

DRAFT
FOR DISCUSSION ONLY

REVISION OF UNIFORM PARENTAGE ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MARCH 22, 1999

REVISION OF UNIFORM PARENTAGE ACT

With Prefatory Note and Reporter's Notes

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ON UNIFORM STATE LAWS

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| | |
|---|----|
| ARTICLE 1.GENERAL PROVISIONS | 1 |
| SECTION 101. SHORT TITLE..... | 1 |
| SECTION 102. DEFINITIONS | 1 |
| SECTION 103. SCOPE OF [ACT]..... | 4 |
| | |
| ARTICLE 2. PARENT-CHILD RELATIONSHIP | 5 |
| SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP..... | 5 |
| SECTION 202. NO DISCRIMINATION BASED ON MARITAL STATUS | 5 |
| SECTION 203. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE..... | 6 |
| SECTION 204. PRESUMPTION OF PATERNITY IN CONTEXT OF MARRIAGE..... | 6 |
| | |
| ARTICLE 3.VOLUNTARY ACKNOWLEDGMENT OF PATERNITY | 8 |
| SECTION 301. ACKNOWLEDGMENT OF PATERNITY | 8 |
| SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF PATERNITY | 8 |
| SECTION 303. FILING OF ACKNOWLEDGMENT | 8 |
| SECTION 304. SIGNING OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY | 8 |
| SECTION 305. EFFECT OF ACKNOWLEDGMENT OF PATERNITY..... | 9 |
| SECTION 306. SUIT FOR RESCISSION..... | 9 |
| SECTION 307. SUIT TO CONTEST ACKNOWLEDGMENT OR DENIAL..... | 9 |
| SECTION 308. PROCEDURE FOR RESCISSION OR CONTEST | 10 |
| SECTION 309. COURT RATIFICATION BARRED..... | 10 |
| SECTION 310. FULL FAITH AND CREDIT | 10 |
| SECTION 311. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY | 10 |
| SECTION 312. VALIDITY OF FORMS | 11 |
| SECTION 313. RELEASE OF INFORMATION..... | 11 |
| SECTION 314. ADOPTION OF RULES | 11 |
| | |
| ARTICLE 4. PUTATIVE-FATHER REGISTRY | 12 |
| PART 1. GENERAL PROVISIONS | |
| SECTION 401. ESTABLISHMENT OF REGISTRY..... | 12 |
| SECTION 402. REGISTRATION OF CLAIM OF PATERNITY | 12 |
| SECTION 403. NOTICE OF PROCEEDING TO REGISTRANT | 13 |

SECTION 404. TERMINATION OF RIGHTS; CHILD LESS THAN ONE YEAR OF AGE13
SECTION 405. TERMINATION OF RIGHTS; CHILD AT LEAST ONE-YEAR OLD14

PART 2. OPERATION OF REGISTRY

SECTION 411. REGISTRATION FORM.....14
SECTION 412. FURNISHING OF INFORMATION; CONFIDENTIALITY15
SECTION 413. PENALTY FOR RELEASING INFORMATION16
SECTION 414. REVOCATION OF REGISTRATION16
SECTION 415. REMOVAL OF REGISTRANT’S NAME16
SECTION 416. UNTIMELY ATTEMPT TO FILE CLAIM16
SECTION 417. FEES FOR REGISTRY.....17

PART 3. SEARCH OF REGISTRIES

SECTION 421. SEARCH OF APPROPRIATE REGISTRY17
SECTION 422. CERTIFICATE OF SEARCH OF REGISTRY17
SECTION 423. FILING CERTIFICATE OF SEARCH.....18
SECTION 424. ADMISSIBILITY OF REGISTERED INFORMATION18

ARTICLE 5. GENETIC TESTING19

SECTION 501. APPLICATION OF ARTICLE19
SECTION 502. ORDER FOR TESTING19
SECTION 503. REQUIREMENTS OF GENETIC TESTING.....20
SECTION 504. GENETIC TESTING; PRESUMPTION.....21
SECTION 505. COSTS OF GENETIC TESTING.....22
SECTION 506. ADDITIONAL GENETIC TESTING.....22
SECTION 507. GENETIC TESTING WHEN NOT ALL PERSONS AVAILABLE23
SECTION 508. DECEASED INDIVIDUAL.....23
SECTION 509. IDENTICAL BROTHERS23

ARTICLE 6. PROCEEDING TO DETERMINE PARENTAGE.....25

PART 1. NATURE OF PROCEEDING

SECTION 601. PROCEEDING AUTHORIZED25
SECTION 602. STANDING TO MAINTAIN PROCEEDING25
SECTION 603. PARTIES TO PARENTAGE PROCEEDING.....26
SECTION 604. NO LIMITATION; CHILD WITHOUT PRESUMED FATHER26

| | |
|---|-----------|
| SECTION 605. LIMITATION; CHILD WITH PRESUMED FATHER | 26 |
| SECTION 606. PERSONAL JURISDICTION | 27 |
| SECTION 607. CHOICE OF LAW | 28 |
| SECTION 608. VENUE..... | 28 |
| SECTION 609. JOINDER OF ACTIONS. IF THE COURT HAS APPROPRIATE JURISDICTION | 28 |
| SECTION 610. PROCEEDING STAYED UNTIL AFTER BIRTH..... | 28 |
| SECTION 611. REPRESENTATION OF CHILD | 29 |
| SECTION 612. MOTHER-CHILD RELATIONSHIP | 29 |
| PART 2. SPECIAL RULES FOR PARENTAGE PROCEEDING | |
| SECTION 621. ADMISSIBILITY OF GENETIC TEST RESULTS AND EXPENSES | 29 |
| SECTION 622. CONSEQUENCES OF REFUSING GENETIC TESTING | 30 |
| SECTION 623. ADMISSION OF PATERNITY AUTHORIZED | 30 |
| SECTION 624. TEMPORARY ORDERS..... | 31 |
| PART 3. HEARINGS AND FINAL ORDER | |
| SECTION 631. RESOLUTION OF CLAIM OF PATERNITY | 31 |
| SECTION 632. JURY PROHIBITED | 32 |
| SECTION 633. HEARINGS AND RECORDS; CONFIDENTIALITY | 32 |
| SECTION 634. ORDER ON DEFAULT..... | 32 |
| SECTION 635. FINAL ORDER REGARDING PARENTAGE..... | 32 |
| SECTION 636. BINDING EFFECT OF ORDER | 33 |
| | |
| ARTICLE 7. PARENTAGE BASED ON EQUITABLE ESTOPPEL | 35 |
| SECTION 701. COURT AUTHORIZED TO REFUSE GENETIC TESTING | 35 |
| SECTION 702. ORDER BASED ON EQUITABLE ESTOPPEL | 36 |
| | |
| ARTICLE 8. CHILD OF ASSISTED REPRODUCTION | 37 |
| SECTION 801. HUSBAND’S LIABILITY FOR ASSISTED REPRODUCTION..... | 37 |
| SECTION 802. CONSENT TO ASSISTED REPRODUCTION | 37 |
| SECTION 803. LIMITATION ON HUSBAND’S DISPUTE OF PATERNITY | 38 |
| SECTION 804. PARENTAL STATUS OF DECEASED INDIVIDUAL..... | 38 |
| SECTION 805. EFFECT OF DISSOLUTION OF MARRIAGE..... | 38 |
| SECTION 806. PARENTAL STATUS OF DONOR | 39 |

| | |
|--|----|
| ARTICLE 9. GESTATIONAL AGREEMENT | 40 |
| SECTION 901. GESTATIONAL AGREEMENT AUTHORIZED | 40 |
| SECTION 902. APPROVAL OF GESTATIONAL AGREEMENT..... | 40 |
| SECTION 903. TERMINATION OF GESTATIONAL AGREEMENT | 42 |
| SECTION 904. PARENTAGE UNDER APPROVED GESTATIONAL AGREEMENT | 42 |
| SECTION 905. GESTATIONAL AGREEMENT: MISCELLANEOUS PROVISIONS | 42 |
| SECTION 906. UNAPPROVED GESTATIONAL AGREEMENT | 43 |
| | |
| ARTICLE 10. MISCELLANEOUS PROVISIONS | 44 |
| SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION..... | 44 |
| SECTION 1002. SEVERABILITY CLAUSE | 44 |
| SECTION 1003. TIME OF TAKING EFFECT..... | 44 |
| SECTION 1004. [REPEAL] | 44 |
| SECTION 1005. TRANSITIONAL PROVISION..... | 44 |

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) “Acknowledged father” means a man who has established a father-child relationship as provided in Section 303.

7

(2) “Assisted reproduction” means a pregnancy resulting from means other than sexual 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;

12 or

13

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

14

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

15

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

16

(5) “Court” means a judicial entity authorized under the law of a state to determine parentage. The term may include an administrative entity that is given express authority to handle an issue related to parentage by other state law, including issuing a subpoena, ordering genetic testing, and determining parentage of a child based on voluntary acknowledgment of paternity or from the results of genetic testing.

17

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

18

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

19

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

3 (B) a woman who gives birth to a resulting child except as provided in Article
4 9.

5 (8) "Ethnic or racial group" means, for purposes of genetic testing, a recognized
6 group that an individual identifies as his or her ancestry or that is so identified.

7 (9) "Genetic testing" means an analysis of genetic markers to determine parentage.
8 The term includes one or a combination of the following:

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

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

13 (10) "Gestational mother" means the woman who gives birth to a child.

14 (11) "Intended parent" means an individual, whether married or not, who enters into
15 an agreement providing that he or she will be the parent of a child born to a gestational
16 mother through assisted reproductive technology irrespective of a genetic relationship.

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

18 (13) "Parent" of a child means:

19 (A) the mother excluding a gestational mother as covered by Article 9;

20 (B) an adoptive mother or father; or

21 (C) a man who is:

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

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

24 (iii) determined to be the father by a court of competent jurisdiction.

25 (14) "Parent-child relationship" means the legal relationship between a child and a
26 parent of the child. The term includes the mother-child relationship and the father-child
27 relationship.

28 (15) "Paternity index" means the likelihood of paternity calculated by computing
29 the ratio between:

1 (a) the probability of paternity based on the genetic markers of the of the tested
2 man, mother, and child conditioned on the hypothesis that the tested man in the father of
3 the child; and

4 (b)the probability of paternity based on the genetic markers of the tested man,
5 mother, and child conditioned on the hypothesis that the tested man is not the father of
6 the child and that the true father is from the same ethnic and racial group as the tested
7 man.

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

11 (17) “Probability of paternity” means the measure, for the ethnic or racial group of
12 the putative father, of the probability that the individual in question is the genetic father of
13 the child, compared with a random, unrelated man of the same ethnic or racial group,
14 expressed as a percentage incorporating the paternity index and a prior probability.

15 (18) “Putative father” means a man who claims 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
17 determined. The term does not include:

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

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

20 or

21 (C) a male donor.

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

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

29 (21) “Support-enforcement agency” means a public official or agency authorized to
30 seek:

- 1 (A) enforcement of support orders or laws relating to the duty of support;
2 (B) establishment or modification of child support;
3 (C) determination of parentage; or
4 (D) the location of obligors and their income and assets.

5 *Reporter's Note*

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

9 *The definition of "specimen" in subsection (19) lists constituent element of "body*
10 *tissue and fluids" in order to clarify biological terminology for the legal profession. In*
11 *states with statutes employing only the broad terms, courts and lawyers have evidenced*
12 *confusion about the fact that that buccal cells, bone, hair, etc. are "body tissues."*
13

14 **SECTION 103. SCOPE OF [ACT].**

15 (a) This [Act] governs every determination of the parentage of a child in this State.

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

18 *Reporter's Note*

19 *This section makes clear that the Act applies not just in so-called "paternity suits,"*
20 *but also in all disputes of parentage, whether in a proceeding involving] divorce,*
21 *paternity, probate, or any other legal matter. In contrast to Sections 17, 18, 22-25 of the*
22 *Uniform Parentage Act of 1973, this Act does not provide any significant substantive rules*
23 *regarding enforcement, modification, support, birth records, adoption, or termination of*
24 *parental rights. Except for references to unspecified rights and duties regarding custody,*
25 *visitation, and child support, these matters are left to other provisions in each state's*
26 *statutory scheme.*
27

1 **ARTICLE 2**

2 **PARENT-CHILD RELATIONSHIP**

3 **SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.**

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

6 (1) the woman's having given birth to the child except as otherwise provided in
7 Article 9;

8 (2) a determination of the woman's maternity by a court of competent
9 jurisdiction;

10 (3) the adoption of the child by the woman; or

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

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

14 (1) a presumption of the man's paternity of the child as provided in Section
15 204;

16 (2) the man's jointly signing with the mother an unrescinded acknowledgment
17 of paternity under Article 3;

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

19 (4) the adoption of the child by the man;

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

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

23 *Reporter's Note*

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

26
27 **SECTION 202. NO DISCRIMINATION BASED ON MARITAL STATUS.** A child
28 born to parents who are not married to each other has the same rights and is entitled to the
29 same protections of the law as a child whose parents are or were married to each other.

30 *Reporter's Note*

1 *Derived from Massachusetts Gen. Laws ch 209C, § 1.*
2

3 **SECTION 203. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE.**

4 Unless terminated, the parent-child relationship established or negated by this [Act]
5 applies for all purposes.

6 *Reporter's Note*

7 *Derived from USCACA § 10. This states the obvious, but is necessary because a literal*
8 *reading of Section 201 is not accurate without further explanation. A birth mother is not*
9 *always the parent once her parental rights have been terminated. A man whose paternity*
10 *has been established by acknowledgment or by court determination, may subsequently*
11 *have his parental rights terminated.*
12

13 **SECTION 204. PRESUMPTION OF PATERNITY IN CONTEXT OF MARRIAGE**

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

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

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

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

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

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

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

1 (C) he is obligated to support the child under a written voluntary promise
2 or by order of a court.

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

5 *Reporter's Note*

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

13

14

1 **ARTICLE 3**

2 **VOLUNTARY ACKNOWLEDGMENT OF PATERNITY.**

3 **SECTION 301. ACKNOWLEDGMENT OF PATERNITY.** The mother of a child and
4 a man claiming to be the father of the child may execute an acknowledgment of paternity
5 as provided by this article to establish the man's paternity.

6
7 **SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF PATERNITY.**

8 (a) An acknowledgment of paternity shall be in writing and be signed by the
9 mother and the putative father and shall state whether the child whose paternity is being
10 acknowledged has a presumed father as provided in Section 204.

11 (b) If the mother declares in the acknowledgment that there is a presumed father,
12 the acknowledgment must be accompanied by a denial of paternity signed by the
13 presumed father.

14
15 **SECTION 303. FILING OF ACKNOWLEDGMENT.**

16 (a) An acknowledgment of paternity under this article shall be filed with the
17 [appropriate state agency].

18 (b) The [appropriate state agency] may not charge a fee for the filing of the
19 acknowledgment.

20
21 **SECTION 304. SIGNING OF ACKNOWLEDGMENT OR DENIAL OF**
22 **PATERNITY.**

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

25 (b) An acknowledgment of paternity or a denial of paternity may be signed before
26 the birth of the child.

27 (c) An adult or a minor may sign an acknowledgment of paternity or a denial of
28 paternity.

29

1 **SECTION 305. EFFECT OF ACKNOWLEDGMENT OF PATERNITY.**

2 (a) A signed acknowledgment of paternity filed with the [appropriate state
3 agency] constitutes a legal finding of paternity of a child equivalent to a judicial
4 determination and bestows upon the signatories all the rights and duties of a parent by
5 virtue of law.

6 (b) An acknowledgment of paternity in which the signatures falsely deny the
7 existence of a presumed father is voidable within the time for rescission as provided in
8 Section 306.

9
10 **SECTION 306. SUIT FOR RESCISSION.**

11 (a) Subject to the requirements of subsection (b), a signatory may file a suit
12 affecting the parent-child relationship for rescission of an acknowledgment or denial of
13 paternity.

14 (b) The petition for rescission of an acknowledgment or denial of paternity must
15 be filed before the earlier of:

16 (1) the expiration of 60 days from the filing of the acknowledgment of
17 paternity or denial of paternity with the [appropriate state agency]; or

18 (2) the date of the first hearing before a tribunal to determine an issue
19 relating to the child in which the signatory is a party, including a proceeding that
20 establishes support.

21 (c) If a timely-filed proceeding to rescind an acknowledgment or denial of
22 paternity is jointly filed or agreed to by all necessary parties, the court shall notify the
23 [appropriate state agency] to amend the birth record of the child by removing the father's
24 name.

25 (d) A proceeding to rescind which is not agreed to by all parties shall be
26 conducted in the same manner as a proceeding to determine parentage under this article.

27
28 **SECTION 307. SUIT TO CONTEST ACKNOWLEDGMENT OR DENIAL.**

29 (a) A person or entity identified in Section 301 may contest either an
30 acknowledgment or denial of paternity by filing a suit affecting the parent-child

1 relationship. A suit to contest that is filed after the 60-day period for rescission provided
2 in Section 306 may be filed only on the basis of fraud, duress, or material mistake of fact.
3 The party challenging the acknowledgment or denial bears the burden of proof.

4 (b) A suit to contest an acknowledgment or denial of paternity shall be conducted
5 in the same manner as a proceeding to determine parentage under this article.

6 (c) A suit to contest brought more than two years after filing of the
7 acknowledgment or denial of paternity with the [appropriate state agency] is barred.

8
9 **SECTION 308. PROCEDURE FOR RESCISSION OR CONTEST.**

10 (a) Each signatory to the acknowledgment of paternity or denial of paternity must
11 be made a party to a proceeding to rescind or contest an acknowledgment or denial of
12 paternity.

13 (b) Except for good cause shown, during the pendency of the proceeding the court
14 may not suspend the legal responsibility of a signatory arising from the acknowledgment
15 of paternity, including the duty to pay child support.

16 (c) On a determination of paternity or nonpaternity, the court shall notify the
17 [appropriate state agency] to amend the birth record of the child in accordance with the
18 order of the court.

19
20 **SECTION 309. COURT RATIFICATION BARRED.** A court is neither required nor
21 permitted to ratify an unrescinded acknowledgment of paternity.

22
23 **SECTION 310. FULL FAITH AND CREDIT.** This state shall give full faith and credit
24 to an acknowledgment of paternity signed in another state if the acknowledgment has
25 been signed in apparent compliance with the provisions of the other state's law.

26
27 **SECTION 311. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF**
28 **PATERNITY.**

29 (a) The [appropriate state agency] shall prescribe forms for an acknowledgment of
30 paternity and denial of paternity to comply with this article.

1 (b) The forms prescribed under this section must:

2 (1) contain information regarding the procedure for rescission of the
3 forms;

4 (2) provide that signatures be witnessed and signed under penalty of
5 perjury; and

6 (3) state whether the mother, the putative father, or the presumed father is
7 a minor.

8 (c) The form for acknowledgment of paternity must inform the putative father that
9 his signing of the acknowledgment of paternity with the consent of the mother:

10 (1) creates the parent-child relationship between him and the child;

11 (2) imposes upon him a legal duty to support the child; and

12 (3) enables a court to grant him the right of custody or visitation with the
13 child.

14 (d) The form for denial of paternity must inform the presumed father that his
15 signing of the denial of paternity with the consent of the mother:

16 (1) legally determines his nonpaternity of the child;

17 (2) removes the legal duty that he support the child; and

18 (3) terminates his right of custody or visitation with the child.

19

20 **SECTION 312. VALIDITY OF FORMS.**

21 The validity of an acknowledgment or denial of paternity is not affected by a
22 modification of the prescribed form occurring after the date of signing if the signed form
23 met the requirements of state law at the time it was signed.

24

25 **SECTION 313. RELEASE OF INFORMATION.** The [appropriate state agency] may
26 release information relating to the acknowledgment, denial, and rescission of paternity to
27 [other appropriate state agencies] and other persons or entities as authorized by law.

28

29 **SECTION 314. ADOPTION OF RULES.** The [appropriate state agency] may adopt
30 rules to implement this article.

31

1 **ARTICLE 4**

2 **PUTATIVE-FATHER REGISTRY**

3 **PART 1. GENERAL PROVISIONS**

4
5 **SECTION 401. ESTABLISHMENT OF REGISTRY.** The putative-father registry is
6 established in the [appropriate state agency].

7 *Reporter's Note*

8 *Beginning with Stanley v. Illinois, 405 U.S. 545 (1972) and continuing through*
9 *the 70's and early 80's the Supreme Court of the United States recognized the rights of*
10 *putative fathers with respect to their nonmarital children. In 1983, the court upheld the*
11 *constitutionality of the New York putative father registry in the case of Lehr v. Robertson,*
12 *463 U.S. 248 (1983). Basically, statute requires fathers of children born out of wedlock to*
13 *register if they wish to be notified of any termination or adoption proceeding. Following*
14 *a series of well- publicized adoption cases wherein putative fathers had not been given*
15 *proper notice, legislatures began responding these cases by enacting putative father*
16 *registries similar to the New York statute. This draft accepts part of that concept, but with*
17 *some significant differences. In Lehr, the father was actually already in litigation seeking*
18 *to establish his parental rights, but still did not prevail as he had failed to register. This*
19 *Act excepts from registration those persons who initiate a proceeding for paternity,*
20 *notwithstanding the failure to register. Secondly, this Act only applies to children under*
21 *one year of age at time of the court hearing. Section 405. This protects the need for*
22 *expediting infant adoption, yet properly protects the rights of putative fathers who may*
23 *have had some informal relationship with the child following birth. Finally, this Act*
24 *requires those who register and who are served with notice of a proceeding for*
25 *termination or adoption, to respond to such an action, by either admitting paternity or*
26 *cross acting for paternity. Section 404. This gives the putative the opportunity to step*
27 *forward to accept responsibility of parenthood, but failing to do so, will not derail the*
28 *termination or adoption proceeding.*

29
30 **SECTION 402. REGISTRATION OF CLAIM OF PATERNITY**

31 (a) Except as provided in subsection (b), a man claiming to be the father of a child
32 shall register with the [appropriate state agency].

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

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

36 (2) the man commences a proceeding to determine his parentage before a
37 court has terminated his parental rights.

1 (c) A man may register before the birth of the child, but must register no later than
2 30 days after the birth of the child.

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

8 *Reporter's Note*

9 *The primary purpose of such a registry is to facilitate infant adoptions by licensed*
10 *agencies. Limiting the major impact of failure to register with a putative-father registry to*
11 *infant adoptions seems appropriate. If an infant adoption is not consummated, throughout*
12 *the minority of the child the putative father and the mother remain responsible for support*
13 *and eligible for custody or visitation. That fact situation distinguishes the infant adoption in*
14 *which both parents abdicate those right and duties for the presumptive benefit of the child.*
15

16 **SECTION 403. NOTICE OF PROCEEDING TO REGISTRANT.** Notice of a
17 proceeding affecting a child who is, or may be, the subject of termination proceeding or
18 an adoption must be given to a man who has timely registered in the putative-father
19 registry. Notice must be given by service as in civil cases.

20 *Reporter's Note*

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

28 **SECTION 404. TERMINATION OF RIGHTS ; CHILD LESS THAN ONE YEAR**
29 **OF AGE.**

30 (a) The rights of a man who may have fathered a child less than one year of age,
31 at time of the court hearing, may be terminated without notice if:

32 (1) he failed to register with [appropriate state agency] under this article;

33 and

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

3 *Reporter's Note*

4 *This section is the obverse logical conclusion to the legal rationale for*
5 *establishing a putative-father registry. In a termination or adoption proceeding, the*
6 *registry provides a clear procedure for resolving that a putative father does not intend to*
7 *assert his rights with regard to the child. Although the registry protects the putative*
8 *father's right to notice in a termination or adoption proceeding, his failure to register*
9 *waives those such rights. Thus the registry is both a first step for claiming rights of a*
10 *putative father and the end of those rights for those persons who do not register. It a man*
11 *fails to register with the putative-father registry, the termination and adoption may*
12 *proceed without fear of a belated claim, most particularly a claim coming after adoptive*
13 *parents have received custody of the child. This expedited procedure greatly facilitates*
14 *infant adoption, which in truth explains the existence--and popularity--of the registries*
15 *and their strong support by the adoption community. As of January 1999, approximately*
16 *27 states have enacted similar statutes.*
17

18 **SECTION 405. TERMINATION OF RIGHTS; CHILD AT LEAST ONE-YEAR**
19 **OLD.**

20 (a) Notice must be given to a putative father of a termination or adoption
21 proceeding:

22 (1) if the child affected is one year of age or more at the time of the court
23 hearing; and

24 (2) without regard to whether the man has timely registered with
25 [appropriate state agency].

26 (b) Notice must be given by service as in civil cases generally.

27 *Reporter's Note*

28 *This Section reaffirms Stanley v. Illinois, supra. and its progeny by requiring notice to the*
29 *putative father of a termination or adoption proceeding. This section is derived from*
30 *Uniform Putative and Unknown Fathers Act Section 3 (1989). This protects those fathers*
31 *who may have had some informal nonlegal relationship with the child or mother for some*
32 *time, and prevents unilateral action to adversely affect the father's rights.*
33

34 [Sections 406-410 reserved for expansion]
35

36 **PART 2. OPERATION OF REGISTRY**

37 **SECTION 411. REGISTRATION FORM.**

1 (a) The [appropriate state agency] shall prepare a form, to be signed under penalty of
2 perjury, for registering with the agency. The form must provide notice to the man that:

3 (1) a timely registration entitles the man to be served with any petition for
4 termination of parental rights or any suit for adoption until the child is one-year old;

5 (2) he has a right to commence a proceeding for paternity to establish a
6 father-child relationship, which may be forfeited if he fails to do so;

7 (3) the information disclosed on the form may be used to establish a duty of
8 child support;

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

11 (5) services are available to him through the state's child-support
12 enforcement agency to establish parentage; and

13 (6) he may require information on obtaining the address of other state
14 registries to protect his claim of parentage if conception or birth of the child occurred in
15 another state.

16 (b) The registration must be filed on the form prepared by the [appropriate state
17 agency.]

18 (c) A man who registers shall promptly notify [appropriate state agency] in
19 writing of a change in the information registered. The [appropriate state agency] shall
20 incorporate all new information received by it into its records, but does not have a duty to
21 seek to keep current the information maintained in the registry.

22
23 **SECTION 412. FURNISHING OF INFORMATION; CONFIDENTIALITY.**

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

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

29 (1) a court;

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

- 1 (3) an authorized agency;
2 (4) a licensed child-placing agency;
3 (5) an attorney licensed to practice law in this State who is participating or
4 assisting in a proceeding affecting the parent-child relationship, including termination of
5 the parent-child relationship with the man or a proceeding for the adoption of the child
6 the man claims to have fathered;
7 (6) the putative-father registry of another state.

8 (c) The [appropriate state agency] must furnish information regarding the
9 putative-father registry by electronic data exchange or any other available means to [
10 other appropriate agencies].
11

12 **SECTION 413. PENALTY FOR RELEASING INFORMATION.** A person commits
13 a [appropriate level misdemeanor] if the person intentionally releases to the public
14 information about an individual whose name appears in the putative-father registry, or
15 makes other use of the information in violation of this article.
16

17 **SECTION 414. REVOCATION OF REGISTRATION.** A man who registers may
18 revoke the registration at any time by sending to the putative-father registry a written
19 statement signed by the man and witnessed or notarized. The revocation must include a
20 declaration that, to the best of the man's knowledge and belief:

- 21 (1) he is not the father of the child; or
22 (2) a court has determined paternity and an individual other than he has
23 been determined to be the father of the child.
24

25 **SECTION 415. REMOVAL OF REGISTRANT'S NAME.** If the court determines that
26 the registrant is not the father of the child, the court shall order the [appropriate state
27 agency] to remove the registrant's name from the putative-father registry.
28

29 **SECTION 416. UNTIMELY ATTEMPT TO FILE CLAIM.** If the [appropriate state
30 agency] receives a request to register from a man made more than 30 days after the birth

1 of the child or receives notice of an order terminating the rights of a registrant with regard
2 to a child from the clerk of a court of competent jurisdiction, the [agency] shall:

3 (1) refuse to file the registration; and

4 (2) notify the registrant that his request to file a claim has been refused,
5 stating the reason for the refusal.

6
7 **SECTION 417. FEES FOR REGISTRY.**

8 (a) A fee may not be charged for filing a registration.

9 (b) [Except as otherwise provided in subsection (c), the] [The appropriate state
10 agency] may charge a reasonable fee for making a search of the putative-father registry
11 and for furnishing a certificate.

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

14
15 [Sections 418-420 reserved for expansion]

16
17 **PART 3. SEARCH OF REGISTRIES**

18 **SECTION 421. SEARCH OF APPROPRIATE REGISTRY.**

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

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

25
26 **SECTION 422. CERTIFICATE OF SEARCH OF REGISTRY.**

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

30 (1) a court;

- 1 (2) the mother of a child;
2 (3) an authorized agency;
3 (4) a licensed child-placing agency; or
4 (5) an attorney licensed to practice law in this State who is participating or
5 assisting in a termination of parental rights or an adoption.

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

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

10 (2) a registration:

11 (A) has been found pertaining to a man who may be the father of a
12 child who is the subject of a termination proceeding or an adoption, containing the
13 information required to identify the registrant; or

14 (B) has not been found pertaining to a man who may be the father
15 of a child who is the subject of a termination proceeding or an adoption.

16

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

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

20 (b) Filing a certificate of search of the registry stating that a registration has not
21 been found pertaining to the man who may be the father of a child less than one year of
22 age who is the subject of a proceeding for termination or adoption dispenses with the
23 necessity of personal or constructive service of citation on the man regarding a
24 proceeding for termination of his possible parental rights or for adoption of the child.

25

26 **SECTION 424. ADMISSIBILITY OF REGISTERED INFORMATION.** Information
27 maintained in the putative-father registry is admissible in a termination and adoption
28 proceeding, and where relevant, other legal proceedings.

29

1 **ARTICLE 5**
2 **GENETIC TESTING**

3
4 **SECTION 501. APPLICATION OF ARTICLE.** This article applies to genetic testing
5 of an individual who:

- 6 (1) submits voluntarily to testing; or
7 (2) is ordered by a court or by the support-enforcement agency to be tested.

8 *Reporter's Note*

9 *This section is intended to avoid problems with regard to the admissibility of the*
10 *result of genetic testing voluntarily submitted to such as those encountered in Catawba*
11 *County v. Khatod, 479 S.E. 2d 270 (N.C. App 1997) and Yokley v. Townsend, 849 S.W. 2d*
12 *722 (Mo. App. W.D. 1993).*
13

14 **SECTION 502. ORDER FOR TESTING.**

15 (a) Except as otherwise provided in this article and Articles 6 and 7, the court or
16 support-enforcement agency shall order the parties and the child to submit to genetic
17 testing as soon as feasible if the request for testing is supported by the sworn statement of
18 a party:

- 19 (1) alleging paternity and setting forth facts establishing a reasonable
20 possibility of the requisite sexual contact between the parties; or
21 (2) denying paternity.

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

- 24 (1) the American Association of Blood Banks, or a successor to its
25 functions;
26 (2) the American Society for Histocompatibility and Immunogenetics, or a
27 successor to its functions; or
28 (3) an accrediting body designated by the U.S. Secretary of Health and
29 Human Services.

30 (c) If the request for genetic testing of the child is made before birth, the court or
31 support enforcement agency shall order the testing of the child as soon as medically
32 practicable after birth, but may not order the mother to submit to testing before birth.

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

3 (e) If there is an admission of paternity, the parties may waive or a court may
4 dispense with genetic testing.

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

7 *Reporter's Note*

8 *Subsection (a) and (b) conform to the mandates of 42 U.S.C.*
9 *§ 666(a)(5)(B)(i)(I)(II) and § 666(a)(5)(F)(i)(I)(II).*

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

16
17 **SECTION 503. REQUIREMENTS OF GENETIC TESTING.**

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

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

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

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

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

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

29 (5) the date the specimens were received.

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

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

4 (1) the individual objecting may require the testing laboratory within 30
5 days after receipt of the test to recalculate the probability of paternity using an ethnic or
6 racial group 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
9 the ethnic or racial group requested, provide the requested frequencies compiled in a
10 manner recognized by accrediting bodies; or

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

12 and

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

17 (e) If after recalculation using a different ethnic or racial group the genetic test
18 does not create a presumption of paternity as provided in Section 504, an individual who
19 has been tested may be required to submit to additional genetic testing.

20 *Reporter's Note*

21 *Subsections (b) and (c) are designed to avoid evidentiary problems encountered*
22 *in Dotson v. Petty, 359 S.E. 2d 403 (Va. App. 1987) Most jurisdictions apparently do not*
23 *have this problem. See: State v. Brashear, 841 S.W. 2d 754 (Mo. App. 1992); DeLaGarza*
24 *v. Salazar, 851 S.W. 2d 380 (Tex.App.—San Antonio 1993, no writ)*
25

26 **SECTION 504. GENETIC TESTING; PRESUMPTION.**

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

29 (1) the man has at least a 99% probability of paternity, using a prior
30 probability of 0.50, as calculated by using the paternity index obtained in the testing; and

31 (2) a combined paternity index of at least 100 to 1.

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

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

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

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

9 *Reporter's Note*

10 *The appropriate standard for genetic testing is recited in this section, which*
11 *identifies the level of testing needed to establish a presumption of paternity. The point of*
12 *the standard, after all, is to establish a level of testing that will sustain a finding of*
13 *paternity on the genetic evidence alone. There is no reason for the court to order a*
14 *particular level of testing. The 99% level of probability simply is the point at which a*
15 *presumption of paternity is appropriate. It is important for bench and bar to understand*
16 *that a positive genetic test at a lower level is still evidence of paternity.*

17 *Moreover, the approach of § 504 to employ both the combined paternity index*
18 *and the probability of paternity will help avoid confusion in courts in those few states*
19 *that now use only the combined paternity index as a presumption.*
20

21 **SECTION 505. COSTS OF GENETIC TESTING.**

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

23 (1) by the support-enforcement agency in a proceeding commenced by
24 that agency;

25 (2) by the party who made the request;

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

27 (4) as ordered by a court.

28 (b) The court may order reimbursement from a party if the result of the genetic
29 test is contrary to the position of that party.

30 *Reporter's Note*

31 *Source: U.P.A. § 11; 42 U.S.C. § 666(a)(5)(B)(ii)(I); see Little v. Streater, 454*
32 *U.S. 1, 101 S. Ct. 2202, 68 L. Ed. 2d 627 (1981).*
33

34 **SECTION 506. ADDITIONAL GENETIC TESTING.** The court or the support-
35 enforcement agency shall order additional genetic testing on the request of an individual

1 contesting the result of the original testing. The court need not order additional testing
2 until the contestant provides advance payment for that testing.

Reporter's Note

3
4 *Source: U.P.A. § 11; 42 U.S.C. § 666(a)(5)(B)(ii)(II).*
5

6 **SECTION 507. GENETIC TESTING WHEN NOT ALL PERSONS AVAILABLE.**

7 (a) If a specimen is not available for genetic testing, on its own motion or upon
8 request of a party, as appropriate, a court may order the following persons to submit to
9 genetic testing by a laboratory:

- 10 (1) the parents of the presumed or putative father or the mother;
11 (2) brothers and sisters of the presumed or putative father or the mother;
12 (3) other children of the presumed or putative father and their mothers;
13 (4) other children of the mother and their fathers; and
14 (5) other persons the court finds to be appropriate for testing.

15 (b) If the mother of a child is not available for genetic testing, the court may order
16 genetic testing to proceed without a specimen from the mother.
17

18 **SECTION 508. DECEASED INDIVIDUAL.** For good cause shown, the court may
19 order genetic testing of a deceased individual for determining the parentage of a child.

Reporter's Note

20
21 *The court with jurisdiction to determine parentage may not have jurisdiction to*
22 *order disinterment of a deceased individual in some states. If so, proper authority should*
23 *be substituted in this section.*
24

25 **SECTION 509. IDENTICAL BROTHERS.**

26 (a) If identical brothers are identified as putative fathers in a proceeding to
27 determine parentage, the court shall order the brothers to submit to genetic testing.

28 (b) If no identical brother is excluded by genetic testing as the genetic father, and
29 each brother exceeds the presumption of paternity provided in Section 504 without
30 consideration of another identical brother's probability of paternity, the court shall rely
31 on nongenetic evidence to determine which brother is the genetic father.

Reporter's Note

1
2 See *Illinois Dept. of Public Aid v. Whitworth*, 652 N.E.2d 458 (Ill. App. 4 Dist.
3 1995). In some cases, non-identical brother (and even other related men) will not be
4 excluded after initial testing. This section should not be used to resolve those cases; the
5 appropriate response is for the court to order additional testing as provided in § 504(c).
6 Genetic testing will differentiate non-identical siblings in virtually every instance.
7 Therefore, there should never be a case with non-identical siblings where one is not
8 excluded. If a case occurs in which after initial testing two men are not excluded, the
9 appropriate action is defined in § 504(c). That is, both brothers should be ordered to
10 submit to additional testing in order to determine which is the father. There is no
11 justification for an incompetent or marginally qualified laboratory to perform a
12 superficial amount of testing and then issue a report failing to exclude either man and to
13 inform the requestor that nothing further may be accomplished. In the very, very rare
14 case where a competent laboratory exhausts all its in-house testing and still has not
15 determined which non-identical sibling is excluded, the common practice is to refer the
16 genetic material to another laboratory for more testing.
17 The complexity of this section is illustrated by the question: "Is it possible in cases other
18 than identical twins for one brother to have a 99% probability of paternity and another to
19 have a lesser probability?" The answer is yes, but this begs another question: "Is it
20 possible that the non-identical sibling with the lower probability is the real father?" The
21 answer to that question is also yes. Unfortunately, in some cases the matter is left to rest
22 there instead of the court ordering further testing. If so, courts and other nonscientists
23 will usually find the man with the higher probability to be the father, right or wrong.
24 While this cannot be scientifically sustained, at least one state has incorporated statutory
25 language that provides for a finding of paternity for the putative father with the highest
26 probability of paternity (see Michigan). Therefore, there is a danger that a court will
27 improperly resolve the case after initial genetic testing of non-identical siblings, rather
28 than properly ordering additional testing to resolve who is the father.
29 In contrast, genetic testing can never differentiate identical twin putative fathers. This
30 fact raises an entirely different problem for the court to resolve. This section resolves the
31 identical twin conundrum as much as it is possible to do; it is designed to prevent courts
32 from simply dismissing the case
33

1 **ARTICLE 6**

2 **PROCEEDING TO DETERMINE PARENTAGE**

3
4 **PART 1. NATURE OF PROCEEDING**

5 **SECTION 601. PROCEEDING AUTHORIZED.** A civil action may be brought to
6 determine the parentage of a child. The action is governed by the [rules of civil
7 procedure].

8 *Reporter's Note*

9 *Source: derived from UPA (1973) § 8(2). This section authorizes the suit for a*
10 *parentage proceeding. The suit is declared a "civil proceeding" to remove it from*
11 *criminal law jurisdiction. The bracket for filling in appropriate court rules should be*
12 *tailored to local court structure. For example some jurisdictions have special rules for*
13 *family court, surrogate court, etc.*
14

15 **SECTION 602. STANDING TO MAINTAIN PROCEEDING.** Subject to Sections
16 604 and 605, a proceeding to determine the existence or nonexistence of a parent-child
17 relationship may be maintained by:

- 18 (1) a child;
19 (2) the mother of the child;
20 (3) a presumed father of the child;
21 (4) a man who has acknowledged being the father pursuant to Article 3;
22 (5) a man alleging that he is or is not the father of the child;
23 (6) the support enforcement agency [and other authorized governmental entity];
24 (7) an authorized adoption agency or licensed child-placing agency;
25 (8) a representative authorized by law to act for an individual who would
26 otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a
27 minor; or
28 (9) an intended parent under Article 9 of this Act.

29 *Reporter's Note*

30 *Source: UPA (1973) § 6.*

1
2 **SECTION 603. PARTIES TO PARENTAGE PROCEEDING**

3 (a) The following individuals must be joined as parties on the commencement of a
4 proceeding to determine parentage:

5 (1) a presumed father of the child; and

6 (2) a man alleged by the petitioner to be the father of the child.

7 (b) An individual, governmental entity, adoption agency, or licensed child-placing
8 agency, asserting an interest in the child must be joined as a party to a proceeding to
9 determine parentage if required by other law of this state.

10 *Reporter's Notes*

11 *Source: UPA (1973) §9 This section partially follows the original UPA*
12 *requirement that presumed and alleged fathers must be named as parties. Differences in*
13 *this draft are notable. First, the mother is not a necessary party. Of course, the mother*
14 *will almost certainly be a party or be fully aware of the proceeding. However, many Title*
15 *IV-D agencies bring actions in their own name, not in the name of the mother, which*
16 *account for this alteration of the original Act. Secondly, the child is not a necessary*
17 *party. Few states require children as necessary parties; Drafting Committee believes*
18 *that, with the widespread use of DNA testing and child support guidelines, such a*
19 *requirement has outlived its usefulness. Finally, as far as can be determined, no state*
20 *requires the children to be named as parties in every divorce action, and those judgments*
21 *serve as res judicata if a later attack is mounted. Subsection (b) is designed to cover a*
22 *myriad of state law variations on those other persons or entities who may be necessary*
23 *parties. This act does not attempt to cover the subject, which is left to other state law.*
24

25 **SECTION 604. NO LIMITATION; CHILD WITHOUT PRESUMED FATHER.**

26 (a) A proceeding to determine paternity of a child having no presumed father may
27 be commenced:

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

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

31 (b) This section does not apply to an issue of heirship after the closing of an estate

32 *Reporter's Note*

33 *Source: UPA (1973) §§ 6, 7.*
34

35 **SECTION 605. LIMITATION; CHILD WITH PRESUMED FATHER.**

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

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

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

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

10 (c) The court shall dismiss a proceeding under subsection (b) commenced more
11 than two years after the birth of the child unless the party seeking to establish that the
12 presumed father is not the father of the child demonstrates that:

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

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

16 (3) the presumed father of the child does not seek a determination by the
17 court naming him as the father of the child;

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

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

21 *Reporter's Note*

22 *Source: UPA (1973) § 6.*

23
24 **SECTION 606. PERSONAL JURISDICTION.**

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

29 (b) Lack of jurisdiction over a particular party does not preclude the court from
30 making a final determination binding on a party over whom the court has personal
31 jurisdiction.

1
2 **SECTION 607. CHOICE OF LAW.** The court shall apply the law of this State to
3 determine the parent-child relationship. The applicable law does not depend on:

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

6 *Reporter's Note*

7 *Source: UIFSA § 303; UPA (1973) § 8(b). This section simplifies choice of law*
8 *principles; the local court always applies local law. If in fact this state is an*
9 *inappropriate forum, dismissal for forum non-conveniens may be appropriate.*

10
11 **SECTION 608. VENUE.** A proceeding to determine parentage must be commenced in
12 the [county] of this State in which:

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

17 *Reporter's Note*

18 *Source: UPA (1973) § 8.*

19
20 **SECTION 609. JOINDER OF ACTIONS.** If the court has appropriate jurisdiction, a
21 proceeding to determine parentage may be joined with a proceeding for divorce,
22 annulment, legal separation, separate maintenance, custody, visitation, support,
23 termination of parental rights, adoption, or probate or administration of an estate.

24 *Reporter's Note*

25 *Source: UPA (1973) § 8(2).*

26
27 **SECTION 610. PROCEEDING STAYED UNTIL AFTER BIRTH.** A proceeding
28 may be commenced before or after the birth of the child. The proceeding may not be
29 concluded until after the birth, but the following actions may be pursued at any time after
30 the proceeding is commenced: (1) service of process; (2) taking of depositions to
31 perpetuate testimony; and (3) collection of specimens for genetic testing, except as
32 prohibited in Section 502(c).

1 **SECTION 611. REPRESENTATION OF CHILD.**

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

3 (b) If the court finds that no party to the proceeding adequately represents the
4 interests of the child, the court shall appoint an [attorney ad litem] to represent the child.

5 *Reporter's Note*

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

7
8 **SECTION 612. MOTHER-CHILD RELATIONSHIP.** As far as practicable, the
9 provisions of this article relating to father-child proceedings apply to a proceeding to
10 determine the mother-child relationship.

11 [Sections 613-620 reserved for expansion.]

12
13 **PART 2. SPECIAL RULES FOR PARENTAGE PROCEEDING**

14 **SECTION 621. ADMISSIBILITY OF GENETIC TEST RESULTS AND**
15 **EXPENSES.**

16 (a) Subject to subsection (c), a written report of a genetic-testing expert is
17 admissible as evidence of the truth of the matters it contains unless a party objects to the
18 report within 30 days after its receipt and cites specific grounds for exclusion. The
19 admissibility of the report is not affected by:

20 (1) the testing having resulted from an agreement of the parties or an order
21 of the court; or

22 (2) the performance of the testing before or after the commencement of the
23 proceeding.

24 (b) A party objecting to the genetic test results may call one or more genetic-
25 testing experts to testify in person, by telephone, or by deposition. The party objecting
26 bears the expense for the expert testifying.

27 (c) If a child has a presumed father, the results of genetic testing are inadmissible
28 to determine parentage unless performed:

29 (1) with the consent of both the mother and the presumed father; or

30 (2) pursuant to an order of a court as provided by Section 604.

1 (d) Copies of bills for genetic testing and for prenatal and postnatal health care for
2 the mother and child furnished to the adverse party not less than ten days before a hearing
3 are admissible in evidence to prove:

4 (1) the amount of the charges; and

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

6 *Reporter's Note*

7 *Source: 42 U.S.C. § 666(a)(5)(F)(ii); UPA (1973) § 10, § 13. This section greatly*
8 *simplifies the introduction of genetic test results, but preserves a party's right to call the*
9 *expert if desired. Subsection (c) is intended to discourage unilateral genetic testing,*
10 *usually done in the context of a suspicious spouse seeking to determine whether a child is*
11 *actually the child of the presumed father. While such testing cannot be stopped, the*
12 *admissibility of the result may be excluded unless the court determines that the*
13 *requirements of Section 605 have been satisfied.*
14

15 **SECTION 622. CONSEQUENCES OF REFUSING GENETIC TESTING.**

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

17 (b) If the mother does to submit to genetic testing, the court may proceed with
18 testing of the child and putative father.

19 (c) If the putative father or the presumed father refuses to submit to genetic testing
20 for parentage, the fact of refusal may be introduced as evidence.

21 (d) The court may issue a determination of parentage against a [respondent] if the
22 [respondent] refuses to submit to genetic testing as ordered by the court.

23 *Reporter's Note*

24 *Source: UPA (1973) § 10.*
25

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

27 (a) A [respondent] in a proceeding under this [Act] may admit to the paternity of a
28 child by signing an admission of paternity or by admitting paternity at an appearance or
29 hearing in a proceeding to determine parentage of the child.

30 (b) The court shall issue an order determining the child to be the child of the
31 father if the court finds that the admission of paternity was made as provided in this
32 article.

33 *Reporter's Note*

1 (c) If no evidence of an additional genetic test is presented to rebut the
2 presumption of paternity established under Section 504, the court shall issue an order
3 determining the man to be the father of the child.

4 (d) If the court finds that the genetic testing fails to establish a presumption under
5 section 504, the court may not dismiss the proceeding and the genetic testing results,
6 along with other evidence, shall be admissible to resolve paternity.

7 (e) The court shall dismiss with prejudice a proceeding to determine parentage if
8 it finds that genetic testing excludes a man as the father of the child.

9 *Reporter's Note*

10 *Source: UPA (1973) § 14.*

11
12 **SECTION 632. JURY PROHIBITED.** The court shall conduct the final hearing
13 without a jury.

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

16 (a) On request of a party, a court may close hearing under this article for good
17 cause shown.

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

21 *Reporter's Note*

22 *Source: UPA (1973) § 20.*

23
24 **SECTION 634. ORDER ON DEFAULT.** The court shall issue an order of parentage
25 against a party who, after service of process, is in default.

26 *Reporter's Note*

27 *Source: UPA (1973) § 15, 17.*

28
29 **SECTION 635. FINAL ORDER REGARDING PARENTAGE.**

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

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

1 (c) An order determining that a man is the father of a child confirms or creates the
2 father-child relationship between the father and the child as provided in section 201.

3 (d) An order may include appropriate provisions for custody, visitation, support,
4 and other relief as provided by state law.

5 (e) Except as otherwise provided in subsection (f), the court may assess filing
6 fees, reasonable attorney's fees, genetic-testing fees, other costs, and necessary travel and
7 other reasonable expenses incurred in a proceeding under this article. The court may
8 award attorney's fees, which may be paid directly to the attorney, who may enforce the
9 order in the attorney's own name. Payment of child support has priority over fees, costs,
10 and expenses.

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

Reporter's Note.

Derived from UIFSA Section 313; UPA (1973) § 15, 16

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

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

20 (b) If the court is acting under circumstances that meets the jurisdictional
21 requirements of [Section 201 of the Uniform Interstate Family Support Act], in a
22 proceeding to dissolve a marriage the court is deemed to have determined parentage of a
23 child if it:

24 (1) expressly identifies a child as a "child of the marriage," "issue of the
25 marriage," or similar words indicating that the husband is the father of the child; or

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

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

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

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

3 (d) A determination of parentage made consistently with this [Act] is binding
4 upon the support-enforcement agency and any other state agency.

5 (e) A person who is not a party to a proceeding under this [Act] may claim benefit
6 of the determination of parentage in another proceeding commenced by or against the
7 person who is not a party.

8

1 **ARTICLE 7**

2 **PARENTAGE BASED ON EQUITABLE ESTOPPEL**

3
4 **SECTION 701. COURT AUTHORIZED TO REFUSE GENETIC TESTING.**

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

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

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

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

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

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

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

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

20 (5) the age of the child;

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

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

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

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

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

3
4 **SECTION 702. ORDER BASED ON EQUITABLE ESTOPPEL.** If the tribunal denies
5 genetic testing, it shall issue an order determining that the presumed father is the father of
6 the child.

7 *Reporter's Note*

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

10

1 **ARTICLE 8**

2 **CHILD OF ASSISTED REPRODUCTION**

3
4 **SECTION 801. HUSBAND'S LIABILITY FOR ASSISTED REPRODUCTION. A**

5 husband consents to assisted reproduction as provided in Section 802, he is deemed to be
6 the father of any child resulting from:

7 (1) the artificial insemination of his wife;

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

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

13 *Reporter's Note*

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

16
17 **SECTION 802. CONSENT TO ASSISTED REPRODUCTION.**

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

20 (1) a husband and wife;

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

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

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

25 (b) The consent must:

26 (1) be in writing; and

27 (2) be signed by the participant.

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

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

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

5
6 **SECTION 803. LIMITATION ON HUSBAND'S DISPUTE OF PATERNITY.**

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

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

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

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

14 (c) A husband who does not consent in writing to the assisted reproduction by the
15 wife may challenge the presumption of paternity of the resulting child as provided in
16 section 605.

17 *Reporter's Note*

18 *This section is derived from USCACA Section 3*

19
20 **SECTION 804. PARENTAL STATUS OF DECEASED INDIVIDUAL.** An
21 individual who dies before implantation of an embryo or before a child is conceived from
22 the assisted reproduction using the individual's eggs or sperm is not a parent of the
23 resulting child unless the decedent has provided written consent that the donation is to
24 continue posthumously.

25 *Reporter's Note*

26 *This section is derived from USCACA Section 4*

27
28 **SECTION 805. EFFECT OF DISSOLUTION OF MARRIAGE.** If a husband and
29 wife dissolve their marriage before implantation of an embryo or before a child is
30 conceived by use of the husband's sperm, his earlier consent for assisted reproduction is
31 void.

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Reporter's Note

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

SECTION 806. PARENTAL STATUS OF DONOR.

(a) A donor of sperm is not the father of a child conceived through assisted reproduction if the mother is unmarried at the time of conception unless the donor and the mother of the child acknowledge the donor's paternity in compliance with Article 3.

(b) Except as provided in Article 9, a donor of eggs or embryos is not a parent of the child born by the donee.

1 **ARTICLE 9**

2 **GESTATIONAL AGREEMENT**

3
4 **SECTION 901. GESTATIONAL AGREEMENT AUTHORIZED.**

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

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

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

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

13 (c) A gestational agreement is enforceable only if approved as provided in Section
14 903.

15
16 **SECTION 902. APPROVAL OF GESTATIONAL AGREEMENT.**

17 (a) The intended parent and the gestational mother must file a petition in the
18 [appropriate court] to approve a gestational agreement if one of them is a resident of this
19 State. The gestational mother's husband, if she is married, must join in the petition. A
20 copy of the agreement must be attached to the petition. The court shall name a [guardian
21 ad litem] to represent the interests of a child to be conceived by the gestational mother
22 through assisted reproduction and may appoint counsel to represent the gestational mother.

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

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

27 (1) the court has jurisdiction and all parties have submitted to its jurisdiction
28 under subsection (e) and have agreed that the law of this State governs all matters arising
29 under this [Act] and the agreement;

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

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

6 (4) the intended parent, the gestational mother, and the gestational mother's
7 husband, if she is married, meet the standards of fitness applicable to adoptive parents in
8 this State;

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

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

15 (7) a report of the results of any medical or psychological examination or
16 genetic screening agreed to by parties or required by law has been filed with the court and
17 made available to the parties;

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

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

23 (c) Unless otherwise provided in the gestational agreement, all costs of the court,
24 attorney's fees, and other costs and expenses associated with the proceeding must be
25 assessed against the intended parent.

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

1 (e) The court conducting the proceedings has exclusive and continuing jurisdiction of
2 all matters arising out of the gestational agreement until a child born to the gestational
3 mother during the period governed by the agreement is 180 days old.

4
5 **SECTION 903. TERMINATION OF GESTATIONAL AGREEMENT.**

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

10 (b) An individual who terminates an agreement shall file notice of the termination
11 with the court. On receipt of the notice, the court shall vacate the order entered under this
12 article. An individual who fails to notify the court of the termination of the agreement is
13 subject to appropriate sanctions.

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

16
17 **SECTION 904. PARENTAGE UNDER APPROVED GESTATIONAL**

18 **AGREEMENT.** Upon birth of the child, the intended parent shall provide the facility in
19 which the birth takes place with a certified copy of the order of the court issued under
20 Section 903. The facility shall notify the [department of vital statistics] of the birth of the
21 child and request that agency:

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

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

24
25 **SECTION 905. GESTATIONAL AGREEMENT: MISCELLANEOUS**
26 **PROVISIONS.**

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

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

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

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

7 (1) have notice of the birth; and

8 (2) do not commence a timely action in the court that issued the order.

9 (e) An action challenging the presumption established in subsection (d) must name
10 the parties to the agreement and the child as parties to the proceeding. The child must be
11 represented by an [attorney ad litem].

12
13 **SECTION 906. UNAPPROVED GESTATIONAL AGREEMENT.**

14 (a) An agreement not approved by a court under Section 903 is without legal effect.

15 (b) If there is a birth pursuant to an unapproved agreement, the gestational mother is
16 the mother of a child resulting from assisted reproduction, and paternity of the child is
17 determined under this Act.

18 (c) An individual who is a party to a gestational agreement as an intended parent, that
19 has not been approved by a court as provided in Section 902, may be liable for support of
20 the resulting child if the intended parent fails or refuses to adopt the child.

21 (d) This section applies to an agreement that:

22 (1) was not submitted to a court for approval; or

23 (2) was expressly disapproved by a court before the birth of the child.

24

1 **ARTICLE 10**

2 **MISCELLANEOUS PROVISIONS**

3 **SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
4 applying and construing this Uniform Act, consideration must be given to the need to
5 promote uniformity of the law with respect to its subject matter among States that enact it.
6

7 **SECTION 1002. SEVERABILITY CLAUSE.** If any provision of this [Act] or its
8 application to an individual or circumstance is held invalid, the invalidity does not affect
9 other provisions or applications of this [Act] which can be given effect without the invalid
10 provision or application, and to this end the provisions of this [Act] are severable.
11

12 **SECTION 1003. TIME OF TAKING EFFECT.** This [Act] takes effect on _____.
13

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

15 (1) [Uniform Act on Paternity, 1960]

16 (2) [Uniform Parentage Act, 1973]

17 (3) [Uniform Putative and Unknown Fathers Act, 1989]

18 (4) [Uniform Status of Children of Assisted Conception Act, 1989]
19

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