

DRAFT
FOR DISCUSSION ONLY

AMENDMENTS TO UNIFORM PARENTAGE ACT (2002)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 11-12, 2016 Committee Meeting

AMENDMENTS SHOWN IN STRIKE AND SCORE

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ON UNIFORM STATE LAWS

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March 4, 2016

AMENDMENTS TO UNIFORM PARENTAGE ACT (2002)

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Uniform Parentage Act (ULPA) (2002)

Drafted by:

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Brief description of act:

The 2002 **Uniform Parentage Act** (UPA) augments and streamlines the original 1973 UPA, which removed the legal status of illegitimacy from the law of the U.S. and provided a first modern civil paternity action. It includes the basic paternity or parentage action with expanded standing to bring such an action, but provides for a non-judicial acknowledgment of paternity procedure that is the equivalent of an adjudication of paternity in a court, providing that there is no presumed father of the child. The presumption of fatherhood is based on the relationship between a man and woman with respect to a child. The most common presumed father is the man married to the birth mother of the child at the time of conception. The acknowledgment proceeding is predicated on the availability of the precise genetic testing that has developed since 1973. A paternity registry is provided in the 2002 UPA. There is a specific, separate judicial proceeding for ordering genetic testing. The 2002 UPA provides specific standards for genetic testing. Only genetic tests that identify another man as a father or exclude the presumed father may be used to rebut the presumption of fatherhood in a paternity action. Also included in the 2002 UPA are rules for determining the parents of children whose conception is not the result of sexual intercourse. Included kinds of assisted conception are artificial insemination and in vitro fertilization. The 2002 UPA also incorporates sections on gestational agreements, but as optional sections because of state law differences on these kinds of contracts.

Questions about UPA?

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Notes about NCCUSL Acts:

For information on the specific drafting rules used by NCCUSL, the Conference *Procedural and Drafting Manual* is available online at www.nccusl.org.

Because these are uniform acts, it is important to keep the numbering sequence intact while drafting.

In general, the use of bracketed language in NCCUSL acts indicates that a choice must be made between alternate bracketed language, or that specific language must be inserted into the empty brackets. For example: “An athlete agent who violates Section 14 is guilty of a [misdemeanor] [felony] and, upon conviction, is punishable by [].

A word, number, or phrase, or even an entire section, may be placed in brackets to indicate that the bracketed language is suggested but may be changed to conform to state usage or

requirements, or to indicate that the entire section is optional. For example: “An applicant for registration shall submit an application for registration to the [Secretary of State] in a form prescribed by the [Secretary of State]. [An application filed under this section is a public record.] The application must be in the name of an individual, and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury.”

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

1 **AMENDMENTS TO UNIFORM PARENTAGE ACT (2002)**

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

4 *A word about a drafting convention of the Conference that appears throughout this Act. Brackets*
5 *in the statutory text are inserted to warn legislative draftsmen in the several states that the*
6 *suggested language is likely to be subject to local variation. For example, a State may not refer*
7 *to UPA (2000) as an “[Act],” but may label it as a “chapter,” “title,” etc. Often times the*
8 *brackets flag terminology that is known to vary greatly, e.g., [petition], or is clearly subject to*
9 *local option, e.g., [30 days].*

10
11 **SECTION 101. SHORT TITLE.** This [Act] may be cited as the Amendments to
12 Uniform Parentage Act (2002).

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

14 (1) “Acknowledged father” means a man who has established a father-child relationship
15 under [Article] 3.

16 (2) “Adjudicated parent father” means a an individual man who has been adjudicated by a
17 court of competent jurisdiction to be the parent father of a child.

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

21 (A) a presumed father;

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

23 (C) a male donor.

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

26 (A) intrauterine insemination;

27 (B) donation of eggs;

- 1 (C) donation of embryos;
2 (D) in-vitro fertilization and transfer of embryos; and
3 (E) intracytoplasmic sperm injection.

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

6 (6) “Commence” means to file the initial pleading seeking an adjudication of parentage in
7 [the appropriate court] of this State.

8 (7) “Determination of parentage” means the establishment of the parent-child relationship
9 by the signing of a valid acknowledgment of paternity under [Article] 3 or adjudication by the
10 court.

11 (8) “Donor” means an individual who produces a gamete or gametes ~~eggs or sperm~~ used
12 for assisted reproduction, whether or not for consideration. The term does not include:

13 ~~(A) a husband a person who provides sperm, or a wife who provides eggs a~~
14 ~~gamete or gametes, to be used for assisted reproduction by his or her spouse the wife;~~

15 ~~(AB) a woman who gives birth to a child by means of assisted reproduction [,~~
16 ~~except as otherwise provided in [Article] 8]; ~~or~~~~

17 ~~(BC) a parent under Article 7 [or an intended parent under Article 8]; or~~

18 ~~(C) an individual who provides gametes for use in assisted reproduction who~~
19 ~~consents to the use of assisted reproduction with the intent to parent the resulting child.~~

20 (9) “Ethnic or racial group” means, for purposes of genetic testing, a recognized group
21 that an individual identifies as all or part of the individual’s ancestry or that is so identified by
22 other information.

23 (10) “Genetic testing” means an analysis of genetic markers to exclude or identify a man

1 as the genetic father or a woman as the genetic mother of a child. The term includes an analysis
2 of one or a combination of the following:

3 (A) deoxyribonucleic acid; and

4 (B) blood-group antigens, red-cell antigens, human-leukocyte antigens, serum
5 enzymes, serum proteins, or red-cell enzymes.

6 [(11) “Gestational ~~mother~~ carrier” means an adult woman who is not an intended parent
7 and who agrees to gestate an embryo that is genetically unrelated to her, pursuant to gives birth
8 to a child under a gestational surrogacy agreement as set forth in Article 8.]

9 () “Individual means a person of any age.

10 () “Intended parent” means an individual, married or unmarried, who manifests the
11 intent to be legally bound as the parent of a child resulting from assisted reproduction.;

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

13 () “Maternity index” means the likelihood of genetic paternity calculated by computing
14 the ratio between:

15 (A) the likelihood that the tested woman is the genetic mother, based on the
16 genetic markers of the tested woman, the genetic father, and child, conditioned on the hypothesis
17 that the tested woman is the genetic mother of the child; and

18 (B) the likelihood that the tested woman is not the genetic mother, based on the
19 genetic markers of the tested woman, the genetic father, and child, conditioned on the hypothesis
20 that the tested woman is not the genetic mother of the child and that the genetic mother is of the
21 same ethnic or racial group as the tested woman.

22 (13) “Parent” means an individual who has established a parent-child relationship under
23 Section 201.

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

3 (15) "Paternity index" means the likelihood of genetic paternity calculated by computing
4 the ratio between:

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

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

12 (16) "Presumed ~~father~~ parent" means a an individual man who, by operation of law under
13 Section 204, is recognized as the parent ~~father~~ of a child until that status is rebutted or confirmed
14 in a judicial proceeding.

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

19 (18) "Record" means information that is inscribed on a tangible medium or that is stored
20 in an electronic or other medium and is retrievable in perceivable form.

21 (19) "Signatory" means an individual who authenticates a record and is bound by its
22 terms.

23 (20) "State" means a State of the United States, the District of Columbia, Puerto Rico, the

1 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
2 the United States.

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

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

5 (B) establishment or modification of child support;

6 (C) determination of parentage; or

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

8 () “Surrogacy agreement” means an agreement under Article 8 by which a woman,
9 whether genetically related to the resulting child or not, agrees to gestate a fetus with the
10 intentional that she will relinquish the resulting child to the intended parent or parents.

11 () “Surrogacy carrier” means a woman, whether genetically related to the resulting
12 child or not, who agrees to gestate a fetus with the intentional that she will relinquish the
13 resulting child to the intended parent or parents.

14 () “Traditional carrier” means an adult woman who is not an intended parent and who
15 agrees to become pregnant through assisted reproduction using her own gamete(s) and sperm
16 from the intended father or a donor, pursuant to a traditional surrogacy agreement as set forth in
17 Article 8.

18 () “Woman” means a female individual of any age, unless otherwise specified.

19 **Reporter’s Comment**

20
21 1. DEFINITION OF DONOR

22
23 I recommend striking subsection (8)(A) (definition of donor). I believe subsection (A)
24 should be stricken because such persons are already encompassed by Subsection (8)(C), so long
25 as they consent and intend to be a parent. If such spouses have not consented to the assisted
26 reproduction with the intention to be a parent, then I believe they are and should be considered
27 donors. If subsection (A) it is retained, it must be made gender neutral. So it would read: “(A) a
28 person who provides a gamete or gametes to be used for assisted reproduction by his or her

1 spouse”.

2
3 2. PATERNITY/MATERNITY INDEX

4
5 We could combine “Maternity index” and “Paternity index” into a single definition under
6 the heading “Parentage index.” Another alternative is to do what Maine did. Maine has a single
7 listing as follows:

- 8
9 • “Probability of paternity; probability of maternity. ‘Probability of paternity’ and
10 ‘probability of maternity’ mean the measure, for the genetic population group to which
11 the alleged genetic father or genetic mother belongs, of the probability that the person in
12 question is the genetic father or genetic mother of the child compared with a random,
13 unrelated person of the same genetic population group and expressed as a percentage
14 incorporating the paternity or maternity index and a prior probability.

15
16 3. DEFINITIONS OF SURROGACY

17
18 I added definitions of “traditional carrier” and “gestational carrier.” Alternatively, we
19 could do what California did. It has a definition for “surrogacy,” which then contains subsections
20 which define “traditional carrier,” and “gestational carrier.”

21
22 4. PROBABILITY OF PATERNITY

23
24 I deleted this definition because I believe it is never used in the Act and is therefore
25 unnecessary.

26
27 **SECTION 103. SCOPE OF [ACT]; CHOICE OF LAW.**

28 (a) This [Act] applies to determination of parentage in this State.

29 (b) The court shall apply the law of this State to adjudicate the parent-child relationship.

30 The applicable law does not depend on:

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

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

33 (c) This [Act] does not create, enlarge, or diminish parental rights or duties under other
34 law of this State.

35 [(d) This [Act] does not authorize or prohibit an agreement between the intended
36 parent(s) a woman and a man and another woman who agrees to become pregnant through

1 assisted reproduction and in which the woman relinquishes all rights as a parent of a resulting
2 child ~~conceived by means of assisted reproduction~~, and which provides that the intended
3 parent(s) man and other woman become the parent(s) of the resulting child. If a birth results
4 under such an agreement and the agreement is unenforceable under [the law of this State], the
5 parent-child relationship is determined as provided in [Article] 2.]

6 **Official Comment**

7
8 Subsection (d) should be enacted by states that do not enact Article 8 or otherwise do not
9 statutorily address the permissibility of surrogacy agreements.

10
11 **Reporter's Comment**

12
13 Do we want to create an exception to the general choice of law rule for surrogacy
14 agreements that include choice of law provisions? Many surrogacy agreements do include choice
15 of law provisions, and it is not unusual for the parties to be residents of different states.

16
17 **SECTION 104. COURT OF THIS STATE.** The [designate] court is authorized to
18 adjudicate parentage under this [Act].

19 **SECTION 105. PROTECTION OF PARTICIPANTS.** Proceedings under this [Act]
20 are subject to other law of this State governing the health, safety, privacy, and liberty of a child
21 or other individual who could be jeopardized by disclosure of identifying information, including
22 address, telephone number, place of employment, social security number, and the child's day-
23 care facility and school.

24 **SECTION 106. DETERMINATION OF MATERNITY.** Provisions of this [Act]
25 relating to determination of paternity apply to determinations of maternity.

26 **ARTICLE 2**

27 **PARENT-CHILD RELATIONSHIP**

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

29 (a) The ~~mother~~ parent-child relationship is established between a an individual woman

1 and a child by:

2 (1) an un rebutted presumption of parentage under Section 204;

3 ~~the woman's having given birth to the child [, except as otherwise provided in [Article] 8];~~

4 (2) an adjudication of the ~~woman's~~ individual's maternity parentage; ~~{or}~~

5 (3) adoption of the child by the ~~woman~~ individual; ~~;~~ ~~or~~

6 (4) ~~an adjudication confirming the woman as a parent of a child born to a~~
7 ~~gestational mother if the agreement was validated under [Article] 8 or is enforceable under other~~
8 ~~law].~~

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

10 (1) ~~an un rebutted presumption of the man's paternity of the child under Section~~
11 ~~204;~~

12 (2) ~~an effective acknowledgment of paternity by the man under [Article] 3, unless~~
13 ~~the acknowledgment has been rescinded or successfully challenged;~~

14 (3) ~~an adjudication of the man's paternity;~~

15 (4) ~~adoption of the child by the man;~~ ~~{or}~~

16 (45) an adjudication confirming the individual as a parent of a child born through
17 ~~the man's having consented to assisted reproduction by a woman under [Article] 7 which~~
18 ~~resulted in the birth of the child[; or~~

19 [(56) an adjudication confirming the ~~man~~ individual as a parent of a child born to
20 a gestational surrogate mother carrier as provided in Article 8 ~~if the agreement was validated~~
21 ~~under [Article] 8 or is enforceable under other law;]~~

22 (6) for the purpose of establishing a mother-child relationship, the woman's
23 having given birth to the child[, except as otherwise provided in [Article] 8]; or

1 (7) for the purpose of establishing a father-child relationship, an effective
2 acknowledgement of paternity by the man under [Article] 3, unless the acknowledgement has
3 been rescinded or successfully challenged.

4 **Reporter's Comment**

5
6 In the above revised draft, I combined the means of establishing a mother-child
7 relationship and a father-child relationship into a single provision. This is consistent with the
8 approach that Maine took in its recent revision.

9
10 Alternatively, we could do two separate provisions, one detailing the means of
11 establishing a mother-child relationship, and one detailing the means of establishing a father-
12 child relationship.

13
14 Given that most of the provisions are identical, I recommend the combined approach that
15 is detailed above. I believe it is the most straightforward approach.

16
17 **SECTION 202. NO DISCRIMINATION BASED ON MARITAL STATUS.** A child
18 born to parents who are not married to each other has the same rights under the law as a child
19 born to parents who are married to each other.

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

23 **Alternative A**

24 **SECTION 204. PRESUMPTION OF ~~PATERNITY~~ PARENTAGE.**

25 (a) ~~A~~ An individual ~~man~~ is presumed to be the parent ~~father~~ of a child if:

26 (1) ~~he~~ the individual and the woman giving birth to ~~mother~~ of the child are
27 married to each other and the child is born during the marriage;

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

1 (3) before the birth of the child, ~~he~~ the individual and the woman giving birth to
2 the child ~~mother of the child~~ married each other in apparent compliance with law, even if the
3 attempted marriage is or could be declared invalid, and the child is born during the invalid
4 marriage or within 300 days after its termination by death, annulment, declaration of invalidity,
5 or divorce [, or after a decree of separation];

6 (4) after the birth of the child, ~~he~~ the individual and the woman giving birth to
7 ~~mother of the child~~ married each other in apparent compliance with law, whether or not the
8 marriage is or could be declared invalid, and ~~he~~ the individual voluntarily asserted ~~his paternity~~
9 parentage of the child, and:

10 (A) the assertion is in a record filed with [state agency maintaining birth
11 records];

12 (B) ~~he~~ the individual agreed to be and is named as the child's parent ~~father~~
13 on the child's birth certificate; or

14 (C) ~~he~~ the individual promised in a record to support the child as his or her
15 own; or

16 (5) for the first two years of the child's life, the individual ~~he~~ resided in the same
17 household with the child and openly held out the child as his or her own.

18 (b) A presumption of ~~paternity~~ parentage established under this section may be rebutted
19 only by an adjudication under [Article] 6.

20 (c) If two or more conflicting presumptions of parentage arise, the court shall adjudicate
21 parentage and determine parental rights and responsibilities in accordance with the factors listed
22 in Section 608. A presumption of parentage is not necessarily rebutted by evidence that the
23 individual is not a genetic parent.

1 **Alternative B**

2 **SECTION 204. PRESUMPTION OF PATERNITY PARENTAGE.**

3 (a) An ~~man~~ individual is presumed to be the ~~father~~ parent of a child if:

4 (1) ~~he~~ the individual and the mother or the father of the child are married to each
5 other and the child is born during the marriage;

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

9 (3) before the birth of the child, ~~he~~ the individual and the mother or the father of
10 the child married each other in apparent compliance with law, even if the attempted marriage is
11 or could be declared invalid, and the child is born during the invalid marriage or within 300 days
12 after its termination by death, annulment, declaration of invalidity, or divorce[, or after a decree
13 of separation];

14 (4) after the birth of the child, ~~he~~ the individual and the mother or the father of the
15 child married each other in apparent compliance with law, whether or not the marriage is or
16 could be declared invalid, and ~~he~~ the individual voluntarily asserted his or her ~~paternity~~
17 parentage of the child, and:

18 (A) the assertion is in a record filed with [state agency maintaining birth
19 records];

20 (B) ~~he~~ the individual agreed to be and is named as the child's ~~father~~ parent
21 on the child's birth certificate; or

22 (C) ~~he~~ the individual promised in a record to support the child as his or her
23 own; or

1 (5) for the first two years of the child’s life, ~~he~~ the individual resided in the same
2 household with the child and openly held out the child as his or her own.

3 (b) A presumption of ~~paternity~~ parentage established under this section may be rebutted
4 only by an adjudication under [Article] 6.

5 (c) If two or more conflicting presumptions of parentage arise, the court shall adjudicate
6 parentage and determine parental rights and responsibilities in accordance with the factors listed
7 in Section 608. A presumption of parentage is not necessarily rebutted by evidence that the
8 individual is not a genetic parent.

9 **End of Alternatives**

10 **Reporter’s Comment**

11
12 **1. FULL OR PARTIAL GENDER NEUTRALITY**

13
14 In our first drafting call, we discussed whether to make the marital presumption fully or
15 only partially gender neutral. The Option A above makes the marital presumption partially
16 gender neutral. Specifically, under Option A, the marital presumption applies to a male or female
17 spouse of the woman who gives birth. Among those states that have amended their marital
18 presumptions in the wake of same-sex marriage, the above approach is the one that has been
19 adopted by a majority of states. Only one or possibly two states (Washington state and maybe
20 New Hampshire) have chosen to make their marital presumptions fully gender neutral.
21 Consistent with our discussion on the call, I have included both versions for us to consider.
22

23 In case it is helpful, I offer a bit more about the potential constitutional concern with
24 Version B. The Supreme Court has declared that it is constitutionally permissible for a state to
25 treat a nonbiological spouse as a legal parent over the objection and parentage claim of the
26 nonmarital genetic father. Michael H. v. Gerald D., 486 U.S. 1053 (1988). Given that the
27 parentage determination in Michael H. was based on the man’s status as a legal spouse and his
28 conduct in forming a family with the child’s mother, the same result should apply to a situation
29 where the spouse is a woman rather than a man. Thus, Version A is likely constitutionally
30 permissible.
31

32 Under Version B, by contrast, it is possible that a court would be required to find that a
33 biologically unrelated spouse is a legal parent over the claim of a woman who is the genetic,
34 gestational, intended, and functional mother. Because the Court has treated genetic, gestational
35 mothers differently than genetic fathers, that fact pattern potentially raises a different
36 constitutional question from the one presented in Michael H. I think it is likely that some courts
37 would find that result to be unconstitutional.

1 2. COMPETING PRESUMPTIONS

2
3 The 1973 UPA contained a provision addressing the situation involving competing
4 presumptions. Section (4)(b) of the 1973 UPA provides, in relevant part: “If two or more
5 presumptions arise which conflict with each other, the presumption which on the facts is founded
6 on the weightier considerations of policy and logic controls.”
7

8 The 2002 UPA contains no provision addressing how courts should address situations in
9 which there are competing presumptions of parentage. It seems important to include such a
10 provision. I have included a provision here in Section 204. Newly drafted Subsection (c) cross
11 references Section 608. Section 608 lists factors that courts should consider in other cases where
12 genetic parentage and functional parentage do not or may not coincide. These factors seems like
13 they are the ones that would be more appropriate for resolving cases involving competing
14 presumptions. Another possibility is to add this concept into Section 608.
15

16 **ARTICLE 3**

17 **VOLUNTARY ACKNOWLEDGMENT OF PATERNITY**

18 **SECTION 301. ACKNOWLEDGMENT OF PATERNITY.** The woman who gave
19 birth ~~mother of~~ to a child and a man claiming to be the genetic father of the child may sign an
20 acknowledgment of paternity with intent to establish the man’s paternity.

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

22 (a) An acknowledgment of paternity must:

23 (1) be in a record;

24 (2) be signed, or otherwise authenticated, under penalty of perjury by the ~~mother~~
25 woman who gave birth and by the man seeking to establish his paternity;

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

27 (A) does not have a presumed ~~father~~ parent, or has a presumed parent
28 ~~father~~ whose full name is stated; and

29 (B) does not have ~~other~~ another acknowledged father or an adjudicated
30 ~~father~~ parent other than the birth mother ~~another acknowledged or adjudicated father~~;

31 (4) state whether there has been genetic testing and, if so, that the acknowledging

1 man's claim of paternity is consistent with the results of the testing; and

2 (5) state that the signatories understand that the acknowledgment is the equivalent
3 of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is
4 permitted only under limited circumstances and is barred after two years.

5 (b) An acknowledgment of paternity is void if ~~it~~:

6 (1) ~~states that~~ another ~~man~~ individual is a presumed parent ~~father~~ at the time of
7 signing, unless a denial of paternity parentage signed or otherwise authenticated by the presumed
8 ~~father~~ parent is filed with the [agency maintaining birth records];

9 (2) ~~states that~~ another ~~man~~ individual other than the birth mother is an adjudicated
10 parent at the time of signing;

11 (3) another man is or an acknowledged ~~or adjudicated~~ father at the time of
12 signing; ~~or~~

13 (3) ~~falsely denies the existence of a presumed, acknowledged, or adjudicated~~
14 ~~father of the child.~~

15 (c) A presumed father may sign or otherwise authenticate an acknowledgment of
16 paternity.

17 Reporter's Comment

18
19 I made a number of changes to reflect the fact that presumed parents can be men or
20 women. I also made a substantive change to Subsection (b) to better reflect what I think is the
21 actual intent of the provision. The change makes clear that the VAP is void if another person
22 other than the woman who gave birth is a presumed, acknowledged, or adjudicated parent. As
23 previously drafted, the VAP is void only if it states that that is the case. Under the 2002 UPA, the
24 VAP is void only if the person knowingly lies on the form; the VAP can cut off potential claims
25 of other individuals so long as the signatories do not lie. If Subsection (b) is so amended, then
26 what had previously been (b)(3) is no longer necessary.

27
28 **SECTION 303. DENIAL OF PATERNITY.** A presumed father may sign a denial of
29 his paternity. The denial is valid only if:

1 (1) an acknowledgment of paternity signed, or otherwise authenticated, by another man is
2 filed pursuant to Section 305;

3 (2) the denial is in a record, and is signed, or otherwise authenticated, under penalty of
4 perjury; and

5 (3) the presumed father has not previously:

6 (A) acknowledged his paternity, unless the previous acknowledgment has been
7 rescinded pursuant to Section 307 or successfully challenged pursuant to Section 308; or

8 (B) been adjudicated to be the father of the child.

9 **SECTION 304. RULES FOR ACKNOWLEDGMENT AND DENIAL OF**
10 **PATERNITY.**

11 (a) An acknowledgment of paternity and a denial of paternity may be contained in a
12 single document or may be signed in counterparts, and may be filed separately or
13 simultaneously. If the acknowledgement and denial are both necessary, neither is valid until both
14 are filed.

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

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

20 (d) An acknowledgment of paternity or denial of paternity signed by a minor is valid if it
21 is otherwise in compliance with this [Act].

1 **[NEW POTENTIAL VAP-LIKE PROCEDURES**

2 **Alternative A**

3 **SECTION 305. ACKNOWLEDGEMENT OF PARENTAGE.** The birth mother of
4 the child and an individual claiming to be the child's second parent may sign a claim of
5 parentage with the intent to establish the individual's parentage.

6 **~~SECTION 306. EXECUTION OF ACKNOWLEDGEMENT OF PARENTAGE.~~**

7 ~~(a) A acknowledgement of parentage must:~~

8 ~~(1) be in a record;~~

9 ~~(2) be signed, or otherwise authenticated, under penalty of perjury by the woman~~
10 ~~who gave birth and by the individual seeking to establish his or her parentage;~~

11 ~~(3) state that the child whose parentage is being claimed:~~

12 ~~(A) does not have a presumed parent, or has a presumed parent whose full~~
13 ~~name is stated; and~~

14 ~~(B) does not have an acknowledged parent or an adjudicated parent other~~
15 ~~than the birth mother;~~

16 ~~(5) state that the signatories understand that the claim of parentage is the~~
17 ~~equivalent of a judicial adjudication of parentage of the child and that a challenge to the claim of~~
18 ~~parentage is permitted only under limited circumstances and is barred after two years.~~

19 ~~(b) A claim of parentage is void if:~~

20 ~~(1) another individual is a presumed parent, unless a denial of parentage signed or~~
21 ~~otherwise authenticated by the presumed parent is filed with the [agency maintaining birth~~
22 ~~records];~~

23 ~~(2) another individual other than the birth mother is an adjudicated parent;~~

1 ~~(3) another man is an acknowledged father.~~

2 **SECTION 306. EXECUTION OF ACKNOWLEDGEMENT OF PARENTAGE.**

3 (a) A acknowledgement of parentage must:

4 (1) be in a record;

5 (2) be signed, or otherwise authenticated, under penalty of perjury by the woman
6 who gave birth and by the individual seeking to establish his or her parentage;

7 (3) state that the child whose parentage is being claimed:

8 (A) does not have a presumed parent, or has a presumed parent whose full
9 name is stated; and

10 (B) does not have an acknowledged parent or an adjudicated parent other
11 than the birth mother;

12 (5) state that the signatories understand that the claim of parentage is the
13 equivalent of a judicial adjudication of parentage of the child and that a challenge to the claim of
14 parentage is permitted only under limited circumstances and is barred after two years.

15 (b) A claim of parentage is void if:

16 (1) another individual is a presumed parent, unless a denial of parentage signed or
17 otherwise authenticated by the presumed parent is filed with the [agency maintaining birth
18 records];

19 (2) another individual other than the birth mother is an adjudicated parent;

20 (3) another man is an acknowledged father; or

21 (c) A presumed parent may sign or otherwise authenticate an acknowledgment of
22 paternity.

1 Alternative B

2 VOLUNTARY CLAIM OF PARENTAGE

3 SECTION 305. CLAIM OF PARENTAGE.

4 (a) An individual married to a woman who gave birth under circumstances in which the
5 genetic father is or may not be known, may sign in a record, a claim of parentage.

6 (b) A claim of parentage must be filed within [6 months] following the birth of the child.

7 (c) A consent or relinquishment required for the claim of parentage must comply with
8 signing, witnessing, and acknowledging formalities of a consent or relinquishment for an
9 adoption required by other law of this State.

10 SECTION 306. EXECUTION OF ACKNOWLEDGEMENT OF PARENTAGE.

11 (a) A claim of parentage by a person married to the woman who gave birth must:

12 (1) be in a record;

13 (2) be signed, or otherwise authenticated, under penalty of perjury by the woman
14 who gave birth and by the individual seeking to establish his or her parentage;

15 (3) state that the child whose parentage is being claimed:

16 (A) does not have a presumed parent, or has a presumed parent whose full
17 name is stated; and

18 (B) does not have an acknowledged parent or an adjudicated parent other
19 than the birth mother;

20 (5) state that the signatories understand that the claim of parentage is the
21 equivalent of a judicial adjudication of parentage of the child and that a challenge to the claim of
22 parentage is permitted only under limited circumstances and is barred after two years.

23 (b) A claim of parentage is void if:

1 (1) another individual is a presumed parent, unless a denial of parentage signed or
2 otherwise authenticated by the presumed parent is filed with the [agency maintaining birth
3 records];

4 (2) another individual other than the birth mother is an adjudicated parent;

5 (3) another man is an acknowledged father.

6 (c) A presumed parent may sign or otherwise authenticate an acknowledgment of
7 paternity.

8 **End of Alternatives**

9 **Reporter's Comment**

10
11 Option A is my attempt to draft what was discussed on our first call. Option A allows the
12 woman giving birth and another individual to establish the parentage of that individual. The
13 claim of parentage is valid only so long as any other parties with parentage claims deny
14 parentage.

15
16 Option B was drafted by Harry Tindall. Option B is similar, but it limits this
17 acknowledgment of parentage scheme to married couples. Option B would be simpler in some
18 respects. Some may argue, however, that Option B is inconsistent with the basic purpose of the
19 UPA. The primary purpose of the UPA is to ensure the equal treatment of marital and nonmarital
20 children. *See* Section 202 (“A child born to parents who are not married to each other has the
21 same rights under the law as a child born to parents who are married to each other.”). Given that
22 the purpose of the acknowledgement of parentage scheme is to establish parentage based on
23 mutual intentions alone, some may argue that there is no sufficient justification to limit it to
24 married couples only.

25
26 If we decide to incorporate something like the above new acknowledgement of parentage
27 scheme, we would need to amend the remaining provisions in Article 3 to clarify that they apply
28 equally to acknowledgements of paternity and to acknowledgements of parentage.

29
30 I am not aware of any state that has a system like the one drafted above.

31
32 **SECTION 305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF**
33 **PATERNITY.**

34 (a) Except as otherwise provided in Sections 307 and 308, a valid acknowledgment of
35 paternity filed with the [agency maintaining birth records] is equivalent to an adjudication of

1 paternity of a child and confers upon the acknowledged father all of the rights and duties of a
2 parent.

3 (b) Except as otherwise provided in Sections 307 and 308, a valid denial of paternity by a
4 presumed father filed with the [agency maintaining birth records] in conjunction with a valid
5 acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the
6 presumed father and discharges the presumed father from all rights and duties of a parent.

7 **SECTION 306. NO FILING FEE.** The [agency maintaining birth records] may not
8 charge for filing an acknowledgment of paternity or denial of paternity.

9 **SECTION 307. PROCEEDING FOR RESCISSION.** A signatory may rescind an
10 acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind
11 before the earlier of:

12 (1) 60 days after the effective date of the acknowledgment or denial, as provided in
13 Section 304; or

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

16 **SECTION 308. CHALLENGE AFTER EXPIRATION OF PERIOD FOR**
17 **RESCISSION.**

18 (a) After the period for rescission under Section 307 has expired, a signatory of an
19 acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the
20 acknowledgment or denial only:

21 (1) on the basis of fraud, duress, or material mistake of fact; and

22 (2) within two years after the acknowledgment or denial is filed with the [agency
23 maintaining birth records].

1 (b) A party challenging an acknowledgment of paternity or denial of paternity has the
2 burden of proof.

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

4 (a) Every signatory to an acknowledgment of paternity and any related denial of paternity
5 and any presumed or adjudicated parents must be made a party to a proceeding to rescind or
6 challenge the acknowledgment or denial.

7 (b) For the purpose of rescission of, or challenge to, an acknowledgment of paternity or
8 denial of paternity, a signatory submits to personal jurisdiction of this State by signing the
9 acknowledgment or denial, effective upon the filing of the document with the [agency
10 maintaining birth records].

11 (c) Except for good cause shown, during the pendency of a proceeding to rescind or
12 challenge an acknowledgment of paternity or denial of paternity, the court may not suspend the
13 legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay
14 child support.

15 (d) A proceeding to rescind or to challenge an acknowledgment of paternity or denial of
16 paternity must be conducted in the same manner as a proceeding to adjudicate parentage under
17 [Article] 6.

18 (e) At the conclusion of a proceeding to rescind or challenge an acknowledgment of
19 paternity or denial of paternity, the court shall order the [agency maintaining birth records] to
20 amend the birth record of the child, if appropriate.

21 **SECTION 310. RATIFICATION BARRED.** A court or administrative agency
22 conducting a judicial or administrative proceeding is not required or permitted to ratify an
23 unchallenged acknowledgment of paternity.

1 **SECTION 311. FULL FAITH AND CREDIT.** A court of this State shall give full
2 faith and credit to an acknowledgment of paternity or denial of paternity effective in another
3 State if the acknowledgment or denial has been signed and is otherwise in compliance with the
4 law of the other State.

5 **SECTION 312. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF**
6 **PATERNITY.**

7 (a) To facilitate compliance with this [article], the [agency maintaining birth records]
8 shall prescribe forms for the acknowledgment of paternity, the denial of paternity, and claim of
9 parentage.

10 (b) A valid acknowledgment of paternity or denial of paternity is not affected by a later
11 modification of the prescribed form.

12 **SECTION 313. RELEASE OF INFORMATION.** The [agency maintaining birth
13 records] may release information relating to the acknowledgment of paternity or denial of
14 paternity to a signatory of the acknowledgment or denial and to courts and [appropriate state or
15 federal agencies] of this or another State.

16 **SECTION 314. ADOPTION OF RULES.** The [agency maintaining birth records] may
17 adopt rules to implement this [article].]

18 **ARTICLE 4**

19 **REGISTRY OF PATERNITY**

20 **PART 1**

21 **GENERAL PROVISIONS**

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

1 **SECTION 402. REGISTRATION FOR NOTIFICATION.**

2 (a) Except as otherwise provided in subsection (b) or Section 405, a man who desires to
3 be notified of a proceeding for adoption of, or termination of parental rights regarding, a child
4 that he may have fathered must register in the registry of paternity before the birth of the child or
5 within 30 days after the birth.

6 (b) A man is not required to register if [:

7 (1)] a father-child relationship between the man and the child has been established
8 under this [Act] or other law [; or

9 (2) the man commences a proceeding to adjudicate his paternity before the court
10 has terminated his parental rights].

11 (c) A registrant shall promptly notify the registry in a record of any change in the
12 information registered. The [agency maintaining the registry] shall incorporate all new
13 information received into its records but need not affirmatively seek to obtain current
14 information for incorporation in the registry.

15 **SECTION 403. NOTICE OF PROCEEDING.** Notice of a proceeding for the
16 adoption of, or termination of parental rights regarding, a child must be given to a registrant who
17 has timely registered. Notice must be given in a manner prescribed for service of process in a
18 civil action.

19 **SECTION 404. TERMINATION OF PARENTAL RIGHTS: CHILD UNDER**
20 **ONE YEAR OF AGE.** The parental rights of a man who may be the father of a child may be
21 terminated without notice if:

22 (1) the child has not attained one year of age at the time of the termination of parental
23 rights;

1 (2) the man did not register timely with the [agency maintaining the registry]; and

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

3 **SECTION 405. TERMINATION OF PARENTAL RIGHTS: CHILD AT LEAST**
4 **ONE YEAR OF AGE.**

5 (a) If a child has attained one year of age, notice of a proceeding for adoption of, or
6 termination of parental rights regarding, the child must be given to every alleged father of the
7 child, whether or not he has registered with the [agency maintaining the registry].

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

9 **PART 2**

10 **OPERATION OF REGISTRY**

11 **SECTION 411. REQUIRED FORM.** The [agency maintaining the registry] shall
12 prepare a form for registering with the agency. The form must require the signature of the
13 registrant. The form must state that the form is signed under penalty of perjury. The form must
14 also state that:

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

17 (2) a timely registration does not commence a proceeding to establish paternity;

18 (3) the information disclosed on the form may be used against the registrant to establish
19 paternity;

20 (4) services to assist in establishing paternity are available to the registrant through the
21 support-enforcement agency;

22 (5) the registrant should also register in another State if conception or birth of the child
23 occurred in the other State;

1 (6) information on registries of other States is available from [appropriate state agency or
2 agencies]; and

3 (7) procedures exist to rescind the registration of a claim of paternity.

4 **SECTION 412. FURNISHING OF INFORMATION; CONFIDENTIALITY.**

5 (a) The [agency maintaining the registry] need not seek to locate the mother of a child
6 who is the subject of a registration, but the [agency maintaining the registry] shall send a copy of
7 the notice of registration to a mother if she has provided an address.

8 (b) Information contained in the registry is confidential and may be released on request
9 only to:

10 (1) a court or a person designated by the court;

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

12 (3) an agency authorized by other law to receive the information;

13 (4) a licensed child-placing agency;

14 (5) a support-enforcement agency;

15 (6) a party or the party's attorney of record in a proceeding under this [Act] or in a
16 proceeding for adoption of, or for termination of parental rights regarding, a child who is the
17 subject of the registration; and

18 (7) the registry of paternity in another State.

19 **SECTION 413. PENALTY FOR RELEASING INFORMATION.** An individual
20 commits a [appropriate level misdemeanor] if the individual intentionally releases information
21 from the registry to another individual or agency not authorized to receive the information under
22 Section 412.

1 **SECTION 422. CERTIFICATE OF SEARCH OF REGISTRY.**

2 (a) The [agency maintaining the registry] shall furnish to the requester a certificate of
3 search of the registry on request of an individual, court, or agency identified in Section 412.

4 (b) A certificate provided by the [agency maintaining the registry] must be signed on
5 behalf of the [agency] and state that:

6 (1) a search has been made of the registry; and

7 (2) a registration containing the information required to identify the registrant:

8 (A) has been found and is attached to the certificate of search; or

9 (B) has not been found.

10 (c) A [petitioner] must file the certificate of search with the court before a proceeding for
11 adoption of, or termination of parental rights regarding, a child may be concluded.

12 **SECTION 423. ADMISSIBILITY OF REGISTERED INFORMATION.** A

13 certificate of search of the registry of paternity in this or another State is admissible in a
14 proceeding for adoption of, or termination of parental rights regarding, a child and, if relevant, in
15 other legal proceedings.

16 **ARTICLE 5**

17 **GENETIC TESTING**

18 **Reporter's Comment**

19
20 Genetic testing in the parentage context is most commonly ordered with regard to a man.
21 While less common, it is possible to also have questions related to genetic maternity.
22 Accordingly, I made Article 5 gender neutral where appropriate.

23
24 **SECTION 501. SCOPE OF ARTICLE.**

25 (a) This [article] governs genetic testing of an individual to determine parentage, whether
26 the individual:

1 (1) voluntarily submits to testing; or

2 (2) is tested pursuant to an order of the court or a support-enforcement agency;

3 (b) Genetic testing cannot be used to disestablish the parentage of an individual who is a
4 parent under Articles 7 or 8.

5 **Reporter's Comment**

6
7 I'm not sure whether Section 501 is the correct place for this to go, but somewhere the
8 Act needs to clarify that genetic testing cannot be used to deny the parentage of someone who is
9 a legal parent under Article 7 or 8.

10
11 Section 608 (included here as a new Section 503) may be a better home for such a
12 subsection.

13 **SECTION 502. AUTHORITY TO ORDER GENETIC TESTING FOR TESTING.**

14
15 (a) Except as otherwise provided in this [article] and [Article] 6, the court shall order the
16 child and other designated individuals to submit to genetic testing if the request for testing is
17 supported by the sworn statement of a party to the proceeding:

18 (1) alleging ~~paternity~~ genetic parentage and stating facts establishing a reasonable
19 probability of the requisite sexual contact between the individuals; or

20 (2) denying genetic ~~paternity~~ parentage and stating facts establishing a possibility
21 that sexual contact between the individuals, if any, did not result in the conception of the child.

22 (b) A support-enforcement agency may order genetic testing only if there is no presumed
23 or adjudicated parent other than the woman giving birth and no; ~~acknowledged, or adjudicated~~
24 father.

25 (c) If a request for genetic testing of a child is made before birth, the court or support-
26 enforcement agency may not order in-utero testing.

27 (d) If two or more ~~men~~ individuals are subject to court-ordered genetic testing, the testing
28 may be ordered concurrently or sequentially.

1 Alternative A

2 SECTION 503. AUTHORITY TO DENY MOTION FOR GENETIC TESTING.

3 (a) In a proceeding to adjudicate the parentage of a child having a presumed parent or to
4 challenge the parentage of a child having an acknowledged father, the court may deny a motion
5 seeking an order for genetic testing if the court determines that:

6 (1) the conduct of the woman giving birth or the presumed parent or the
7 acknowledged father estops that party from denying parentage; and

8 (2) it would be inequitable to disprove the parent-child relationship between the
9 child and the presumed parent or acknowledged father.

10 (b) In determining whether to deny a motion seeking an order for genetic testing under
11 this section, the court shall consider the best interest of the child, including the following factors:

12 (1) the length of time between the proceeding to adjudicate parentage and the time
13 that the presumed parent or acknowledged father was placed on notice that he or she might not
14 be the genetic parent;

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

17 (3) the facts surrounding the presumed parent's or acknowledged father's
18 discovery of his or her possible lack of genetic parentage;

19 (4) the nature of the relationship between the child and the presumed parent or
20 acknowledged father;

21 (5) the age of the child;

22 (6) the harm that may result to the child if parentage is successfully challenged;

23 (7) the nature of the relationship between the child and the presumed or

1 acknowledged parent;

2 (8) the extent to which the passage of time reduces the chances of establishing the
3 parentage of another person and a child-support obligation in favor of the child; and

4 (9) any other factors that may affect the equities arising from the disruption of the
5 parent-child relationship between the child and the presumed parent or acknowledged father or
6 the chance of other harm to the child.

7 (c) In a proceeding involving the application of this section, a minor or incapacitated
8 child must be represented by a guardian ad litem.

9 (d) Denial of a motion seeking an order for genetic testing must be based on clear and
10 convincing evidence.

11 (e) If the court denies a motion seeking an order for genetic testing, it shall issue an order
12 adjudicating the presumed parent or acknowledged father to be the parent of the child if there are
13 no competing claims to parentage that must be resolved.

14 **Alternative B**

15 **SECTION 503. USE OF GENETIC TESTING TO REBUT A PRESUMPTION OF**
16 **PARENTAGE.**

17 (a) In a proceeding to adjudicate the parentage of a child having a presumed parent or to
18 challenge the parentage of a child having an acknowledged father, the court may deny a motion
19 to deny parentage based on evidence of lack of genetic parentage if the court determines that:

20 (1) the conduct of the woman giving birth or the presumed parent or the
21 acknowledged father estops that party from denying parentage; and

22 (2) it would be inequitable to disprove the parent-child relationship between the
23 child and the presumed parent or acknowledged father.

1 (b) In determining whether to deny a motion to deny parentage based on evidence of lack
2 of genetic parentage under this section, the court shall consider the best interest of the child,
3 including the following factors:

4 (1) the length of time between the proceeding to adjudicate parentage and the time
5 that the presumed parent or acknowledged father was placed on notice that he or she might not
6 be the genetic parent;

7 (2) the length of time during which the presumed parent or acknowledged father
8 has assumed the role of parent of the child;

9 (3) the facts surrounding the presumed parent's or acknowledged father's
10 discovery of his or her possible lack of genetic parentage;

11 (4) the nature of the relationship between the child and the presumed parent or
12 acknowledged father;

13 (5) the age of the child;

14 (6) the harm that may result to the child if parentage is successfully challenged;

15 (7) the nature of the relationship between the child and the presumed or
16 acknowledged parent;

17 (8) the extent to which the passage of time reduces the chances of establishing the
18 parentage of another person and a child-support obligation in favor of the child; and

19 (9) any other factors that may affect the equities arising form the disruption of the
20 parent-child relationship between the child and the presumed parent or acknowledged father or
21 the chance of other harm to the child.

22 (c) In a proceeding involving the application of this section, a minor or incapacitated
23 child must be represented by a guardian ad litem.

1 (d) Denial of a motion seeking an order for genetic testing must be based on clear and
2 convincing evidence.

3 (e) If the court denies a motion seeking an order for genetic testing, it shall issue an order
4 adjudicating the presumed parent or acknowledged father to be the parent of the child if there are
5 no competing claims to parentage that must be resolved.

6 **End of Alternatives**

7 **Reporter's Comment**

8
9 Articles 5 and 6 contain some provisions that are extremely interrelated. Most
10 importantly, Section 502 addresses the circumstances under which a court can order genetic
11 testing. While Section 608 addresses the circumstances under which a court can deny a request
12 for genetic testing. Having the provisions in separate Articles may create confusion. This is
13 particularly true in the states that have adopted only Article 5, but not Article 6. Because the
14 concepts are so related, I recommend either combining Sections 502 and 608 into a single
15 provision or putting them sequentially, in the same Article. Option A above lists the provisions
16 sequentially.

17
18 I also included an Option B. Option B reframes the purpose of former Section 608/n
19 new Section 503. As stated in the 2002 UPA, Section 608 (labeled above as Section 503)
20 addresses the circumstances under which a court can deny a request for genetic testing. As re-
21 written in Option B above, the provision instead addresses what courts should do if there is
22 evidence that a presumed parent or acknowledged father is not a genetic parentage. If it were
23 rewritten in this way, it would be more in the nature of provision governing the rebuttal of a
24 presumption. I think this reframing (as a rebuttal provision) may make more sense. It is
25 increasingly the case that the individuals know whether or not the presumed parent or
26 acknowledged father is a genetic parent. Thus, I think it makes more sense to have the provision
27 framed in terms of the relevance of this information of lack of genetic parentage, rather than
28 being framed around whether it is permissible to gather this information.

29
30 If we moved Section 608 here, we would need to renumber the rest of Article 5.

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

32
33 (a) Genetic testing must be of a type reasonably relied upon by experts in the field of
34 genetic testing and performed in a testing laboratory accredited by:

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

36 (2) the American Society for Histocompatibility and Immunogenetics, or a

1 successor to its functions; or

2 (3) an accrediting body designated by the federal Secretary of Health and Human
3 Services.

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

8 (c) Based on the ethnic or racial group of an individual, the testing laboratory shall
9 determine the databases from which to select frequencies for use in calculation of the probability
10 of paternity. If there is disagreement as to the testing laboratory's choice, the following rules
11 apply:

12 (1) The individual objecting may require the testing laboratory, within 30 days
13 after receipt of the report of the test, to recalculate the probability of genetic paternity parentage
14 using an ethnic or racial group different from that used by the laboratory.

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

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

19 (B) engage another testing laboratory to perform the calculations.

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

23 (d) If, after recalculation using a different ethnic or racial group, genetic testing does not

1 rebuttably identify a an individual man as the genetic parent ~~father~~ of a child under Section 505,
2 an individual who has been tested may be required to submit to additional genetic testing.

3 **SECTION 504. REPORT OF GENETIC TESTING.**

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

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

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

12 (2) the names of the individuals who collected the specimens;

13 (3) the places and dates the specimens were collected;

14 (4) the names of the individuals who received the specimens in the testing
15 laboratory; and

16 (5) the dates the specimens were received.

17 **SECTION 505. GENETIC TESTING RESULTS; ~~REBUTTAL.~~**

18 (a) Under this [Act], an individual man is rebuttably identified as the genetic parent ~~father~~
19 of a child if the genetic testing complies with this [article] and the results disclose that:

20 (1) the individual man has at least a 99 percent probability of genetic parent
21 paternity, using a prior probability of 0.50, as calculated by using the combined paternity or
22 maternity index obtained in the testing; and

23 (2) a combined paternity or maternity index of at least 100 to 1.

1 (b) An individual man identified under subsection (a) as the genetic parent father of the
2 child may ~~rebut~~ challenge the genetic testing results only by other genetic testing satisfying the
3 requirements of this [article] which:

4 (1) excludes the individual man as a genetic parent father of the child; or

5 (2) identifies another individual man as the possible genetic parent father of the
6 child.

7 (c) Except as otherwise provided in Section 510, if more than one individual man is
8 identified by genetic testing as the possible genetic parent father of the child, the court shall
9 order them to submit to further genetic testing to identify the genetic parent father.

10 **Reporter's Comment**

11
12 I removed the words “rebut” and “rebuttal,” because they create confusion. “Rebut” and
13 “rebuttal” are used in the context of parentage to refer to rebuttals of presumptions. This section,
14 by contrast, deals with attempts to *challenge* a factual finding of genetic parentage. Thus, using a
15 different word seems more appropriate and helps avoid confusion.

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

17
18 (a) Subject to assessment of costs under [Article] 6, the cost of initial genetic testing must
19 be advanced:

20 (1) by a support-enforcement agency in a proceeding in which the support-
21 enforcement agency is providing services;

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

23 (3) as agreed by the parties; or

24 (4) as ordered by the court.

25 (b) In cases in which the cost is advanced by the support-enforcement agency, the agency
26 may seek reimbursement from ~~a~~ an individual man who is rebuttably identified as the genetic
27 parent father.

1 have an identical sibling brother and evidence suggests that the sibling brother may be the
2 genetic parent father of the child.

3 (b) If each sibling brother satisfies the requirements as the identified genetic parent father
4 of the child under Section 505 without consideration of another identical sibling brother being
5 identified as the genetic parent father of the child, the court may rely on nongenetic evidence to
6 adjudicate which sibling brother is the genetic parent father of the child.

7 **SECTION 511. CONFIDENTIALITY OF GENETIC TESTING.**

8 (a) Release of the report of genetic testing for parentage is controlled by [applicable state
9 law].

10 (b) An individual who intentionally releases an identifiable specimen of another
11 individual for any purpose other than that relevant to the proceeding regarding parentage without
12 a court order or the written permission of the individual who furnished the specimen commits a
13 [appropriate level misdemeanor].

14 **ARTICLE 6**

15 **PROCEEDING TO ADJUDICATE PARENTAGE**

16 **PART 1**

17 **NATURE OF PROCEEDING**

18 **SECTION 601. PROCEEDING AUTHORIZED.** A civil proceeding may be
19 maintained to adjudicate the parentage of a child. The proceeding is governed by the [rules of
20 civil procedure].

21 **SECTION 602. STANDING TO MAINTAIN PROCEEDING.** Subject to [Article] 3
22 and Sections 607 and 609, a proceeding to adjudicate parentage may be maintained by:

23 (1) the child;

- 1 (2) ~~the mother of the woman giving birth to the child;~~
- 2 (3) an individual man whose paternity parentage of the child is to be adjudicated;
- 3 (4) the support-enforcement agency [or other governmental agency authorized by other
- 4 law];
- 5 (5) an authorized adoption agency or licensed child-placing agency; [or]
- 6 (6) a representative authorized by law to act for an individual who would otherwise be
- 7 entitled to maintain a proceeding but who is deceased, incapacitated, or a minor [; or
- 8 (7) an intended parent under [Articles] 7 or 8].

9 **SECTION 603. PARTIES TO PROCEEDING.** The following individuals must be
10 joined as parties in a proceeding to adjudicate parentage:

- 11 (1) ~~the mother of the woman giving birth to the child;~~
- 12 (2) any presumed, acknowledged, or adjudicated parents; and
- 13 (3) a an individual man whose paternity parentage of the child is to be adjudicated.

14 **SECTION 604. PERSONAL JURISDICTION.**

- 15 (a) An individual may not be adjudicated to be a parent unless the court has personal
- 16 jurisdiction over the individual.
- 17 (b) A court of this State having jurisdiction to adjudicate parentage may exercise personal
- 18 jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the
- 19 conditions prescribed in [Section 201 of the Uniform Interstate Family Support Act] are fulfilled.
- 20 (c) Lack of jurisdiction over one individual does not preclude the court from making an
- 21 adjudication of parentage binding on another individual over whom the court has personal
- 22 jurisdiction.

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

- 3 (1) the child resides or is found;
- 4 (2) the [respondent] resides or is found if the child does not reside in this State; or
- 5 (3) a proceeding for probate or administration of the presumed or alleged father’s estate
6 has been commenced.

7 **SECTION 606. NO LIMITATION: CHILD HAVING NO PRESUMED OR**
8 **ADJUDICATED PARENT OTHER THAN THE WOMAN GIVING BIRTH AND NO,**

9 **ACKNOWLEDGED, OR ADJUDICATED FATHER.** A proceeding to adjudicate the
10 parentage of a child having no presumed or adjudicated second parent other than the woman
11 giving birth, and no acknowledged, ~~or adjudicated~~ father may be commenced at any time, even
12 after:

- 13 (1) the child becomes an adult, but only if the child initiates the proceeding; or
- 14 (2) an earlier proceeding to adjudicate ~~paternity~~ parentage has been dismissed based on
15 the application of a statute of limitation then in effect.

16 **Reporter’s Comment**

17 The wording here is awkward.

18 **SECTION 607. LIMITATION: CHILD HAVING PRESUMED FATHER**
19 **PARENT.**

20 (a) Except as otherwise provided in subsection (b), a proceeding to challenge a presumed
21 parent’s parentage brought by a presumed father, the mother, or another individual to adjudicate
22 the parentage of a child having a presumed father must be commenced not later than two years
23 after the birth of the child.

1 (b) A proceeding seeking to ~~disprove~~ challenge the ~~father~~ parent-child relationship
2 between a child and the child's presumed parent ~~father~~ may be maintained at any time if the
3 court determines that:

4 (1) the presumed parent ~~father~~ and the ~~mother~~ woman giving birth to ~~of~~ the child
5 neither cohabited nor engaged in sexual intercourse with each other during the probable time of
6 conception; and

7 (2) the presumed parent ~~father~~ never openly held out the child as his or her own.

8 **Reporter's Comment**

9
10 The amendment to Section 607(a) is necessary in order to clarify that a presumed person
11 is not precluded from obtaining a court order declaring his or her parentage just because the child
12 is two years old or older. The intent behind the provision is simply to preclude *challenges* to the
13 presumption after that point.

14 **SECTION 608. AUTHORITY TO DENY MOTION FOR GENETIC TESTING.**

15
16 (a) In a proceeding to adjudicate the parentage of a child having a presumed ~~father~~ parent
17 or to challenge the ~~paternity~~ parentage of a child having an acknowledged father, the court may
18 deny a motion seeking an order for genetic testing of the mother or father, the child, and the
19 presumed parent or acknowledged father if the court determines that:

20 (1) the conduct of the mother or father or the presumed parent or acknowledged
21 father estops that party from denying parentage; and

22 (2) it would be inequitable to disprove the ~~father~~ parent-child relationship
23 between the child and the presumed parent or acknowledged father.

24 (b) In determining whether to deny a motion seeking an order for genetic testing under
25 this section, the court shall consider the best interest of the child, including the following factors:

26 (1) the length of time between the proceeding to adjudicate parentage and the time
27 that the presumed parent or acknowledged father was placed on notice that he or she might not

1 be the genetic parent ~~father~~;

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

4 (3) the facts surrounding the presumed parent's or acknowledged father's
5 discovery of his or her possible ~~nonpaternity~~ nonparentage;

6 (4) the nature of the relationship between the child and the presumed parent or
7 acknowledged father;

8 (5) the age of the child;

9 (6) the harm that may result to the child if ~~presumed or acknowledged paternity~~
10 parentage is successfully challenged;

11 (7) the nature of the relationship between the child and any alleged ~~father~~ parent;

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

14 and

15 (9) other factors that may affect the equities arising from the disruption of the
16 parent ~~father~~-child relationship between the child and the presumed parent or acknowledged
17 father or the chance of other harm to the child.

18 (c) In a proceeding involving the application of this section, a minor or incapacitated
19 child must be represented by a guardian ad litem.

20 (d) Denial of a motion seeking an order for genetic testing must be based on clear and
21 convincing evidence.

22 (e) If the court denies a motion seeking an order for genetic testing, it shall issue an order
23 adjudicating the presumed or acknowledged father to be the father of the child.

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Reporter's Comment

As discussed in the comment to Section 502, I think that this section (Section 608) should be moved so that it is combined with or follows Section 502. As noted in the Comment to Section 502, the Sections are interrelated. Section 502 addresses when genetic testing can be ordered. Section 608 addresses when a motion requesting genetic testing can be denied. It is confusing to have them in different Articles. In addition, as discussed in the Comment to Section 502, we may want to consider reframing this provision so that it addresses when evidence of lack of genetic parentage rebuts a presumption of parentage, rather than addressing when the court can refuse to order genetic testing. As currently framed, it is not clear what a court should do if there is already evidence that the person is not the genetic parent.

13
14

**SECTION 609. LIMITATION: CHILD HAVING ACKNOWLEDGED FATHER
OR ADJUDICATED FATHER PARENT.**

15 (a) If a child has an acknowledged father, a signatory to the acknowledgment of paternity
16 or denial of paternity may commence a proceeding seeking to rescind the acknowledgement or
17 denial or challenge the paternity of the child only within the time allowed under Section 307 or
18 308.

19 (b) If a child has an acknowledged father or an adjudicated parent father, an individual,
20 other than the child, who is neither a signatory to the acknowledgment of paternity nor a party to
21 the adjudication and who seeks an adjudication of parentage paternity of the child must
22 commence a proceeding not later than two years after the effective date of the acknowledgment
23 or adjudication.

24 (c) A proceeding under this section is subject to the application of the principles of
25 estoppel established in Section 608.

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Reporter's Comment

We may want to clarify that an action to challenge an acknowledgement on the ground that it is void under Section 302 can be made at any time.

SECTION 610. JOINDER OF PROCEEDINGS.

(a) Except as otherwise provided in subsection (b), a proceeding to adjudicate parentage

1 may be joined with a proceeding for adoption, termination of parental rights, child custody or
2 visitation, child support, divorce, annulment, [legal separation or separate maintenance,] probate
3 or administration of an estate, or other appropriate proceeding.

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

6 **SECTION 611. TIME FOR ACTION, ORDER, OR JUDGMENT PROCEEDING**

7 **~~BEFORE BIRTH.~~** A proceeding to determine parentage may be commenced, and an order or
8 judgment may be entered, before the birth of the child, but ~~may not be concluded until after the~~
9 ~~birth of the child~~ enforcement of that order or judgment shall be stayed until the birth of the
10 child. ~~The following actions may be taken before the birth of the child:~~

11 ~~(1) service of process;~~

12 ~~(2) discovery; and~~

13 ~~(3) except as prohibited by Section 502, collection of specimens for genetic testing.~~

14 **Reporter's Comment**

15
16 I amended Section 611 so that it permits the issuance of pre-birth parentage orders. The
17 amendments are modeled on the relevant California provision. Cal. Fam. Code § 7633 (“An
18 action under this chapter may be brought, an order or judgment may be entered before the birth
19 of the child, and enforcement of that order or judgment shall be stayed until the birth of the
20 child.”).

21
22 Alternatively, Maine has a provision that applies only to children born through assisted
23 reproduction. Me. Stat., T. § 1928 (“Before or after the birth of the resulting child, a party
24 consenting to assisted reproduction, a person who has a written agreement to be a parent
25 pursuant to Section 1922, subsection 2, paragraph B, the intended parent or parents or the person
26 giving birth may commence a proceeding in District Court to obtain an order: A. Declaring that
27 the intended parent or parents are the parent or parents of the resulting child and ordering that
28 parental rights and responsibilities vest exclusively in the intended parent or parents immediately
29 upon the birth of the child.”).

30
31 There may, however, be circumstances where parents to a child born through means other
32 than sexual intercourse would like to initiate a pre-birth action.
33

1 performed:

2 (1) with the consent of both the woman who gave birth to the child ~~mother~~ and the
3 presumed or adjudicated parent or, ~~acknowledged, or adjudicated~~ father; or

4 (2) pursuant to an order of the court under Section 502.

5 (d) Copies of bills for genetic testing and for prenatal and postnatal health care for the
6 mother and child which are furnished to the adverse party not less than 10 days before the date of
7 a hearing are admissible to establish:

8 (1) the amount of the charges billed; and

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

10 **Reporter's Comment**

11 I strongly recommend moving this section and Section 622 into Article 5. Article 5
12 generally addresses genetic testing. Having provisions about genetic testing in multiple Articles
13 is confusing. It creates especially large problems in jurisdictions that adopt Article 5 but not
14 Article 6, or vice versa.

15
16 As I state in my comment to Section 501, we need to make clear how provisions
17 regarding genetic testing apply in cases involving assisted reproduction. If this Section is moved
18 into Article 5, I think the suggested addition to Section 501 addresses this issue. If this Section
19 and Section 622 stay here, we should add language clarifying their relevance to children born
20 through assisted reproduction.

21
22 **SECTION 622. CONSEQUENCES OF DECLINING GENETIC TESTING.**

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

24 (b) If an individual whose genetic paternity parentage is being determined declines to
25 submit to genetic testing ordered by the court, the court for that reason may adjudicate parentage
26 contrary to the position of that individual.

27 (c) Genetic testing of the woman who gave birth ~~mother of a child~~ is not a condition
28 precedent to testing the child and ~~a man~~ the individual whose genetic paternity parentage is being
29 determined. If the genetic ~~mother~~ woman who gave birth is unavailable or declines to submit to

1 genetic testing, the court may order the testing of the child and every individual man whose
2 genetic parentage ~~paternity~~ is being adjudicated.

3 **SECTION 623. ADMISSION OF PATERNITY PARENTAGE AUTHORIZED.**

4 (a) A [respondent] in a proceeding to adjudicate parentage may admit to the ~~paternity~~
5 parentage of a child by filing a pleading to that effect or by admitting ~~paternity~~ parentage under
6 penalty of perjury when making an appearance or during a hearing.

7 (b) If the court finds that the admission of ~~paternity~~ parentage satisfies the requirements
8 of this section and finds that there is no reason to question the admission, the court shall issue an
9 order adjudicating the child to be the child of the ~~man~~ individual admitting ~~paternity~~ parentage.

10 **SECTION 624. TEMPORARY ORDER.**

11 (a) In a proceeding under this [article], the court shall issue a temporary order for support
12 of a child if the order is appropriate and the individual ordered to pay support is:

- 13 (1) a presumed parent ~~father~~ of the child;
- 14 (2) petitioning to have ~~his paternity~~ his or her parentage adjudicated;
- 15 (3) identified as the ~~father~~ parent through genetic testing under Section 505;
- 16 (4) an alleged ~~father~~ parent who has declined to submit to genetic testing;
- 17 (5) shown by clear and convincing evidence to be the parent ~~father~~ of the child; or
- 18 (6) the woman who gave birth to the child ~~the mother of the child~~.

19 (b) A temporary order may include provisions for custody and visitation as provided by
20 other law of this State.

1 **PART 3**

2 **HEARINGS AND ADJUDICATION**

3 **~~SECTION 631. RULES FOR ADJUDICATION OF PATERNITY PARENTAGE.~~**

4 ~~The court shall apply the following rules to adjudicate the paternity parentage of a child:~~

5 ~~(1) The parentage paternity of a child having a presumed or adjudicated parent or, an~~
6 ~~acknowledged, or adjudicated father may be disproved only by admissible results of genetic~~
7 ~~testing excluding that man person as the genetic parent father of the child or identifying another~~
8 ~~person man as the genetic parent father of the child.~~

9 ~~(2) Unless the results of genetic testing are admitted to rebut other results of genetic~~
10 ~~testing, a man identified as the genetic father of a child under Section 505 must be adjudicated~~
11 ~~the father of the child.~~

12 ~~(3) If the court finds that genetic testing under Section 505 neither identifies nor excludes~~
13 ~~a man as the genetic father of a child, the court may not dismiss the proceeding. In that event, the~~
14 ~~results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity.~~

15 ~~(4) Unless the results of genetic testing are admitted to rebut other results of genetic~~
16 ~~testing, a man excluded as the genetic father of a child by genetic testing must be adjudicated not~~
17 ~~to be the father of the child.~~

18 **Reporter's Comment**

19
20 I recommend deleting this Section. If it is retained in some form, it should be moved so
21 that it is next to and/or combined with Section 502 and the new Section 503 (former Section
22 608). This section addresses the relevance of genetic parentage or lack thereof in determining
23 parentage. This Section suggests that parentage is based on genetics. Section 631(2) (“Unless the
24 results of genetic testing are admitted to rebut other results of genetic testing, a man identified as
25 the genetic father under Section 505 must be adjudicated the father of the child.”). But in other
26 places, the Act contemplates a range of circumstances under which a person who is not a genetic
27 parent may nonetheless be found to be a legal parent. Thus, as written, this provision creates
28 confusion and conflict. Just to offer one example, with regard to acknowledged fathers, this
29 provision seems potentially inconsistent with Section 308, which places strict limitations on

1 actions to challenge acknowledgements.

2

3 As applied to same-sex couples specifically, this Section would result in many
4 circumstances under which a same-sex partner could not be recognized as a legal parent, even
5 where all parties agree that the person should be recognized as a legal parent and even where the
6 person intended to be a parent and always acted as a parent.

7

8 **SECTION 632. JURY PROHIBITED.** The court, without a jury, shall adjudicate
9 ~~paternity~~ parentage of a child.

10 **SECTION 633. HEARINGS; INSPECTION OF RECORDS.**

11 (a) On request of a party and for good cause shown, the court may close a proceeding
12 under this [article].

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

16 **SECTION 634. ORDER ON DEFAULT.** The court shall issue an order adjudicating
17 the ~~paternity~~ parentage of a an individual man who:

18 (1) after service of process, is in default; and

19 (2) is found by the court to be the parent ~~father~~ of a child.

20 **SECTION 635. DISMISSAL FOR WANT OF PROSECUTION.** The court may
21 issue an order dismissing a proceeding commenced under this [Act] for want of prosecution only
22 without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is
23 void and has only the effect of a dismissal without prejudice.

24 **SECTION 636. ORDER ADJUDICATING PARENTAGE.**

25 (a) The court shall issue an order adjudicating whether a an individual man alleged or
26 claiming to be the parent ~~father~~ is the parent of the child.

27 (b) An order adjudicating parentage must identify the child by name and date of birth.

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

6 (d) The court 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 (e) On request of a party and for good cause shown, the court may order that the name of
9 the child be changed.

10 (f) If the order of the court is at variance with the child's birth certificate, the court shall
11 order [agency maintaining birth records] to issue an amended birth registration.

12 **SECTION 637. ~~BINDING~~ RES JUDICATA EFFECT OF DETERMINATION OF**
13 **PARENTAGE.**

14 (a) Except as otherwise provided in subsection (b), a determination of parentage is
15 binding on:

16 (1) all signatories to an acknowledgement or denial of paternity as provided in
17 [Article] 3; and

18 (2) all parties to an adjudication by a court acting under circumstances that satisfy
19 the jurisdictional requirements of [Section 201 of the Uniform Interstate Family Support Act].

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

21 (1) the determination was based on an unrescinded acknowledgment of paternity
22 and the acknowledgement is consistent with the results of genetic testing;

23 (2) the adjudication of parentage was based on a finding consistent with the

1 results of genetic testing and the consistency is declared in the determination or is otherwise
2 shown. This subsection does not apply to determinations of parentage under Article 7 or 8; or

3 (3) the child was a party or was represented in the proceeding determining
4 parentage by an [attorney ad litem].

5 (c) In a proceeding to dissolve a marriage, the court is deemed to have made an
6 adjudication of the parentage of a child if the court acts under circumstances that satisfy the
7 jurisdictional requirements of [Section 201 of the Uniform Interstate Family Support Act], and
8 the final order:

9 (1) expressly identifies a child as a “child of the marriage,” “issue of the
10 marriage,” or similar words indicating that ~~the husband is the father of the child~~ both spouses are
11 parents of the child; or

12 (2) provides for support of the child ~~by the husband~~ by one spouse unless that
13 spouse’s parentage ~~paternity~~ is specifically disclaimed in the order.

14 (d) Except as otherwise provided in subsection (b), a determination of parentage may be a
15 defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was
16 not a party to the earlier proceeding.

17 (e) A party to an adjudication of parentage ~~paternity~~ may challenge the adjudication only
18 under law of this State relating to appeal, vacation of judgments, or other judicial review.

19 **ARTICLE 7**

20 **CHILD OF ASSISTED REPRODUCTION**

21 **SECTION 701. SCOPE OF ARTICLE.** This [article] does not apply to the birth of a
22 child conceived by means of sexual intercourse [, or as the result of a gestational agreement as
23 provided in [Article] 8].

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

3 **SECTION 703. PARENTAGE PATERNITY OF CHILD OF ASSISTED**
4 **REPRODUCTION.** A ~~An individual man who provides sperm for~~ who provides a gamete or
5 gametes for, or who consents to, assisted reproduction by a woman as provided in Section 704
6 with the intent to be the parent of the resulting ~~her~~ child, is a parent of the resulting child.

7 **SECTION 704. CONSENT TO ASSISTED REPRODUCTION.**

8 (a) Consent by an individual ~~a woman, and a man~~ who intends to be a parent of a child
9 born ~~to~~ through ~~the woman~~ by assisted reproduction must be in a ~~record~~ writing signed by the
10 woman giving birth and the ~~man~~ individual. ~~This requirement does not apply to a donor.~~

11 (b) Failure of the individual ~~a man~~ to sign a consent required by subsection (a), before or
12 after birth of the child, does not preclude a finding of paternity parentage if the ~~woman and the~~
13 ~~man~~ individual, during the first two years of the child's life, resided together in the same
14 household with the child and openly held out the child as ~~their~~ his or her own.

15 **SECTION 705. LIMITATION ON ~~HUSBAND'S~~ SPOUSE'S DISPUTE OF**
16 **PATERNITY PARENTAGE.**

17 (a) Except as otherwise provided in subsection (b), the ~~husband of a wife~~ spouse of the
18 woman who gives birth to a child by means of assisted reproduction may not challenge his or her
19 own his parentage ~~paternity~~ of the child unless:

20 (1) within two years after learning of the birth of the child he or she commences a
21 proceeding to adjudicate his or her parentage ~~his paternity~~; and

22 (2) the court finds that he or she did not consent to the assisted reproduction,
23 before or after birth of the child.

1 (b) A proceeding to adjudicate ~~paternity~~ parentage may be maintained at any time if the
2 court determines that:

3 (1) the ~~husband~~ spouse did not provide ~~sperm~~ gametes for, or before or after the
4 birth of the child consent to, assisted reproduction by his or her spouse ~~wife~~;

5 (2) the ~~husband~~ spouse and the woman who gave birth to ~~mother~~ of the child have
6 not cohabited since the probable time of assisted reproduction; and

7 (3) the spouse ~~husband~~ never openly held out the child as his or her own.

8 (c) The limitation provided in this section applies to a marriage declared invalid after
9 assisted reproduction.

10 **SECTION 706. EFFECT OF DISSOLUTION OF MARRIAGE OR**
11 **WITHDRAWAL OF CONSENT.**

12 (a) If a marriage is dissolved before placement of eggs, sperm, or embryos, the former
13 spouse is not a parent of the resulting child unless the former spouse consented in a record that if
14 assisted reproduction were to occur after a divorce, the former spouse would be a parent of the
15 child.

16 (b) The consent of a an individual ~~woman or a man~~ to assisted reproduction may be
17 withdrawn by that individual in a record at any time before placement of eggs, sperm, or
18 embryos. An individual who withdraws consent under this section is not a parent of the resulting
19 child.

20 **SECTION 707. PARENTAL STATUS OF DECEASED INDIVIDUAL.** If an
21 individual who consented in a record to be a parent by assisted reproduction dies before
22 placement of eggs, sperm, or embryos, the deceased individual is not a parent of the resulting
23 child unless the deceased spouse consented in a record that if assisted reproduction were to occur

1 after death, the deceased individual would be a parent of the child.

2 **ARTICLE 8**

3 **~~GESTATIONAL~~ SURROGACY AGREEMENTS**

4 **PART 1**

5 **GENERAL REQUIREMENTS**

6 **Reporter's Comment**

7
8 Because I made substantial revisions to this Article, I have not indicated changes using
9 the redline function.

10
11 Also, I attempted to implement what I understood to be the desire of the Committee to
12 draft one set of rules for traditional surrogacy agreements and one set of rules for gestational
13 surrogacy agreements. Because, however, many of the requirements are identical, the version
14 below begins with provisions setting forth the requirements applicable to both forms of
15 surrogacy agreements. These provisions setting forth the requirements applicable to both forms
16 of surrogacy agreements are then followed by Subparts laying out specific requirements
17 pertaining to traditional surrogacy agreements and gestational surrogacy agreements,
18 respectively. I'm not sure if this format works. It may be clearer to include two, entirely separate
19 sets of rules, even if many of the provisions are identical.

20
21 **SECTION 801. ELIGIBILITY TO ENTER A TRADITIONAL OR**
22 **GESTATIONAL SURROGACY AGREEMENT.**

23 (a) In order to execute an agreement to act as a surrogate carrier, a woman must:

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

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

26 (3) have completed a medical evaluation that includes a mental health
27 consultation; and

28 (4) have had independent legal representation of her own choosing and paid for
29 by the intended parent or parents regarding the terms of the surrogacy agreement.

30 (b) In order to execute a surrogacy agreement, the intended parent or parents, whether
31 genetically related to the child or not, must:

- 1 (1) complete a mental health consultation; and
2 (2) retain independent legal representation regarding the terms of the surrogacy
3 agreement and have been advised of the potential legal consequences of the surrogacy
4 agreement.

5 **SECTION 802. TRADITIONAL AND GESTATIONAL SURROGACY**
6 **AGREEMENTS AUTHORIZED.**

7 (a) A prospective surrogacy carrier who is eligible pursuant to Section 801, her spouse if
8 she is married, and the intended parent or parents may enter into a written agreement providing
9 that:

10 (1) The prospective surrogate carrier agrees to pregnancy by means of assisted
11 reproduction;

12 (2) The prospective surrogate carrier, her spouse if she is married, and the donor
13 or donors if any, relinquish all rights and duties as the parents of a child conceived through
14 assisted reproduction; and

15 (3) The intended parent or parents become the parent or parents of the child.

16 (b) A surrogacy agreement may provide for payment of consideration.

17 (c) A surrogacy agreement is enforceable only if it meets the following requirements:

18 (1) The intended parent or parents, the surrogate carrier, and the surrogate
19 carrier's husband if she has one, must be parties to the surrogacy agreement.

20 (2) The agreement must be in writing and signed by all parties.

21 (3) The agreement must require no more than a one-year term to achieve
22 pregnancy.
23

24 (4) At least one of the parties must be a resident of the State.

1 (5) The agreement must be executed before any medical procedures related to the
2 surrogacy agreement other than the medical evaluations required by Section 801.

3 (6) The surrogate and the intended parent or parents must meet the eligibility
4 requirements of Section 801.

5 (7) If any party is married, the party's spouse also must be required to execute the
6 agreement.

7 (8) The agreement may not limit the right of the surrogate carrier to make
8 decisions to safeguard her health or that of the embryos or fetus.

9 (9) The surrogate carrier and the intended parent or parents must be represented
10 by independent legal counsel in all matters concerning the agreement, and each counsel shall
11 affirmatively so state in a written declaration attached to the surrogacy agreement.

12 (10) The agreement must include information disclosing how the intended parents
13 will cover the medical expenses of the surrogate carrier and the newborn or newborns. If health
14 care coverage is used to cover the medical expenses, the disclosure shall include a review of the
15 health care policy provisions related to coverage for surrogate pregnancy, including any
16 possibility liability of the surrogate carrier, third-party liability liens or other insurance coverage,
17 and any notice requirements that could affect coverage or liability of the surrogate carrier.

18 (11) The surrogate carrier and each intended parent must sign a written
19 acknowledgment of having received a copy of the agreement.

20 (12) The signature of each party to the agreement must be notarized,
21 acknowledged or attested by a person authorized to take oaths in accordance with the laws of the
22 jurisdiction where it is executed.

23 (d) A surrogacy agreement is enforceable only if it expressly provides that:

1 (1) the surrogate carrier:
2 (A) must undergo assisted reproduction and attempt to gestate and give
3 birth to any resulting child;
4 (B) has no claim to parentage of all resulting children; and
5 (C) must acknowledge the exclusive parentage of the intended parent or
6 parents of all resulting children;
7 (2) if the surrogate carrier is married, her spouse:
8 (A) must acknowledge and agree to abide by the obligations imposed on
9 the gestational carrier by the terms of the surrogacy agreement;
10 (B) has no claim to parentage of any resulting children; and
11 (C) must acknowledge the exclusive parentage of the intended parent or
12 parents of all resulting children;
13 (3) the surrogate carrier has the right to use the services of a health-care provider
14 of her choosing to provide her care during her pregnancy;
15 (4) the intended parent or parents must:
16 (A) be the exclusive parent or parents and accept parental rights and
17 responsibilities of all resulting children immediately upon birth regardless of the number, gender
18 or mental or physical condition of the child or children; and
19 (B) assume responsibility for the financial support of all resulting children
20 immediately upon the birth of the children; and
21 (e) A traditional surrogacy agreement is valid and enforceable only if it complies with
22 Sections 801 – 806, and the specific requirements applicable to traditional surrogacy agreements
23 provided in Sections 810 - 812.

1 (f) A gestational surrogacy agreement is valid and enforceable only if it complies with
2 Sections 801 – 806, and the specific requirements applicable to gestational surrogacy agreements
3 provided in Sections 807 - 809.

4 **SECTION 803. SURROGACY AGREEMENT: EFFECT OF SUBSEQUENT**
5 **MARRIAGE.** The subsequent marriage of a surrogate carrier after the signing of the agreement
6 does not affect the validity of a surrogacy agreement, her spouse’s consent to the agreement is
7 not required, and her spouse is not a presumed parent of the resulting child.

8 **SECTION 804. TERMINATION OF SURROGACY AGREEMENT.**

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

10 (1) A party to a traditional surrogacy agreement may withdraw consent to any
11 medical procedure and may terminate the traditional surrogacy agreement at any time prior to the
12 use of intrauterine insemination, intracytoplasmic sperm injection, or in-vitro fertilization and
13 transfer of embryos by giving written notice of termination to all other parties.

14 (2) A party to a gestational surrogacy agreement may withdraw consent to any
15 medical procedure and may terminate the gestational surrogacy agreement at any time prior to
16 any embryo transfer by giving written notice of termination to all other parties.

17 (b) Upon proper termination of the surrogacy agreement under subsection (a), the parties
18 are released from all obligations recited in the agreement except that the intended parent or
19 parents remain responsible for all expenses that are reimbursable under the agreement incurred
20 by the surrogate carrier through the date of termination. The surrogate carrier is entitled to keep
21 all payments she has received and obtain all payments to which she is entitled. Neither a
22 prospective surrogate carrier nor her spouse, if any, is liable to the intended parent or parents for
23 terminating a surrogacy agreement.

1 **SECTION 805. INSPECTION OF RECORDS.** The petition, relinquishment or
2 consent, agreement, order, report to the court from any investigating agency, and any power of
3 attorney and deposition filed in the office of the clerk of the court pursuant to this part shall not
4 be open to inspection by any person other than the parties to the proceeding and their attorneys
5 and the State Department of Social Services, except upon written court order. A judge of the
6 Superior Court shall not authorize anyone to inspect the petition, relinquishment or consent,
7 agreement, order, report to the court from any investigating agency, or power of attorney or
8 deposition, or any portion of those documents, except in exceptional circumstances and where
9 necessary. The petitioner may be required to pay the expense of preparing the copies of the
10 documents to be inspected.

11 **SECTION 806. EXCLUSIVE, CONTINUING JURISDICTION.** Subject to the
12 jurisdictional standards of [Section 201 of the Uniform Child Custody Jurisdiction and
13 Enforcement Act], the court conducting a proceeding under this [part] has exclusive, continuing
14 jurisdiction of all matters arising out of a surrogacy agreement until a child is born to the
15 surrogate carrier during the period governed by the agreement.

16 **PART 2**

17 **SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENTS**

18 **SECTION 807. PARENTAGE UNDER GESTATIONAL SURROGACY**
19 **AGREEMENT.**

20 (a) The intended parent or parents are by operation of law the parent or parents of the
21 resulting child born through gestational surrogacy immediately upon the birth of the child, and
22 the resulting child is considered the child of the intended parent or parents immediately upon the
23 birth of the child.

1 (b) Neither the gestational surrogate carrier nor her spouse, if any, is the parent of the
2 resulting child.

3 (c) If due to a laboratory error the resulting child is not genetically related to the intended
4 parent or parents, or if due to a laboratory error the resulting child is not genetically related to a
5 donor who donated to the intended parent or parents, the intended parent or parents are
6 considered the parent or parents of the child.

7 (d) An individual who is determined to be a parent of the resulting child is obligated to
8 support the child. The breach of the gestational surrogacy agreement by the intended parent or
9 parents does not relieve the intended parent or parents of the obligation to support the resulting
10 child.

11 **SECTION 808. GESTATIONAL SURROGACY AGREEMENT: ORDER OF**
12 **PARENTAGE.**

13 (a) Pursuant to a valid gestational surrogacy agreement under this [Article], before or
14 after the birth of the resulting child a party to the gestational surrogacy agreement may
15 commence a proceeding in the [appropriate court] to obtain an order:

16 (1) designating the contents of the birth certificate in accordance with [applicable
17 law] and directing the [agency maintaining birth records] to designate the intended parent or
18 parents as the parent or parents of the child;

19 (2) declaring that the intended parent or parents are the parent or parents of the
20 resulting child and ordering that parental rights and responsibilities vest exclusively in the
21 intended parent or parents immediately upon the birth of the child;

22 (3) sealing the record from the public to protect the privacy of the child and the
23 parties; or

1 (4) for any relief that the court determines necessary and proper.

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

4 **SECTION 809. EFFECT OF UNENFORCEABLE GESTATIONAL**
5 **SURROGACY AGREEMENT.**

6 (a) A gestational carrier agreement that does not meet the requirements for a gestational
7 surrogate agreement laid out in this Article is not enforceable.

8 (b) If a birth results under a gestational surrogacy agreement that is not enforceable as
9 provided in this [part], the parent-child relationship is determined as provided in the other
10 Articles of this Act.

11 (c) Individuals who are parties to an unenforceable gestational surrogacy agreement as
12 intended parents may be held liable for support of the resulting child [if they are parents under
13 other Articles of this Act], even if the agreement is otherwise unenforceable. The liability under
14 this subsection includes assessing all expenses and fees as provided in Section 636.

15 (d) Except as expressly provided in a gestational surrogacy agreement and in subsection
16 (e), in the event of a breach of the gestational surrogacy agreement by the gestational surrogate
17 carrier or the intended parent or parents, the gestational surrogate carrier or the intended parent
18 or parents are entitled to all remedies available at law or in equity.

19 (e) Specific performance is not an available remedy for a breach by the gestational
20 surrogate carrier of any term in a gestational surrogacy agreement that requires the gestational
21 surrogate carrier to be impregnated or to terminate a pregnancy. Specific performance is an
22 available remedy for a breach by the gestational surrogate carrier of any term that prevents the
23 intended parent or parents from exercising the full rights of parentage immediately upon birth of

1 the child.

2 **PART 3**

3 **SPECIAL RULES FOR TRADITIONAL SURROGACY AGREEMENTS**

4 **SECTION 810. REQUIREMENTS OF PETITION TO VALIDATE A**

5 **TRADITIONAL SURROGACY AGREEMENT.**

6 (a) The intended parent or parents and the prospective traditional surrogate carrier may
7 commence a proceeding in the [appropriate court] to validate a traditional surrogacy agreement.

8 (b) The court may issue an order validating the traditional surrogacy agreement only on
9 finding that:

10 (1) all of the requirements of Sections 801 and 802 have been satisfied;

11 (2) unless waived by the court, the [relevant child-welfare agency] has made a
12 home study of the intended parent or parents and the intended parent or parents meet the
13 standards of suitability applicable to adoptive parents;

14 (3) all parties have voluntarily entered into the agreement and understand its
15 terms;

16 (c) An individual who terminates a genetic surrogacy agreement pursuant to Section 804
17 shall file notice of the termination with the court. On receipt of the notice, the court shall vacate
18 the order issued under this [part]. An individual who does not notify the court of the termination
19 of the agreement is subject to appropriate sanctions.

20 **SECTION 811. PARENTAGE UNDER VALIDATED TRADITIONAL**
21 **SURROGACY AGREEMENT.**

22 (a) Upon birth of a child to a traditional surrogate carrier, the intended parent or parents
23 shall file notice with the court that a child has been born to the traditional surrogate carrier within

1 300 days after assisted reproduction. Thereupon, the court shall [or may?] issue an order:

2 (1) confirming that the intended parent or parents are the parent or parents of the
3 child;

4 (2) if necessary, ordering that the child be surrendered to the intended parent or
5 parents; and

6 (3) directing the [agency maintaining birth records] to issue a birth certificate
7 naming the intended parent or parents as parents of the child.

8 (b) If the parentage of a child born to a traditional surrogate carrier is alleged not to be the
9 result of assisted reproduction, the court shall order genetic testing to determine the parentage of
10 the child.

11 (c) If the intended parent or parents fail to file notice required under subsection (a), the
12 traditional surrogate carrier or the appropriate State agency may file notice with the court that a
13 child has been born to the traditional surrogate carrier within 300 days after assisted
14 reproduction. Upon proof of a court order issued pursuant to Section 810 validating the
15 traditional surrogacy agreement, the court shall order that the intended parent or parents are the
16 parents of the child and are financially responsible for the child.

17 **SECTION 812. EFFECT OF NONVALIDATED TRADITIONAL SURROGACY**
18 **AGREEMENT.**

19 (a) A traditional surrogacy agreement, whether in a record or not, that is not judicially
20 validated is not enforceable.

21 (b) If a birth results under a traditional surrogacy agreement that is not judicially
22 validated as provided in this [part], the parent-child relationship is determined as provided in
23 other Articles of this Act.

1 (c) Individuals who are parties to a nonvalidated traditional surrogacy agreement as
2 intended parents may be held liable for support of the resulting child, even if the agreement is
3 otherwise unenforceable. The liability under this subsection includes assessing all expenses and
4 fees as provided in Section 636.

5 (d) Except as expressly provided in a traditional surrogacy agreement and in subsection
6 (e), in the event of a breach of the traditional surrogacy agreement by the traditional surrogate
7 carrier or the intended parent or parents, the traditional surrogate carrier or the intended parent or
8 parents are entitled to all remedies available at law or in equity.

9 (e) Specific performance is not an available remedy for a breach by the traditional
10 surrogate carrier of any term in a traditional surrogacy agreement that requires the gestational
11 surrogate carrier to be impregnated or to terminate a pregnancy. Specific performance is an
12 available remedy for a breach by the traditional surrogate carrier of any term that prevents the
13 intended parent or parents from exercising the full rights of parentage immediately upon birth of
14 the child.

15 ARTICLE 9

16 MISCELLANEOUS PROVISIONS

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

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

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

3 **SECTION 904. REPEAL.** The following acts and parts of acts are repealed:

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

5 (2) [Uniform Parentage Act, 1973]

6 (3) [Uniform Putative and Unknown Fathers Act, 1988]

7 (4) [Uniform Status of Children of Assisted Conception Act, 1988]

8 (5) [other inconsistent statutes]

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

12

1 **APPENDIX**

2 **FEDERAL IV-D STATUTE RELATING TO PARENTAGE**

3 **42 U. S. C. § 666. Requirement of Statutorily Prescribed Procedures To Improve**
4 **Effectiveness of Child Support Enforcement.**

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

9 * * *

10 **(5) Procedures concerning paternity establishment.**

11 **(A) Establishment process available from birth until age 18.**

12 (i) Procedures which permit the establishment of the paternity of a child at any
13 time before the child attains 18 years of age.

14 (ii) As of August 16, 1984, clause (i) shall also apply to a child for whom
15 paternity has not been established or for whom a paternity action was brought but dismissed
16 because a statute of limitations of less than 18 years was then in effect in the State.

17 **(B) Procedures concerning genetic testing.**

18 (i) Genetic testing required in certain contested cases. Procedures under which the
19 State is required, in a contested paternity case (unless otherwise barred by State law) to require
20 the child and all other parties (other than individuals found under section 654(29) of this title to
21 have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon
22 the request of any such party, if the request is supported by a sworn statement by the party:

23 (I) alleging paternity, and setting forth facts establishing a reasonable possibility
24 of the requisite sexual contact between the parties; or

25 (II) denying paternity, and setting forth facts establishing a reasonable
26 possibility of the nonexistence of sexual contact between the parties.

27 (ii) Other requirements. Procedures which require the State agency, in any case in
28 which the agency orders genetic testing:

29 (I) to pay costs of such tests, subject to recoupment (if the State so elects) from
30 the alleged father if paternity is established; and

31 (II) to obtain additional testing in any case if an original test result is contested,
32 upon request and advance payment by the contestant.

33 **(C) Voluntary paternity acknowledgment.**

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

40 (ii) Hospital-based program. Such procedures must include a hospital-based
41 program for the voluntary acknowledgment of paternity focusing on the period immediately
42 before or after the birth of a child.

1 (iii) Paternity establishment services.

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

4 (II) Regulations.

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

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

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

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

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

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

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

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

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

35 (I) 60 days; or

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

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

44 **(E) Bar on acknowledgment ratification proceedings.** Procedures under which

1 judicial or administrative proceedings are not required or permitted to ratify an unchallenged
2 acknowledgment of paternity.

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

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

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

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

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

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

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

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

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

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

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

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

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