

MEMORANDUM

TO: Drafting Committee for the Non-Parental Child Custody and Visitation Act

FROM: Jeff Atkinson, Reporter

DATE: September 1, 2016

RE: Documents for October 14 - 15 meeting;
Summary of changes to draft

Accompanying this memo are several documents related to our October 14 - 15 Drafting Committee Meeting in D.C. for the Non-Parental Child Custody and Visitation Act.

1. A revised draft of the act (31 pages, plus 5 introductory pages)
2. A compare-document showing changes from the draft considered at the First Reading during the Uniform Law Commission (ULC) Annual Meeting in July and the current draft
3. A memo from Cathy Sakimura, an observer from the National Center for Lesbian Rights, focussing on de facto parents and possible changes to the act following the First Reading (8 pages)
4. A memo from me comparing the Non-Parent Act to the Revised Uniform Guardianship and Protective Proceedings Act. (The Revised Guardianship Act also is in the drafting process.) (8 pages)

My thanks to our committee member, David Biklen, for his informal style-edit of the current draft.

On the following two pages, I summarize the main changes made to the act since the Annual Meeting.

I look forward to seeing you in D.C.

Jeff

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Main Changes to the Non-Parental Child Custody and Visitation Act since the 2016 Annual Meeting (Presented Chronologically Relative to the Draft)

- **Troxel facts and holding.** More description has been added of the background facts and holding of *Troxel v. Granville* [Prefatory Note]
- **ICWA.** A provision has been included in the text of the act (not just a Comment) that “Jurisdiction over an American Indian child is governed by the Indian Child Welfare Act, 25 U.S.C. §§ 1901 et seq. [§ 4(b)].”
- **Standing to seek custody and visitation.** Separate “Standing” provisions have been added for both custody and visitation [§ 5]
- **Use of pleadings and affidavits for determining standing.** A new explicit provision has been added: “The court shall determine standing on the basis of pleadings and affidavits under section 6. The court may hold a hearing to determine disputed facts necessary for the issue of standing.” [§ 5(c)]
- **Notice.** A new explicit provision requiring notice has been added. Notice shall be given to: “(1) any parents whose parental rights have not been previously terminated; (2) any person having physical custody of, or visitation with, the child; and (3) the child, if the child has attained 12 years of age.” [§ 7]
- **De Facto parents and parents by agreement.** The former separate sections giving rights to seek custody or visitation to de facto parents and to individuals who agree to raise a child together have been deleted. [The former §§ 6 & 7] Although those sections are deleted in this draft, the concept of de facto parents still could be utilized as a basis for obtaining relief. [See §§ 5 & 8 of this draft.]
- **Consideration of kinship.** To the list of factors a court should consider when determining whether to grant custody or visitation to a non-parent, the following underlined phrase has been added to the second factor: “the nature, extent, and quality of the relationship between the child and non-parent, including specific parent-like activities undertaken by the non-parent and whether the non-parent has a kinship relationship with the child.” [§ 11(2)]
- **Modification of orders.** In the section on modification of orders, a second, alternative provision has been added for the committee’s consideration (modification based on substantial change of circumstances + best interests), as well as the existing modification provision, which refers to state law on disputes between parents. [§ 12]
- **Temporary orders.** The act specifies that its provisions, including presumptions and burden of proof, apply to temporary orders as well as final orders. [§ 13]

- **Adoption by cohabitant.** The section on the “Effect of Adoption of Child by Relative or Stepparent” has been tentatively amended to also cover adoption by a cohabitant of a parent: “The adoption of a child by a relative, stepparent[, or cohabitant of the parent] does not preclude granting or continuing custody or visitation to an individual who is a non-parent.” [§ 14]
- **Authority to seek support for a child.** A section has been added to provide: “A non-parent given custody of a child may petition for and receive money for the support of the child.” [§ 17]
- **Other Rights and Remedies.** Following the suggestion of Harry Tindall, the section on “Other Rights and Remedies” now makes explicit reference to the Uniform Deployed Parents Custody and Visitation Act [or other state law dealing with custody and visitation with children of deployed parents]. [§ 20]