agency for maintaining birth records] shall
33 mail a copy of the rescission to each individual who signed the acknowledgment, denial, or

1 rescission The copy must be sent to the addresses shown for each in the acknowledgment, denial,
2 or rescission.

3
4 **SECTION 310. RATIFICATION BARRED.** A tribunal is neither required nor permitted to
5 ratify an unchallenged acknowledgment of paternity.

6 *Reporter's Note*

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

8
9 **SECTION 311. AGENCY TO PROVIDE SERVICES.** The support-enforcement agency
10 shall offer services for the voluntary establishment of paternity to:

11 (1) hospitals; and

12 (2) other organizations participating in this State's program for voluntary establishment
13 of paternity.

14 *Reporter's Note*

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

16
17 **SECTION 312. FULL FAITH AND CREDIT.** A tribunal of this State shall give full faith
18 and credit to an acknowledgment of paternity signed in another State if the acknowledgment
19 has been signed in apparent compliance with the provisions of the other State's law.

20 *Reporter's Note*

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

22 23 **ARTICLE 4**

24 **PUTATIVE-FATHER REGISTRY**

25 **PART 1. OPERATION OF REGISTRY**

26 **SECTION 401. ESTABLISHMENT OF REGISTRY.** The putative-father registry is
27 established in the [appropriate state agency].

28
29 **SECTION 402. CLAIM OF PATERNITY.**

30 (a) Except as provided in subsection (b), a man claiming to be the putative father of a
31 child who is or may be the subject of adoption shall register a claim of paternity with the
32 [appropriate state agency].

33 (b) A man is not required to register a claim in the putative-father registry if:

1 (1) a father-child relationship between the man and the child has been established
2 under the provisions of Articles 2, 3, or 6; or

3 (2) the man commences a proceeding to determine his parentage before a tribunal
4 has terminated his parental rights.

5 (c) A claim of paternity may be registered before the birth of a child, and the claim must
6 be registered no later than 30 days after the birth of the child.

7 (d) A man who registers a claim of paternity with the putative-father registry shall
8 promptly notify the registry in writing of a change in the information registered. The
9 [appropriate state agency] shall incorporate all new information received by it into its records,
10 but does not have a duty to seek to keep current the information maintained in the registry.

11 *Reporter's Note*

12 *The previous rejection by the Conference of a putative-father registry should be*
13 *reexamined in the light of the fact that a majority of states have adopted the concept. The primary*
14 *purpose of such a registry is to facilitate infant adoptions by licensed agencies. Limiting the*
15 *major impact of failure to register with a putative-father registry to infant adoptions seems*
16 *appropriate. If an infant adoption is not consummated, throughout the minority of the child the*
17 *putative father and the mother remain responsible for support and eligible for custody or*
18 *visitation. That fact situation distinguishes the infant adoption in which both parents abdicate*
19 *those right and duties for the presumptive benefit of the child.*
20

21 **SECTION 403. CLAIM OF PATERNITY FORM ; MANDATORY.**

22 (a) The [appropriate state agency] shall prepare a form, to be signed under penalty of
23 perjury, for registering a claim of paternity with the agency. The form must provide notice to the
24 putative father that:

25 (1) he has a right to commence a proceeding for paternity to establish his claim as a
26 father, which may be forfeited if he fails to do so;

27 (2) the information disclosed on the form may be used to establish a duty of child support;

28 (3) services are available to him through the state's child-support enforcement agency to
29 establish parentage; and

30 (4) if the tribunal determines that he is the father of the child, he may seek to be awarded
31 custody of or visitation with the child.

32 (b) The putative-father registry shall make forms for registration available to:

33 (1) hospitals and facilities for giving birth;

34 (2) licensed child-placing agencies;

- 1 (3) county, district, and municipal clerks;
- 2 (4) judicial offices; and
- 3 (5) correctional facilities.

4 (c) The claim of paternity must be filed on the form prepared by the [appropriate state
5 agency.]

6
7 **SECTION 404. KNOWLEDGE OF POSSIBLE PREGNANCY.**

8 (a) An individual who has sexual intercourse is deemed to have knowledge that sexual
9 intercourse with an individual of the opposite sex can result in pregnancy.

10 (b) Ignorance of a pregnancy or of the birth of a child does not excuse the legal
11 consequences of failing to register.

12
13 **SECTION 405. FURNISHING OF INFORMATION; CONFIDENTIALITY.**

14 (a) If the mother's address has been provided, the [the agency that maintains the
15 putative-father registry] shall send her a copy of the notice of a man's claim of paternity to
16 that address. The registry does not have a duty to locate the mother.

17 (b) Information contained in the putative-father registry is confidential and may be
18 released on request only to:

- 19 (1) a tribunal;
- 20 (2) the mother of the child who is the subject of the registration;
- 21 (3) an authorized agency;
- 22 (4) a licensed child-placing agency;
- 23 (5) an attorney licensed to practice law in this State who is participating or
24 assisting in a proceeding affecting the parent-child relationship, including termination of the
25 parent-child relationship with the putative father or a proceeding for the adoption of the child
26 the putative father claims to have fathered;
- 27 (6) the putative-father registry of another state.

28 (c) The [appropriate state agency] must furnish information regarding the putative-
29 father registry by electronic data exchange or any other available means to [other appropriate
30 agencies].

1 **SECTION 406. PENALTY FOR RELEASING INFORMATION.** A person commits a
2 [appropriate level misdemeanor] if the person intentionally releases to the public information
3 about an individual whose name appears in the registry, or makes other use of the information
4 in violation of this article.

5
6 **SECTION 407. REVOCATION OF CLAIM OF PATERNITY.** A man who files a claim
7 of paternity may revoke the claim at any time by sending to the putative-father registry a
8 written statement signed by the putative father and witnessed or notarized. The revocation
9 must include a declaration that, to the best of the putative father’s knowledge and belief:

10 (1) he is not the father of the child; or

11 (2) a tribunal has determined paternity and an individual other than he has been
12 determined to be the father of the child.

13
14 **SECTION 408. REMOVAL OF PUTATIVE FATHER’S NAME.** If the tribunal
15 determines that a putative father is not the father of the child, the tribunal shall order the
16 [appropriate state agency] to remove the putative father’s name from the registry.

17
18 **SECTION 409. UNTIMELY ATTEMPT TO FILE CLAIM.** If the putative-father registry
19 receives a request to register a claim of paternity made more than [30] days after the birth of
20 the child or receives notice of an order terminating the rights of a putative father with regard
21 to a child from the clerk of a tribunal of competent jurisdiction, the registry shall:

22 (1) refuse to file a claim of paternity; and

23 (2) notify the putative father that his request to file a claim has been refused,
24 stating the reason for the refusal.

25
26 **SECTION 410. FEES FOR REGISTRY.**

27 (a) A fee may not be charged for filing a claim of paternity.

28 (b) [Except as otherwise provided in subsection (c), the] [The] putative-father registry
29 may charge a reasonable fee for making a search of the registry and for furnishing a
30 certificate.

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

3
4 **SECTION 411. ADMISSIBILITY OF REGISTERED INFORMATION.** Information
5 maintained in the putative-father registry is admissible in other legal proceedings.

6 [Sections 411-420 reserved for expansion]

7
8 **PART 2. SEARCH OF REGISTRIES**

9
10 **SECTION 421. SEARCH OF APPROPRIATE PUTATIVE-FATHER REGISTRIES.**

11 (a) A [petitioner] for adoption of a child who does not have an established father-child
12 relationship under Article 2, 3, or 6 must obtain a certificate of search of the putative-father
13 registry of this State.

14 (b) If the [petitioner] has reason to believe that the conception of the child may have
15 taken place in another State, the [petitioner] must also obtain a certificate of diligent search
16 from the putative-father registry of that State if such a registry is maintained there.

17
18 **SECTION 422. CERTIFICATE OF SEARCH OF REGISTRY.**

19 (a) On request, the [agency that maintains the putative-father registry] shall furnish a
20 certificate attesting to the results of a search of the registry regarding a claim of paternity to:

- 21 (1) a tribunal;
22 (2) the mother of a child;
23 (3) an authorized agency;
24 (4) a licensed child-placing agency; or
25 (5) an attorney licensed to practice law in this State who is participating or

26 assisting in a termination of parental rights or an adoption.

27 (b) The certificate provided by the [applicable state agency] must be signed by
28 [applicable individual or office] and state that:

29 (1) a diligent search has been made of the putative-father registry maintained by
30 the [agency]; and

- 31 (2) a registration:

1 (A) has been found pertaining to the putative father of a child who is the
2 subject of an adoption containing the information required to identify the man claiming to be
3 the putative father; or

4 (B) has not been found pertaining to the putative father of a child who is the
5 subject of an adoption.
6

7 **SECTION 423. FILING CERTIFICATE OF SEARCH.**

8 (a) A [petitioner] must file the certificate with the tribunal before a trial on the merits in
9 a proceeding for termination or adoption may be completed.

10 (b) Filing a certificate of search of the registry stating that a registration has not been
11 found pertaining to the putative father of a child [less than one year of age] who is the subject
12 of a proceeding for termination or adoption dispenses with the necessity of [personal or
13 constructive service of citation] on the putative father regarding a proceeding for termination
14 of his possible parental rights or for adoption of the child.

15 Sections 423-430 reserved for expansion]
16

17 **PART 3. EFFECT OF REGISTRATION OR FAILURE TO REGISTER**

18 **SECTION 431. NOTICE OF PROCEEDING TO REGISTERED PUTATIVE**

19 **FATHER.** Notice of a proceeding affecting a child who is, or may be, the subject of adoption
20 must be given to a man who has timely registered a claim of paternity with the putative-father
21 registry. Notice must be given by service as in civil cases.
22

23 *Reporter's Note*

24 *This section is the logical conclusion to the legal rationale for establishing a putative-*
25 *father registry. In a termination or adoption proceeding, the registry provides a clear*
26 *procedure for resolving that a putative father intends to assert his rights with regard to the*
27 *child. If he registers, termination of his rights and adoption of his child may not proceed*
28 *without notice to him, thereby affording him the opportunity to assert his paternity and claims*
29 *for custody or visitation*
30

31 **SECTION 432. TERMINATION OF RIGHTS OF REGISTERED PUTATIVE**

32 **FATHER.**

33 (a) The rights of a putative father who has registered with the putative-father registry
34 under this article [, or with a putative-father registry in the state in which conception may

1 have taken place,] may be terminated if he does not, before the final hearing in the suit,
2 respond by timely filing an acknowledgment of paternity or a counterclaim to establish his
3 paternity under this [Act]:

4 (1) after being personally served with notice; or

5 (2) after being constructively served with notice if the [petitioner's] attempt to
6 serve him personally has been unsuccessful.

7 (b) The tribunal shall not issue an order terminating rights of a putative father unless the
8 tribunal finds that the [petitioner] exercised due diligence in attempting to obtain service on
9 the putative father. The order shall make specific findings regarding the exercise of due
10 diligence of the [petitioner].

11 *Reporter's Note*

12 *Legislative drafters may decide that this section is more appropriately placed with the*
13 *provisions for termination of parental right or adoption.*
14

15 **SECTION 433. EFFECT OF FAILURE TO FILE WITH REGISTRY; CHILD LESS**
16 **THAN ONE YEAR OF AGE.**

17 (a) The rights of a putative father of a child less than one year of age may be terminated
18 without notice if:

19 (1) he failed to register with a registry under this article; and

20 (2) he has not filed a proceeding to establish his paternity at the time of rendition
21 of the decree of [termination or adoption].

22 (b) In a proceeding to [terminate the rights of a putative father and adopt a child less
23 than one year of age] a man who fails to file a claim of paternity of the child with the
24 putative-father registry within [30] days after birth of the child may assert an interest in the
25 child only by commencing a procedure to establish his paternity before the termination of his
26 rights has occurred.

1 *Reporter's Note*

2 *This section is the obverse logical conclusion to the legal rationale for establishing a*
3 *putative-father registry. In a termination or adoption proceeding, the registry provides a*
4 *clear procedure for resolving that a putative father does not intend to assert his rights with*
5 *regard to the child. Although the registry protects the putative father's right to notice in a*
6 *termination or adoption proceeding, his failure to register waives those such rights. Thus the*
7 *registry is both a first step for claiming rights of a putative father and the end of those rights*
8 *for those persons who do not register. It a man fails to register with the putative-father*
9 *registry, the termination and adoption may proceed without fear of a belated claim, most*
10 *particularly a claim coming after adoptive parents have received custody of the child. This*
11 *expedited procedure greatly facilitates infant adoption, which in truth explains the existence-*
12 *-and popularity--of the registries and their strong support by the adoption community. As of*
13 *January 1999, approximately 27 states have enacted similar statutes.*
14

15 **SECTION 434. EFFECT OF FAILURE TO FILE CLAIM WITH REGISTRY; CHILD**
16 **ONE YEAR OLD OR MORE.** Notice of a proceeding affecting a child one year of age or
17 more must be given to a putative father whether or not the man has timely registered a claim
18 of paternity with the appropriate putative-father registry. Notice must be given by service as
19 in civil cases.

20 [Sections 434-499 reserved for expansion]
21

22
23 **ARTICLE 5**
24 **GENETIC TESTING**
25

26 **SECTION 501. APPLICATION OF ARTICLE.** This article applies to genetic testing of an
27 individual who:

- 28 (1) submits voluntarily to testing; or
29 (2) is ordered by a tribunal or by the support-enforcement agency to be tested.

30 *Reporter's Note*

31 *This section is intended to avoid problems with regard to the admissibility of the result*
32 *of genetic testing voluntarily submitted to such as those encountered in* *Catawba County v.*
33 *Khatod, 479 S.E. 2d 270 (N.C. App 1997) and* *Yokley v. Townsend, 849 S.W. 2d 722 (Mo.*
34 *App. W.D. 1993).*
35

36 **SECTION 502. ORDER FOR TESTING.**

1 (a) The tribunal or support-enforcement agency shall order the parties and the child to
2 submit to genetic testing as soon as feasible if the request for testing is supported by the
3 sworn statement of a party:

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

6 (2) denying paternity and setting forth facts establishing a reasonable possibility of
7 the nonexistence of sexual contact between the parties or alleging the possible paternity of
8 another man.

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

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

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

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

16 (c) If the request for genetic testing is made before the birth of the child, the tribunal or
17 support enforcement agency shall order the testing of the child as soon as medically practical
18 after birth, but may not order the mother to submit to collection of a specimen from the fetus.

19 (d) If two or more men are identified as the putative father of a child, the tribunal may
20 order the men to submit to genetic testing.

21 (e) If there is an admission of paternity, the parties may waive or a tribunal may
22 dispense with genetic testing.

23 (f) The tribunal may decline to order genetic testing as provided in this section if the
24 tribunal determines that Article 7 applies to the proceeding.

25 *Reporter's Note*

26 *Subsection (a) and (b) conform to the mandates of 42 U.S.C. § 666(a)(5)(B)(i)(I)(II) and*
27 *§ 666(a)(5)(F)(i)(I)(II).*

28 *As of the date of this writing, the Secretary of Health and Human Services has not*
29 *officially designated any accreditation bodies as referenced in subsection (b)(3). However,*
30 *Information Memorandum O.C.S.E.-IM-97-03 of April 10, 1997, from the Deputy Director of*
31 *O.C.S.E. identifies the American Association of Blood Banks and American Society for*
32 *Histocompatibility and Immunogenetics as meeting this requirement.*
33

34 **SECTION 503. REQUIREMENTS OF GENETIC TESTING.**

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

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

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

8 (2) the name of the person collecting the specimens;

9 (3) the place and date of the collection of the specimens;

10 (4) the name of person receiving the specimens in the testing laboratory; and

11 (5) the date the specimens are received.

12 (c) The specimen used in the testing need not be the same for each person undergoing
13 genetic testing.

14 (d) Based on information provided by an individual about his or her ethnic or racial
15 groups, the testing laboratory shall determine the data bases to select frequencies for use in
16 the calculations. If there is disagreement as to the testing laboratory's choice:

17 (1) the individual objecting may require the testing laboratory within [30] days
18 after receipt of the test to recalculate the probability of paternity using an ethnic or racial
19 group different from that used by the laboratory;

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

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

24 (B) obtain another testing laboratory to make its own calculations; and

25 (3) the testing laboratory may use its own statistical estimate, if the matter is not
26 resolved as to which ethnic or racial group is appropriate, and, if available, statistics for any
27 other ethnic or racial group requested.

28 (e) an individual who has been tested may require additional genetic testing to be
29 conducted if, after a recalculation using a different ethnic or racial group, the genetic test does
30 not create a presumption of paternity as provided in Section 504.

31 (f) The tribunal shall permit the omission of further genetic testing if:

1 (1) the costs of testing have reached an amount that the tribunal determines to be
2 the greatest amount that may reasonably be borne by one or more parties to the suit; or

3 (2) the testing conducted excludes the putative father as the genetic father of the
4 child.

5 *Reporter's Note*

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

10 *Subsection (g)(2) directs that once genetic testing shows that an alleged father is not*
11 *the father of the child, testing has accomplished its task.*

12
13 **SECTION 504. GENETIC TESTING; PRESUMPTION.**

14 (a) A man is rebuttably presumed to be the father of the child tested if the genetic testing
15 complies with this article and the results disclose:

16 (1) the man has at least a [99.0 %; 99.99 %] probability of paternity, using a prior
17 probability of 0.50, as calculated by using the paternity index obtained in the testing; and

18 (2) a combined paternity index of at least [100 to 1; 10,000 to 1].

19 (b) A genetic test establishing a presumption of paternity as provided in subsection (a)
20 may be rebutted only by an additional genetic test meeting the requirements of this article
21 which:

22 (1) excludes the man as a possible father of the child; or

23 (2) identifies another man as a possible father of the child.

24 (c) Except as otherwise provided in Section 510, if another man is identified by a
25 second genetic test as a possible father of the child, the tribunal shall order both men to
26 submit to additional genetic testing that complies with the requirements of this article.

27 (d) If at the preliminary conference no evidence of an additional genetic test is
28 presented to rebut a presumption of paternity established under subsection (a), the tribunal
29 shall issue a final order determining the man to be the father of the child.

30 (e) The tribunal shall set the proceeding for final hearing if it finds that the genetic
31 testing:

32 (1) does not exclude the putative father as the genetic father of the child; and

33 (2) fails to establish a presumption under subsection (a) that the putative father is
34 the genetic father of the child.

1 (f) Subject to a party’s right to additional genetic testing as provided in Section 507, the
2 tribunal shall dismiss with prejudice a proceeding to determine parentage if it finds that
3 genetic testing excludes a man as the father of the child.

4 *Reporter’s Note*

5 *The inclusion of a 99.99% probability of paternity in the tentative draft for the Los*
6 *Angeles meeting caused a stir sufficient to warrant brackets around the proposal.*

7 *The appropriate standard for genetic testing is recited in this section, which identifies*
8 *the level of testing needed to establish a presumption of paternity. The point of the standard,*
9 *after all, is to establish a level of testing that will sustain a finding of paternity on the*
10 *genetic evidence alone. There is no reason for the court to require a particular level of*
11 *testing—the[99.99% or 99.0%] level simply is the point at which a presumption of paternity*
12 *is appropriate. It is important for bench and bar to understand that a positive genetic test at*
13 *a lower level is still evidence of paternity.*

14 *Subsection (f) is designed to avoid situations in which the trial court refused to dismiss*
15 *a paternity suit despite the exclusion of the respondent as the genetic father, see Cable v.*
16 *Anthou, 449 Pa. Super. 553, 674 A.2d 732, appeal granted, 546 Pa 140, 683 A.2d 290*
17 *(1996); In re Paternity of Bratcher, 551 N.E.2d 1160 (Ind. App. 1 Dist. 1990).*

18 *The provision for testing for exclusion of falsely accused men has been eliminated,*
19 *notwithstanding the fact that some states still employ that procedure. For example, Texas*
20 *relies strictly on the exclusion of paternity; Maryland and Hawaii have test requirements*
21 *based on the probability of exclusion, and a presumption based on the combined paternity*
22 *index in Hawaii and the probability of paternity in Maryland; Kentucky uses both the*
23 *combined paternity index and probability of paternity as a presumption.*

24 *Moreover, the approach of § 504 to employ both the combined paternity index and*
25 *the probability of paternity will help avoid confusion in courts in those few states that now*
26 *use only the combined paternity index as a presumption.*
27

28 **SECTION 505. GENETIC TESTING OF CHILD WITH PRESUMED FATHER.** If a
29 child has a presumed father, the results of genetic testing are inadmissible to determine
30 parentage unless performed:

- 31 (1) with the consent of the mother and the presumed father; or
32 (2) pursuant to an order of a tribunal.

33
34 **SECTION 506. COSTS OF GENETIC TESTING.**

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

- 36 (1) by the support-enforcement agency in a proceeding commenced by that
37 agency;
38 (2) by the party who made the request;
39 (3) as agreed upon by the parties; or

1 (4) as ordered by a tribunal.

2 (b) The tribunal may order reimbursement from a party if the result of the genetic test is
3 contrary to the position of that party.

4 *Reporter's Note*

5 *Source: U.P.A. § 11; 42 U.S.C. § 666(a)(5)(B)(ii)(I); see Little v. Streater, 454 U.S. 1,*
6 *101 S. Ct. 2202, 68 L. Ed. 2d 627 (1981).*

7
8 **SECTION 507. ADDITIONAL GENETIC TESTING.** The tribunal or the support-
9 enforcement agency shall order additional genetic testing on the request of an individual
10 contesting the result of the original testing. Additional testing need not be ordered until the
11 contestant provides advance payment for that testing.

12 *Reporter's Note*

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

14
15 **SECTION 508. GENETIC TESTING WHEN NOT ALL PERSONS AVAILABLE.**

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

19 (b) If a specimen from the putative father, the presumed father or the mother is not
20 available for genetic testing, a tribunal on its own motion or upon request of a party, as
21 appropriate, may order the following persons to submit to genetic testing by a laboratory:

- 22 (1) the parents of the presumed or putative father or the mother;
23 (2) brothers and sisters of the presumed or putative father or the mother;
24 (3) other children of the presumed or putative father and their mothers;
25 (4) other children of the mother and their fathers; and
26 (5) other persons considered appropriate by the testing laboratory.

27 *Reporter's Note*

28 *The addition of "or the mother" in § 508(b) is somewhat confusing given the fact*
29 *that (a) already provides for testing without the mother. In rare cases if both the mother and*
30 *alleged father are missing, testing the mother's relatives may be useful; thus, the term is*
31 *included to accommodate those cases where the mother and putative father are both*
32 *missing. If only the mother is missing, as provided for in § (a), there is generally no need to*
33 *collect samples from the mother's relatives..*

1 (1) each parent as to whom the parent-child relationship has not been terminated;
2 and

3 (2) a putative father, unless an affidavit of [waiver of claim of paternity of a child
4 signed by the putative father] is attached to the [petition].

5 (b) An individual, governmental entity, adoption agency, or licensed child-placing
6 agency, which has asserted an interest in the child must be joined as parties to a proceeding to
7 determine parentage.

8
9 **SECTION 604. NO LIMITATION; CHILD WITHOUT PRESUMED FATHER.**

10 (a) A proceeding to determine parentage of a child having no presumed father may be
11 commenced:

12 (1) at any time, even after the child becomes an adult; and

13 (2) after an earlier proceeding was dismissed because a statute of limitation had
14 expired.

15 (b) This section does not apply to an issue of heirship.

16 *Reporter's Note*

17 *Source: UPA (1973) §§ 6, 7.*

18
19 **SECTION 605. LIMITATION; CHILD WITH PRESUMED FATHER.**

20 (a) Except as otherwise provided in subsections (b) and (c) and Article 7, a proceeding
21 seeking to negate the father-child relationship by rebutting the presumption of paternity
22 provided in Section 204 must be commenced not later than [two] years after the birth of the
23 child.

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

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

28 (2) the presumed father has not treated the child as his own.

29 (c) The tribunal shall dismiss a proceeding under subsection (b) commenced more than
30 [two] years after the birth of the child unless the party seeking to establish that the presumed
31 father is not the father of the child demonstrates that:

32 (1) the proceeding is in the best interest of the child;

1 (2) the presumed father of the child has not resided in the same household as the
2 child in a father-child relationship or did not treat the child as his own;

3 (3) the presumed father of the child does not seek a determination by the tribunal
4 naming him as the father of the child;

5 (4) no other man has been determined to be the father of the child; and

6 (5) no other man has signed an acknowledgment of paternity pursuant to Section
7 204(a)(4) or Article 3.

8 *Reporter's Note*

9 *Source: UPA (1973) § 6.*

10 **SECTION 606. EFFECT OF DETERMINATION OF PARENTAGE.**

12 (a) Except as provided in subsection (c), a determination of parentage is binding on all
13 persons if the determination satisfies the jurisdictional requirements of [Section 201 of the
14 Uniform Interstate Family Support Act].

15 (b) In a suit to dissolve a marriage the tribunal is deemed to have determined parentage
16 if it:

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

19 (2) provides an order for support of the child or awards custody of or visitation
20 with the child to the husband.

21 (b) A child, during minority, may not challenge the determination or establishment of
22 parentage made under this [Act] if:

23 (1) the earlier determination was based on genetic testing and this fact is declared
24 in the determination or is otherwise shown of record; or

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

26 (c) A determination of parentage made consistently with this section is binding upon the
27 support-enforcement agency and any other state agency.

28 (d) A person who is not a party to a proceeding under this [Act] may claim benefit of the
29 determination of parentage in another proceeding commenced by or against the person who is
30 not a party.

31 **SECTION 607. PERSONAL JURISDICTION.**

1 (a) A tribunal of this State having jurisdiction to determine parentage may exercise
2 personal jurisdiction over a nonresident individual, or the guardian or conservator of an
3 individual, if the conditions prescribed in [Section 201 of the Uniform Interstate Family
4 Support Act] are met.

5 (b) Lack of jurisdiction over a particular party does not preclude the tribunal from
6 making a final determination binding on a party over whom the tribunal has personal
7 jurisdiction.

8
9 **SECTION 608. CHOICE OF LAW.** The tribunal shall apply the law of this State to
10 determine the parent-child relationship. The applicable law does not depend on:

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

13 *Reporter's Note*

14 *Source: UIFSA § 303; UPA (1973) § 8(b). This section simplifies choice of law*
15 *principles; the local tribunal always applies local law.*

16
17 **SECTION 609. VENUE.** A proceeding to determine paternity must be commenced in the
18 [county] of this State in which:

- 19 (1) the child resides or is found;
20 (2) the [respondent] resides or is found if the child does not reside in this State; or
21 (3) a suit for probate of the presumed or putative father's estate has been commenced.

22 *Reporter's Note*

23 *Source: UPA (1973) § 8.*

24
25 **SECTION 610. JOINDER OF ACTIONS.** A proceeding to determine parentage may be
26 joined with a proceeding for divorce, annulment, legal separation, separate maintenance,
27 custody, visitation, support, termination of parental rights, adoption, or probate or
28 administration of an estate.

29 *Reporter's Note*

30 *Source: UPA (1973) § 8(2).*

31
32 **SECTION 611. PROCEEDING STAYED UNTIL AFTER BIRTH.** Except as prohibited
33 in Section 502(c), a proceeding may be commenced under this article before or after the birth
34 of the child. The proceeding may not be concluded until after the birth, but service of process,

1 the taking of depositions to perpetuate testimony and the collection of specimens for genetic
2 testing may be pursued at any time after the proceeding is commenced.

3
4 **SECTION 612. REPRESENTATION OF CHILD.**

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

6 (b) In a final hearing on the merits to determine parentage it is rebuttably presumed that
7 the interests of the child are adequately represented by the party bringing the proceeding to
8 determine parentage. However, if the tribunal finds that no party to the proceeding adequately
9 represents the interests of the child, the tribunal shall appoint an [attorney ad litem] to
10 represent the child.

11 *Reporter's Note*

12 *This section rejects UPA (1973) § 9.*

13
14 **SECTION 613. HEARINGS AND RECORDS; CONFIDENTIALITY.**

15 (a) On request of a party, for good cause shown a hearing under this article may be
16 closed.

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

20 *Reporter's Note*

21 *Source: UPA (1973) § 20.*

22
23 **SECTION 614. EFFECT OF PRIVATE AGREEMENT.** The tribunal may approve an
24 agreement between a presumed or putative father and the mother if the tribunal determines
25 that the agreement is in the best interest of the child.

26 *Reporter's Note*

27 *Source: UPA (1973) § 13(a)(2); UPUFA § 2(b); see Section 644.*

28
29 **SECTION 615. MOTHER-CHILD RELATIONSHIP.** As far as practicable, the provisions
30 of this [Act] relating to father-child proceedings apply to a proceeding to determine the
31 mother-child relationship.

32 [Sections 616-620 reserved for expansion.]

33
34 **PART 2. ADMISSION OF PATERNITY**

1 **SECTION 621. ADMISSION OF PATERNITY AUTHORIZED.** A [respondent] in a
2 proceeding under this [Act] may admit to the paternity of a child by signing an admission of
3 paternity or by admitting paternity at an appearance or hearing in a proceeding to determine
4 parentage of the child.

5 *Reporter's Note*

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

7
8 **SECTION 622. ORDER BASED ON ADMISSION.** The tribunal shall issue an order
9 determining the child to be the genetic child of the putative father if the tribunal finds that:

10 (1) the admission of paternity was made as provided in this article; and

11 (2) the facts stated in the admission are true.

12 [Sections 623-630 reserved for expansion.]

13
14 **PART 3. PRELIMINARY CONFERENCE**

15 **SECTION 631. CONDUCT OF PRELIMINARY CONFERENCE.**

16 (a) Except as provided in subsection (f), after completion of genetic testing the tribunal
17 shall conduct a preliminary conference at which the parties may appear in person or by
18 counsel.

19 (b) At the preliminary conference, a written report of a genetic-testing expert is
20 admissible as evidence of the truth of the matters it contains unless a party objects to the
21 report within [30] days after its receipt and cites specific grounds for exclusion. The
22 admissibility of the report is not affected by:

23 (1) the report's having resulted from an agreement of the parties or an order of the
24 tribunal; or

25 (2) the performance of the testing before or after the commencement of the
26 proceeding.

27 (c) An objecting party may call one or more genetic-testing experts to testify in person,
28 by telephone, or by deposition.

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

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

32 (f) The tribunal may waive the preliminary conference if the parties have reached
33 agreement on the issue of parentage and temporary child support.

1 *Reporter's Note*

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

3
4 **SECTION 632. TEMPORARY ORDERS.**

5 (a) In a proceeding under this article, the tribunal may issue temporary orders for
6 support of the child if the person ordered to pay support:

7 (1) is a presumed father;

8 (2) is a putative father petitioning to have his paternity determined or admitting
9 paternity in pleadings filed with the tribunal;

10 (3) is shown to be the father through genetic testing;

11 (4) refused to submit to genetic testing; or

12 (5) is shown to be the father of the child by clear and convincing evidence.

13 (b) A temporary order may include provisions for custody and visitation as provided
14 under other state law.

15 *Reporter's Note*

16 *Source: UIFSA § 401.*

17
18 **SECTION 633. CONSEQUENCES OF REFUSING GENETIC TESTING.**

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

20 (b) If a [petitioner] fails or refuses to submit to genetic testing, the tribunal may dismiss
21 the proceeding, without prejudice.

22 (c) If a [petitioner] or [respondent] refuses to submit to genetic testing for parentage,
23 the fact of refusal may be introduced as evidence.

24 (d) The tribunal may issue a final determination of parentage against a [respondent] if:

25 (1) the [respondent] refuses to submit to genetic testing as ordered by the tribunal;

26 and

27 (2) the tribunal determines no lesser sanction would be effective against the
28 recalcitrant party.

29 *Reporter's Note*

30 *Source: UPA (1973) § 10.*

31 [Sections 634-640 reserved for expansion]

32
33 **PART 4. FINAL HEARING AND ORDER**

34 **SECTION 641. EVIDENCE AT FINAL HEARING.**

1 (a) A written report of a genetic-testing expert is admissible at the final hearing in the
2 manner provided in Section 631.

3 (b) If the result of a genetic test is objected to within [30] days after receipt, a party may
4 call a genetic-testing expert to testify at the final hearing in person, by telephone, or by
5 deposition. The person objecting bears the expense for the expert.

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

8 (d) A party seeking to establish a putative father's paternity has the right to open and
9 close at the final hearing.

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

13 (1) the amount of the charges; and

14 (2) that the charges were reasonable, necessary, and customary.

15
16 **SECTION 642. CONFLICTING CLAIMS OF PATERNITY; BURDEN OF PROOF**

17 (a) In a proceeding in which there are conflicting claims of paternity, the party
18 contesting the presumed father's paternity must do so by clear and convincing evidence.

19 (b) If two or more claims of paternity are in conflict, the presumption of parentage
20 established in Article 5 in favor of a man shown by genetic testing to be the genetic father
21 prevails.

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

25 (d) If a claim of paternity is rebutted, the tribunal shall issue an order finding that the
26 man claiming to be the father of the child is not the father.

27 (e) The final hearing must be by the tribunal without a jury.

28 *Reporter's Note*

29 *Source: UPA (1973) § 14.*

30
31 **SECTION 643. COSTS AND FEES.**

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

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

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

10 *Reporter's Note.*

11 *Derived from UIFSA Section 313; UPA (1973) § 16.*

12
13 **SECTION 644. PRIVATE AGREEMENT TO PAY SUPPORT.**

14 (a) A written agreement to pay child support arising out of a putative father-child
15 relationship does not require consideration and, except as otherwise provided in Section 614,
16 is enforceable according to its terms.

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

20 *Reporter's Note*

21 *Source: UPA (1973) § 22.*

22
23 **SECTION 645. ORDER ON DEFAULT.** The tribunal may issue a final order of parentage
24 against a party who, after service of process, is in default.

25 *Reporter's Note*

26 *Source: UPA (1973) § 15, 17.*

27
28 **SECTION 646. FINAL ORDER REGARDING PARENTAGE.**

29 (a) The tribunal shall issue a final order declaring whether a man claiming or claimed to
30 be the father is the parent of the child.

31 (b) An order determining parentage must state the name of the child.

32 (c) A final order determining that a man is the genetic father of a child confirms or
33 creates the parent-child relationship between the father and the child as provided in Article 2.

1 (d) A final order may include appropriate provisions for custody, visitation, support,
2 and other relief as provided by state law.

3 *Reporter's Note*

4 *Source: UPA (1973) § 15.*
5

6 **ARTICLE 7**

7 **PARENTAGE BASED ON EQUITABLE ESTOPPEL**

8
9 **SECTION 701. TRIBUNAL AUTHORIZED TO REFUSE GENETIC TESTING.**

10 (a) On the motion of the mother or the presumed father, a tribunal may deny genetic
11 testing of the mother, the child, and the presumed father if the tribunal determines that:

12 (1) the conduct of the mother or the presumed father creates an equitable estoppel;

13 and

14 (2) an order for genetic testing may cause an inequitable result by denying the
15 father-child relationship to the child and the presumed father.

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

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

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

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

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

25 (5) the age of the child;

26 (6) the harm to the child that may result if presumed paternity is successfully
27 disproved;

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

30 (8) other factors that may affect the equities involved in the potential disruption of
31 the father-child relationship between the child and the presumed father or the chance of
32 undeniable harm to the child.

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

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

5
6 **SECTION 702. ORDER BASED ON EQUITABLE ESTOPPEL.** If the tribunal denies
7 genetic testing, it shall issue an order determining that the presumed father is the father of the
8 child.

9 *Reporter's Note*

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

12
13 **ARTICLE 8**

14 **CHILD OF ASSISTED REPRODUCTION**

15
16 **SECTION 801. HUSBAND'S LIABILITY FOR ASSISTED REPRODUCTION.**

17 [Except as provided in Article 9], if a husband consents to assisted reproduction as provided
18 in Section 802, he is deemed to be the father of any child resulting from:

19 (1) the artificial insemination of his wife;

20 (2) providing his sperm to fertilize a donor's eggs that are placed in the uterus of
21 his wife; or

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

25 *Reporter's Note*

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

28
29 **SECTION 802. CONSENT TO ASSISTED REPRODUCTION.**

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

32 (1) a husband and wife;

33 (2) the donor of sperm if other than the husband;

34 (3) the donor of eggs if other than the wife; and

1 (4) a woman who intends to be the gestational mother on behalf of the intended
2 parents.

3 (b) The consent must:

4 (1) be in writing; and

5 (2) be signed by the participant.

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

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

10 (2) grant rights or impose duties on a donor as a mother or father of the child if
11 the donation of reproductive material was made under circumstances demonstrating that
12 assisted reproduction without parental responsibility being intended in anyone other than the
13 husband and wife.

14
15 **SECTION 803. LIMITATION ON HUSBAND'S DISPUTE OF PATERNITY.**

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

18 (1) within two years after learning of the birth of the child he commences a
19 proceeding to contest his presumed parentage; and

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

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

23 *Reporter's Note*

24 *This section is derived from USCACA Section 3*

25
26 **SECTION 804. PARENTAL STATUS OF DECEASED INDIVIDUAL.** An individual
27 who dies before implantation of an embryo or before a child is conceived from the assisted
28 reproduction using the individual's eggs or sperm is not a parent of the resulting child.

29 *Reporter's Note*

30 *This section is derived from USCACA Section 4*

1 **SECTION 805. EFFECT OF DISSOLUTION OF MARRIAGE.** If a husband and wife
2 dissolve their marriage before implantation of an embryo or before a child is conceived by
3 use of the husband's sperm, his earlier consent for assisted reproduction is void.

4 *Reporter's Note*

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

8
9 **SECTION 806. PARENTAL STATUS OF DONOR TO UNMARRIED WOMAN.**

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

12 (1) the donor and the mother of the child consent in writing in compliance with
13 Article 3 that the donor is acknowledged to be the father of the child; or

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

16 (b) A donor of eggs or an embryo is not a parent of the child born by the donee.

17
18 **ARTICLE 9**

19 **GESTATIONAL AGREEMENT**

20
21 **[Alternative A. §§ 901-906]**

22 **SECTION 901. GESTATIONAL AGREEMENT AUTHORIZED.**

23 (a) The gestational mother, her husband if she is married, a donor or the donors, and the
24 intended parent may enter into a written agreement in which:

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

27 (2) the intended parent becomes the parent of the child pursuant to Section 905.

28 (b) If the intended parent is married, the spouse of the intended parent must be a party
29 to the gestational agreement.

30 (b) A gestational agreement is enforceable only if approved as provided in Section 903.

31
32 **SECTION 902. APPROVAL OF GESTATIONAL AGREEMENT.**

1 (a) The intended parent and the gestational mother must file a petition in the
2 [appropriate tribunal] to approve an gestational agreement if one of them is a resident of this
3 State. The gestational mother’s husband, if she is married, must join in the petition. A copy of
4 the agreement must be attached to the petition. The tribunal shall name a [guardian ad litem]
5 to represent the interests of a child to be conceived by the gestational mother through assisted
6 reproduction and may appoint counsel to represent the gestational mother.

7 (b) The tribunal shall hold a hearing on the petition and, if subsection (c) is satisfied,
8 shall enter an order declaring the intended parent to be the parent of a child conceived
9 through assisted reproduction pursuant to the agreement.

10 (c) An order may be issued under (b) only upon finding that:

11 (1) the tribunal has jurisdiction and all parties have submitted to its jurisdiction
12 under subsection (e) and have agreed that the law of this State governs all matters arising
13 under this [Act] and the agreement;

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

17 (3) the [relevant child-welfare agency] has made a home study of the intended
18 parent and the gestational mother and a copy of the report has been filed with the tribunal;

19 (4) the intended parent, the gestational mother, and the gestational mother’s
20 husband, if she is married, meet the standards of fitness applicable to adoptive parents in this
21 State;

22 (5) all parties have voluntarily entered into the agreement and understand its
23 terms, nature and meaning, and the effect of proceeding;

24 (6) the gestational mother has had at least one pregnancy and delivery and her
25 bearing another child will not pose an unreasonable health risk to the unborn child or to the
26 physical or mental health of the gestational mother, and this finding is supported by medical
27 evidence;

28 (7) a report of the results of any medical or psychological examination or genetic
29 screening agreed to by parties or required by law has been filed with the tribunal and made
30 available to the parties;

1 (8) adequate provision has been made for all reasonable health-care costs
2 associated with the gestational agreement until the birth of the child, including responsibility
3 for those costs if the agreement is terminated; and

4 (9) the agreement will not be substantially detrimental to the interest of any of the
5 affected individuals.

6 (c) Unless otherwise provided in the gestational agreement, all costs of the tribunal,
7 attorney's fees, and other costs and expenses associated with the proceeding must be assessed
8 against the intended parent.

9 (d) The tribunal may close all proceedings under this article. All records of the
10 proceedings are confidential and subject to inspection only under the standards applicable to
11 adoptions. At the request of any party to the agreement, the tribunal shall take steps necessary
12 to ensure that the identities of the individuals are not disclosed.

13 (e) The tribunal conducting the proceedings has exclusive and continuing jurisdiction of
14 all matters arising out of the gestational agreement until a child born to the gestational mother
15 during the time period governed by the agreement is 180 days old.

16
17 **SECTION 903. TERMINATION OF GESTATIONAL AGREEMENT.**

18 (a) After entry of an order under this article, but before the gestational mother becomes
19 pregnant through assisted reproduction, the tribunal for cause, or the gestational mother, her
20 husband, or the intended parent may terminate the gestational agreement by giving written
21 notice of termination to all other parties.

22 (b) An individual who terminates an agreement shall file notice of the termination with
23 the tribunal. On receipt of the notice, the tribunal shall vacate the order entered under this
24 article. An individual who fails to notify the tribunal of the termination of the agreement is
25 subject to appropriate sanctions.

26 (c) The gestational mother is not liable to the intended parents for terminating the
27 agreement pursuant to this section.

28
29 **SECTION 904. PARENTAGE UNDER APPROVED GESTATIONAL AGREEMENT.**

30 Upon birth of the child, the intended parent shall provide the facility in which the birth takes
31 place with a certified copy of the order of the tribunal issued under Section 903. The facility
32 shall notify the [department of vital statistics] of the birth of the child and request that agency:

1 (1) to issue a birth certificate naming the intended parent as the parent; and

2 (2) to seal the original birth certificate in the records of the [agency].

3
4 **SECTION 905. GESTATIONAL AGREEMENT: MISCELLANEOUS PROVISIONS.**

5 (a) A gestational agreement that is the basis for an order under this article may permit
6 payment of consideration.

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

9 (c) After the entry of an order under this article, marriage of the gestational mother does
10 not affect the validity of the agreement, and her husband's consent to the gestational
11 agreement is not required, nor is her husband a presumed father of the resulting child.

12 (d) A child born to a gestational mother within 300 days after assisted reproduction
13 pursuant to an order under this article is presumed to result from the assisted reproduction.
14 The presumption is conclusive as to all individuals who:

15 (1) have notice of the birth; and

16 (2) do not commence a timely action in the tribunal that issued the order.

17 (e) An action challenging the presumption established in subsection (d) must name the
18 parties to the agreement and the child as parties to the suit. The child must be represented by
19 an [attorney ad litem].

20
21 **SECTION 906. UNAPPROVED GESTATIONAL AGREEMENT.**

22 (a) An agreement not approved by a tribunal under Section 903 is without legal effect,
23 and:

24 (1) the gestational mother is the mother of a child resulting from assisted
25 reproduction;

26 (2) paternity of the child is determined under Articles 1 to 8 of this [Act]; and

27 (3) if the gestational mother is unmarried, paternity of the child is governed by
28 Article 8.

29 (b) An individual who is a party to a gestational agreement as an intended parent, if the
30 agreement has not been approved by a tribunal as provided in Section 902, may be liable for
31 support of the resulting child if the intended parent fails or refuses to adopt the child.

32 **[End of Alternative A]**

1
2 **[Alternative B]**

3 **SECTION 901. GESTATIONAL AGREEMENT VOID.** An agreement in which a woman
4 agrees to become a gestational mother or to relinquish her rights and duties as parent of a
5 child thereafter conceived through assisted reproduction is void. She is the mother of a
6 resulting child, and her husband, if he is a party to the agreement, is the father of child. If her
7 husband is not a party to the agreement or the gestational mother is unmarried, paternity is
8 governed by Article 8.

9 **[END OF Alternative B]**

10 **ARTICLE 10**

11 **MISCELLANEOUS PROVISIONS**

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

16
17 **SECTION 1002. SEVERABILITY CLAUSE.** If any provision of this [Act] or its
18 application to an individual or circumstance is held invalid, the invalidity does not affect
19 other provisions or applications of this [Act] which can be given effect without the invalid
20 provision or application, and to this end the provisions of this [Act] are severable.
21

22 **SECTION 1003. TIME OF TAKING EFFECT.** This [Act] takes effect on _____.
23

24 **SECTION 1004. [REPEAL].** The following acts and parts of acts are repealed:

- 25 (1) [Uniform Act on Paternity, 1960]
26 (2) [Uniform Parentage Act, 1973]
27 (3) [Uniform Putative and Unknown Fathers Act, 1989]
28 (4) [Uniform Status of Children of Assisted Conception Act, 1989]
29

30 **SECTION 1005. TRANSITIONAL PROVISION.** A determination of parentage made in a
31 proceeding which was commenced before the effective date of this [Act] is governed by the
32 law in effect at the time the proceeding was commenced.

