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

Copyright © 2016
By
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter’s notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.
AMENDMENTS TO UNIFORM PARENTAGE ACT (2002)
The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

JAMIE PEDERSEN, 235 John A. Cherberg Bldg., P.O. Box 40643, Olympia, WA 98504-0643, Chair
MELISSA HORTMAN, Minnesota House of Representatives, State Office Building, Room 237, 100 Dr. Rev. MLK Jr. Blvd., St. Paul, MN 55155, Vice-Chair
MARY M. ACKERLY, 782 Bantam Rd., P.O. Box 815, Bantam, CT 06750-0815
BARBARA ATWOOD, University of Arizona - James E. Rogers College of Law, 1201 E. Speedway Blvd., P.O. Box 210176, Tucson, AZ 85721-0176
LESLEY E. COHEN, 2657 Windmill Pkwy., #415, Henderson, NV 89074-3384
BART M. DAVIS, P.O. Box 50660, Idaho Falls, ID 83405
GAIL HAGERTY, South Central Judicial District, P.O. Box 1013, 514 E. Thayer Ave., Bismarck, ND 58502-1013
MARY M. ACKERLY, 782 Bantam Rd., P.O. Box 815, Bantam, CT 06750-0815
BARBARA ATWOOD, University of Arizona - James E. Rogers College of Law, 1201 E. Speedway Blvd., P.O. Box 210176, Tucson, AZ 85721-0176
LESLEY E. COHEN, 2657 Windmill Pkwy., #415, Henderson, NV 89074-3384
BART M. DAVIS, P.O. Box 50660, Idaho Falls, ID 83405
GAIL HAGERTY, South Central Judicial District, P.O. Box 1013, 514 E. Thayer Ave., Bismarck, ND 58502-1013
KAY P. KINDRED, University of Nevada Las Vegas, William S. Boyd School of Law, 4505 S. Maryland Pkwy., Box 451003, Las Vegas, NV 89154-1003
DEBRA LEHRMANN, Supreme Court of Texas, Supreme Court Bldg., 201 W. 14th St., Room 104, Austin, TX 78701
CLAIRE LEVY, 1395 Kalmia Ave., Boulder, CO 80304
DAVID C. McBRIDE, 1000 King St., P.O. Box 391, Wilmington, DE 19899
HARRY TINDALL, 1300 Post Oak Blvd., Suite 1550, Houston, TX 77056-3081
COURTNEY G. JOSLIN, University California Davis School of Law, 400 Mrak Hall Dr., Davis, CA 95616-5203, Reporter

EX OFFICIO
RICHARD T. CASSIDY, 100 Main St., P.O. Box 1124, Burlington, VT 05402, President
WILLIAM W. BARRETT, 600 N. Emerson Ave., P.O. Box 405, Greenwood, IN 46142, Division Chair

EXECUTIVE DIRECTOR
LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, Executive Director

Copies of this act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org
AMENDMENTS TO UNIFORM PARENTAGE ACT (2002)

TABLE OF CONTENTS

**ARTICLE 1**
**GENERAL PROVISIONS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>101</td>
<td>SHORT TITLE.</td>
<td>1</td>
</tr>
<tr>
<td>102</td>
<td>DEFINITIONS.</td>
<td>1</td>
</tr>
<tr>
<td>103</td>
<td>SCOPE OF [ACT]; CHOICE OF LAW.</td>
<td>6</td>
</tr>
<tr>
<td>104</td>
<td>COURT OF THIS STATE.</td>
<td>7</td>
</tr>
<tr>
<td>105</td>
<td>PROTECTION OF PARTICIPANTS.</td>
<td>7</td>
</tr>
<tr>
<td>106</td>
<td>DETERMINATION OF MATERNITY.</td>
<td>7</td>
</tr>
</tbody>
</table>

**ARTICLE 2**
**PARENT-CHILD RELATIONSHIP**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>201</td>
<td>ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.</td>
<td>7</td>
</tr>
<tr>
<td>202</td>
<td>NO DISCRIMINATION BASED ON MARITAL STATUS.</td>
<td>9</td>
</tr>
<tr>
<td>203</td>
<td>CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE.</td>
<td>9</td>
</tr>
</tbody>
</table>

**Alternative A**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>204</td>
<td>PRESUMPTION OF PATERNITY PARENTAGE.</td>
<td>9</td>
</tr>
</tbody>
</table>

**Alternative B**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>204</td>
<td>PRESUMPTION OF PATERNITY PARENTAGE.</td>
<td>11</td>
</tr>
</tbody>
</table>

**End of Alternatives**

**ARTICLE 3**
**VOLUNTARY ACKNOWLEDGMENT OF PATERNITY**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>301</td>
<td>ACKNOWLEDGMENT OF PATERNITY.</td>
<td>13</td>
</tr>
<tr>
<td>302</td>
<td>EXECUTION OF ACKNOWLEDGMENT OF PATERNITY.</td>
<td>13</td>
</tr>
<tr>
<td>303</td>
<td>DENIAL OF PATERNITY.</td>
<td>14</td>
</tr>
<tr>
<td>304</td>
<td>RULES FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY.</td>
<td>15</td>
</tr>
</tbody>
</table>

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

**Alternative A**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>305</td>
<td>ACKNOWLEDGEMENT OF PARENTAGE.</td>
<td>16</td>
</tr>
<tr>
<td>306</td>
<td>EXECUTION OF ACKNOWLEDGEMENT OF PARENTAGE.</td>
<td>16</td>
</tr>
<tr>
<td>306</td>
<td>EXECUTION OF ACKNOWLEDGEMENT OF PARENTAGE.</td>
<td>17</td>
</tr>
</tbody>
</table>
Alternative B

VOLUNTARY CLAIM OF PARENTAGE

SECTION 305. CLAIM OF PARENTAGE ................................................................. 18
SECTION 306. EXECUTION OF ACKNOWLEDGEMENT OF PARENTAGE .......... 18

End of Alternatives

SECTION 305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY .. 19
SECTION 306. NO FILING FEE ............................................................................. 20
SECTION 307. PROCEEDING FOR RESCISSION .................................................. 20
SECTION 308. CHALLENGE AFTER EXPIRATION OF PERIOD FOR RESCISSION.. 20
SECTION 309. PROCEDURE FOR RESCISSION OR CHALLENGE ...................... 21
SECTION 310. RATIFICATION BARRED ............................................................. 21
SECTION 311. FULL FAITH AND CREDIT ......................................................... 22
SECTION 312. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY . 22
SECTION 313. RELEASE OF INFORMATION ..................................................... 22
SECTION 314. ADOPTION OF RULES ............................................................... 22

ARTICLE 4
REGISTRY OF PATERNITY

PART 1
GENERAL PROVISIONS

SECTION 401. ESTABLISHMENT OF REGISTRY ............................................... 22
SECTION 402. REGISTRATION FOR NOTIFICATION ......................................... 23
SECTION 403. NOTICE OF PROCEEDING ......................................................... 23
SECTION 404. TERMINATION OF PARENTAL RIGHTS: CHILD UNDER ONE YEAR OF AGE ................................................................. 23
SECTION 405. TERMINATION OF PARENTAL RIGHTS: CHILD AT LEAST ONE YEAR OF AGE ........................................................................ 24

PART 2
OPERATION OF REGISTRY

SECTION 411. REQUIRED FORM ........................................................................ 24
SECTION 412. FURNISHING OF INFORMATION; CONFIDENTIALITY ....................... 25
SECTION 413. PENALTY FOR RELEASING INFORMATION ..................................... 25
SECTION 414. RESCISSION OF REGISTRATION ................................................... 26
SECTION 415. UNTIMELY REGISTRATION .......................................................... 26
SECTION 416. FEES FOR REGISTRY ................................................................. 26
PART 3
SEARCH OF REGISTRIES

SECTION 421. SEARCH OF APPROPRIATE REGISTRY ........................................... 26
SECTION 422. CERTIFICATE OF SEARCH OF REGISTRY ....................................... 27
SECTION 423. ADMISSIBILITY OF REGISTERED INFORMATION. .......................... 27

ARTICLE 5
GENETIC TESTING

SECTION 501. SCOPE OF ARTICLE ........................................................................ 27
SECTION 502. AUTHORITY TO ORDER GENETIC TESTING FOR TESTING .......... 28

Alternative A

SECTION 503. AUTHORITY TO DENY MOTION FOR GENETIC TESTING .......... 29

Alternative B

SECTION 503. USE OF GENETIC TESTING TO REBUT A PRESUMPTION OF PARENTAGE ............................................................................................................. 30

End of Alternatives

SECTION 503. REQUIREMENTS FOR GENETIC TESTING .................................... 32
SECTION 504. REPORT OF GENETIC TESTING .................................................. 34
SECTION 505. GENETIC TESTING RESULTS, REBUTAL .................................. 34
SECTION 506. COSTS OF GENETIC TESTING .................................................. 35
SECTION 507. ADDITIONAL GENETIC TESTING ............................................. 36
SECTION 508. GENETIC TESTING WHEN SPECIMENS NOT AVAILABLE ........ 36
SECTION 509. DECEASED INDIVIDUAL ............................................................ 36
SECTION 510. IDENTICAL BROTHERS SIBLINGS .......................................... 36
SECTION 511. CONFIDENTIALITY OF GENETIC TESTING ............................ 37

ARTICLE 6
PROCEEDING TO ADJUDICATE PARENTAGE

PART 1
NATURE OF PROCEEDING

SECTION 601. PROCEEDING AUTHORIZED ....................................................... 37
SECTION 602. STANDING TO MAINTAIN PROCEEDING .................................. 37
SECTION 603. PARTIES TO PROCEEDING ....................................................... 38
SECTION 604. PERSONAL JURISDICTION ......................................................... 38
SECTION 605. VENUE ...................................................................................... 39
SECTION 606. NO LIMITATION: CHILD HAVING NO PRESUMED OR ADJUDICATED PARENT OTHER THAN THE WOMAN GIVING BIRTH AND NO ACKNOWLEDGED, OR ADJUDICATED FATHER .......................................................... 39

SECTION 607. LIMITATION: CHILD HAVING PRESENTED FATHER PARENT ........................................ 39

SECTION 608. AUTHORITY TO DENY MOTION FOR GENETIC TESTING .................................. 40

SECTION 609. LIMITATION: CHILD HAVING ACKNOWLEDGED FATHER OR ADJUDICATED FATHER PARENT ............................................................................. 42

SECTION 610. JOINER OF PROCEEDINGS ...................................................................................... 42

SECTION 611. TIME FOR ACTION, ORDER, OR JUDGMENT PROCEEDING BEFORE BIRTH ................................................................. 43

SECTION 612. CHILD AS PARTY; REPRESENTATION ................................................................. 44

PART 2
SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE

SECTION 621. ADMISSIBILITY OF RESULTS OF GENETIC TESTING; EXPENSES ........................ 44

SECTION 622. CONSEQUENCES OF DECLINING GENETIC TESTING ............................... 45

SECTION 623. ADMISSION OF PATERNITY PARENTAGE AUTHORIZED .................. 46

SECTION 624. TEMPORARY ORDER ......................................................................................... 46

PART 3
HEARINGS AND ADJUDICATION

SECTION 631. RULES FOR ADJUDICATION OF PATERNITY PARENTAGE ................. 47

SECTION 632. JURY PROHIBITED .............................................................................................. 48

SECTION 633. HEARINGS; INSPECTION OF RECORDS ............................................................ 48

SECTION 634. ORDER ON DEFAULT .......................................................................................... 48

SECTION 635. DISMISSAL FOR WANT OF PROSECUTION ............................................. 48

SECTION 636. ORDER ADJUDICATING PARENTAGE ......................................................... 48

SECTION 637. BINDING RES JUDICATA EFFECT OF DETERMINATION OF PARENTAGE ........................................................................................................... 49

ARTICLE 7
CHILD OF ASSISTED REPRODUCTION

SECTION 701. SCOPE OF ARTICLE .......................................................................................... 50

SECTION 702. PARENTAL STATUS OF DONOR ....................................................................... 51

SECTION 703. PARENTAGE PATERNITY OF CHILD OF ASSISTED REPRODUCTION ............................... 51

SECTION 704. CONSENT TO ASSISTED REPRODUCTION ................................................ 51

SECTION 705. LIMITATION ON HUSBAND'S OR SPOUSE'S DISPUTE OF PATERNITY PARENTAGE ................................................................................................................ 51

SECTION 706. EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL OF CONSENT ....................................................................................................................... 52

SECTION 707. PARENTAL STATUS OF DECEASED INDIVIDUAL ............................................ 52
ARTICLE 8
GESTATIONAL SURROGACY AGREEMENTS

PART 1
GENERAL REQUIREMENTS

SECTION 801. ELIGIBILITY TO ENTER A TRADITIONAL OR GESTATIONAL SURROGACY AGREEMENT. ................................................................. 53
SECTION 802. TRADITIONAL AND GESTATIONAL SURROGACY AGREEMENTS AUTHORIZED.......................................................... 54
SECTION 803. SURROGACY AGREEMENT: EFFECT OF SUBSEQUENT MARRIAGE. 57
SECTION 804. TERMINATION OF SURROGACY AGREEMENT. ....................... 57
SECTION 805. INSPECTION OF RECORDS................................................. 58
SECTION 806. EXCLUSIVE, CONTINUING JURISDICTION.................................. 58

PART 2
SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENTS

SECTION 807. PARENTAGE UNDER GESTATIONAL SURROGACY AGREEMENT .... 58
SECTION 808. GESTATIONAL SURROGACY AGREEMENT: ORDER OF PARENTAGE .................................................................................. 59
SECTION 809. EFFECT OF UNENFORCEABLE GESTATIONAL SURROGACY AGREEMENT ........................................................................... 60

PART 3
SPECIAL RULES FOR TRADITIONAL SURROGACY AGREEMENTS

SECTION 810. REQUIREMENTS OF PETITION TO VALIDATE A TRADITIONAL SURROGACY AGREEMENT. ........................................................................ 61
SECTION 811. PARENTAGE UNDER VALIDATED TRADITIONAL SURROGACY AGREEMENT ........................................................................... 61
SECTION 812. EFFECT OF NONVALIDATED TRADITIONAL SURROGACY AGREEMENT .................................................................................. 62

ARTICLE 9
MISCELLANEOUS PROVISIONS

SECTION 901. UNIFORMITY OF APPLICATION AND CONSTRUCTION.............. 63
SECTION 902. SEVERABILITY CLAUSE ............................................................. 63
SECTION 903. TIME OF TAKING EFFECT ......................................................... 64
SECTION 904. REPEAL ................................................................................ 64
SECTION 905. TRANSITIONAL PROVISION .................................................. 64

APPENDIX

FEDERAL IV-D STATUTE RELATING TO PARENTAGE ......................................... 65
Uniform Parentage Act (ULPA) (2002)

Drafted by:
National Conference of Commissioners on Uniform State Laws (NCCUSL)
211 E. Ontario Street, Suite 1300, Chicago, IL  60611
312-915-0195, www.nccusl.org

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?
For further information contact the following persons:
Harry L. Tindall, Chair of the UPA drafting committee: htindall@tindallfoster.com
John J. Sampson, Reporter for the UPA drafting committee: jsampson@utexas.edu
Michael Kerr, NCCUSL Deputy Legislative Director: 312-915-0195, michael.kerr@nccusl.org

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.
AMENDMENTS TO UNIFORM PARENTAGE ACT (2002)

ARTICLE 1

GENERAL PROVISIONS

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

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

SECTION 102. DEFINITIONS. In this [Act]:

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

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

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

(A) a presumed father;

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

(C) a male donor.

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

(A) intrauterine insemination;

(B) donation of eggs;
(C) donation of embryos;

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

(E) intracytoplasmic sperm injection.

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

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

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

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

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

(B) a woman who gives birth to a child by means of assisted reproduction [,

except as otherwise provided in [Article] 8]; or

(C) a parent under Article 7 [or an intended parent under Article 8]; or

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

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

(10) “Genetic testing” means an analysis of genetic markers to exclude or identify a man
as the genetic father or a woman as the genetic mother of a child. The term includes an analysis of one or a combination of the following:

(A) deoxyribonucleic acid; and

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

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

( ) “Individual means a person of any age.

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

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

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

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

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

(13) “Parent” means an individual who has established a parent-child relationship under Section 201.
(14) “Parent-child relationship” means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

(15) “Paternity index” means the likelihood of genetic paternity calculated by computing the ratio between:

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

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

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

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

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

(19) “Signatory” means an individual who authenticates a record and is bound by its terms.

(20) “State” means a State of the United States, the District of Columbia, Puerto Rico, the
United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
the United States.

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

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

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

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

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

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

Reporter’s Comment

1. DEFINITION OF DONOR

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

2. PATERNITY/MATERNITY INDEX

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

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

3. DEFINITIONS OF SURROGACY

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

4. PROBABILITY OF PATERNITY

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

SECTION 103. SCOPE OF [ACT]; CHOICE OF LAW.

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

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

The applicable law does not depend on:

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

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

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

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

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

Official Comment

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

Reporter’s Comment

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

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

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

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

ARTICLE 2

PARENT-CHILD RELATIONSHIP

SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.

(a) The mother parent-child relationship is established between a an individual woman
and a child by:

(1) an unrebutted presumption of parentage under Section 204;

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

(2) an adjudication of the woman’s individual’s maternity parentage; [or]

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

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

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

(1) an unrebutted presumption of the man’s paternity of the child under Section 204;

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

(3) an adjudication of the man’s paternity;

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

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

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

(6) for the purpose of establishing a mother-child relationship, the woman’s having given birth to the child[, except as otherwise provided in [Article] 8]; or
(7) for the purpose of establishing a father-child relationship, an effective
acknowledgement of paternity by the man under [Article] 3, unless the acknowledgement has
been rescinded or successfully challenged.

Reporter’s Comment

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

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

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

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

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

Alternative A

SECTION 204. PRESUMPTION OF PATERNITY PARENTPAGE.
(a) A An individual man is presumed to be the parent father of a child if:

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

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

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

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

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

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

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

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

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

SECTION 204. PRESUMPTION OF PATERNITY PARENTAGE.

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

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

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

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

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

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

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

(C) he the individual promised in a record to support the child as his or her own; or
(5) for the first two years of the child’s life, the individual resided in the same household with the child and openly held out the child as his or her own.

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

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

End of Alternatives

Reporter’s Comment

1. FULL OR PARTIAL GENDER NEUTRALITY

In our first drafting call, we discussed whether to make the marital presumption fully or only partially gender neutral. The Option A above makes the marital presumption partially gender neutral. Specifically, under Option A, the marital presumption applies to a male or female spouse of the woman who gives birth. Among those states that have amended their marital presumptions in the wake of same-sex marriage, the above approach is the one that has been adopted by a majority of states. Only one or possibly two states (Washington state and maybe New Hampshire) have chosen to make their marital presumptions fully gender neutral.

Consistent with our discussion on the call, I have included both versions for us to consider.

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

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

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

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

ARTICLE 3

VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

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

SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF PATERNITY.

(a) An acknowledgment of paternity must:

(1) be in a record;

(2) be signed, or otherwise authenticated, under penalty of perjury by the mother and by the man seeking to establish his paternity;

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

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

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

(4) state whether there has been genetic testing and, if so, that the acknowledging
man’s claim of paternity is consistent with the results of the testing; and

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

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

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

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

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

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

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

Reporter’s Comment

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

SECTION 303. DENIAL OF PATERNITY. A presumed father may sign a denial of his paternity. The denial is valid only if:
(1) an acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to Section 305;

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

(3) the presumed father has not previously:

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

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

SECTION 304. RULES FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY.

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

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

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

(d) An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with this [Act].
[NEW POTENTIAL VAP-LIKE PROCEDURES]

Alternative A

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

SECTION 306. EXECUTION OF ACKNOWLEDGEMENT OF PARENTAGE.

(a) A acknowledgement of parentage must:

(1) be in a record;

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

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

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

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

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

(b) A claim of parentage is void if:

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

(2) another individual other than the birth mother is an adjudicated parent;
(3) another man is an acknowledged father.

SECTION 306. EXECUTION OF ACKNOWLEDGEMENT OF PARENTAGE.

(a) A acknowledgement of parentage must:

(1) be in a record;

(2) be signed, or otherwise authenticated, under penalty of perjury by the woman

who gave birth and by the individual seeking to establish his or her parentage;

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

(A) does not have a presumed parent, or has a presumed parent whose full

name is stated; and

(B) does not have an acknowledged parent or an adjudicated parent other

than the birth mother;

(5) state that the signatories understand that the claim of parentage is the

equivalent of a judicial adjudication of parentage of the child and that a challenge to the claim of

parentage is permitted only under limited circumstances and is barred after two years.

(b) A claim of parentage is void if:

(1) another individual is a presumed parent, unless a denial of parentage signed or

otherwise authenticated by the presumed parent is filed with the [agency maintaining birth

records];

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

(3) another man is an acknowledged father; or

(c) A presumed parent may sign or otherwise authenticate an acknowledgment of

paternity.
Alternative B

VOLUNTARY CLAIM OF PARENTAGE

SECTION 305. CLAIM OF PARENTAGE.

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

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

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

SECTION 306. EXECUTION OF ACKNOWLEDGEMENT OF PARENTAGE.

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

(1) be in a record;

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

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

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

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

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

(b) A claim of parentage is void if:
(1) another individual is a presumed parent, unless a denial of parentage signed or otherwise authenticated by the presumed parent is filed with the [agency maintaining birth records];

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

(3) another man is an acknowledged father.

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

End of Alternatives

Reporter’s Comment

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

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

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

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

SECTION 305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY.

(a) Except as otherwise provided in Sections 307 and 308, a valid acknowledgment of paternity filed with the [agency maintaining birth records] is equivalent to an adjudication of
paternity of a child and confers upon the acknowledged father all of the rights and duties of a
parent.

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

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

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

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

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

SECTION 308. CHALLENGE AFTER EXPIRATION OF PERIOD FOR
RESCISSION.

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

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

(2) within two years after the acknowledgment or denial is filed with the [agency
maintaining birth records].
(b) A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

SECTION 309. PROCEDURE FOR RESCISSION OR CHALLENGE.

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

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

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

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

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

SECTION 310. RATIFICATION BARRED. A court or administrative agency conducting a judicial or administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of paternity.
SECTION 311. FULL FAITH AND CREDIT. A court of this State shall give full
faith and credit to an acknowledgment of paternity or denial of paternity effective in another
State if the acknowledgment or denial has been signed and is otherwise in compliance with the
law of the other State.

SECTION 312. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF
PATERNITY.

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

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

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

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

ARTICLE 4

REGISTRY OF PATERNITY

PART 1

GENERAL PROVISIONS

SECTION 401. ESTABLISHMENT OF REGISTRY. A registry of paternity is
established in the [agency maintaining the registry].
SECTION 402. REGISTRATION FOR NOTIFICATION.

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

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

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

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

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

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

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

(1) the child has not attained one year of age at the time of the termination of parental rights;
(2) the man did not register timely with the [agency maintaining the registry]; and

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

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

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

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

PART 2

OPERATION OF REGISTRY

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

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

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

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

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

(5) the registrant should also register in another State if conception or birth of the child occurred in the other State;
(6) information on registries of other States is available from [appropriate state agency or agencies]; and

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

SECTION 412. FURNISHING OF INFORMATION; CONFIDENTIALITY.

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

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

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

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

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

(4) a licensed child-placing agency;

(5) a support-enforcement agency;

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

(7) the registry of paternity in another State.

SECTION 413. PENALTY FOR RELEASING INFORMATION. An individual commits a [appropriate level misdemeanor] if the individual intentionally releases information from the registry to another individual or agency not authorized to receive the information under Section 412.
SECTION 414. RESCISSION OF REGISTRATION. A registrant may rescind his registration at any time by sending to the registry a rescission in a record signed or otherwise authenticated by him, and witnessed or notarized.

SECTION 415. UNTIMELY REGISTRATION. If a man registers more than 30 days after the birth of the child, the [agency] shall notify the registrant that on its face his registration was not filed timely.

SECTION 416. FEES FOR REGISTRY. 
(a) A fee may not be charged for filing a registration or a rescission of registration.

(b) [Except as otherwise provided in subsection (c), the] [The] [agency maintaining the registry] may charge a reasonable fee for making a search of the registry and for furnishing a certificate.

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

PART 3

SEARCH OF REGISTRIES

SECTION 421. SEARCH OF APPROPRIATE REGISTRY.
(a) If a father-child relationship has not been established under this [Act] for a child under one year of age, a [petitioner] for adoption of, or termination of parental rights regarding, the child, must obtain a certificate of search of the registry of paternity.

(b) If a [petitioner] for adoption of, or termination of parental rights regarding, a child has reason to believe that the conception or birth of the child may have occurred in another State, the [petitioner] must also obtain a certificate of search from the registry of paternity, if any, in that State.
SECTION 422. CERTIFICATE OF SEARCH OF REGISTRY.

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

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

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

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

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

(B) has not been found.

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

SECTION 423. ADMISSIBILITY OF REGISTERED INFORMATION. A certificate of search of the registry of paternity in this or another State is admissible in a proceeding for adoption of, or termination of parental rights regarding, a child and, if relevant, in other legal proceedings.

ARTICLE 5

GENETIC TESTING

Reporter’s Comment

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

SECTION 501. SCOPE OF ARTICLE.

(a) This [article] governs genetic testing of an individual to determine parentage, whether
(1) voluntarily submits to testing; or

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

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

Reporter’s Comment

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

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

SECTION 502. AUTHORITY TO ORDER GENETIC TESTING FOR TESTING.

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

(1) alleging 

paternity

 genetic parentage and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or

(2) denying 

genetic paternity parentage and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.

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

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

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

SECTION 503. AUTHORITY TO DENY MOTION FOR GENETIC TESTING.

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

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

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

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

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

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

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

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

(5) the age of the child;

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

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

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

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

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

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

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

Alternative B

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

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

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

(2) it would be inequitable to disprove the parent-child relationship between the
child and the presumed parent or acknowledged father.
(b) In determining whether to deny a motion to deny parentage based on evidence of lack of genetic parentage under this section, the court shall consider the best interest of the child, including the following factors:

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

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

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

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

(5) the age of the child;

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

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

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

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

(c) In a proceeding involving the application of this section, a minor or incapacitated child must be represented by a guardian ad litem.
(d) Denial of a motion seeking an order for genetic testing must be based on clear and convincing evidence.

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

End of Alternatives

Reporter’s Comment

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

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

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

SECTION 503. REQUIREMENTS FOR GENETIC TESTING.

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

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

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

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

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

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

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

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

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

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

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

(d) If, after recalculation using a different ethnic or racial group, genetic testing does not
rebuttably identify a **individual man** as the **genetic parent** father of a child under Section 505, an individual who has been tested may be required to submit to additional genetic testing.

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

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

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

1. the names and photographs of the individuals whose specimens have been taken;
2. the names of the individuals who collected the specimens;
3. the places and dates the specimens were collected;
4. the names of the individuals who received the specimens in the testing laboratory; and
5. the dates the specimens were received.

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

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

1. the **individual man** has at least a 99 percent probability of **genetic parent** paternity, using a prior probability of 0.50, as calculated by using the combined paternity or **maternity** index obtained in the testing; and
2. a combined paternity or **maternity** index of at least 100 to 1.
(b) An individual man identified under subsection (a) as the genetic parent father of the child may rebut challenge the genetic testing results only by other genetic testing satisfying the requirements of this [article] which:

(1) excludes the individual man as a genetic parent father of the child; or
(2) identifies another individual man as the possible genetic parent father of the child.

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

Reporter’s Comment

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

SECTION 506. COSTS OF GENETIC TESTING.

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

(1) by a support-enforcement agency in a proceeding in which the support-enforcement agency is providing services;
(2) by the individual who made the request;
(3) as agreed by the parties; or
(4) as ordered by the court.

(b) In cases in which the cost is advanced by the support-enforcement agency, the agency may seek reimbursement from a individual man who is rebuttably identified as the genetic parent father.
SECTION 507. ADDITIONAL GENETIC TESTING. The court or the support-

enforcement agency shall order additional genetic testing upon the request of a party who

 contests the result of the original testing. If the previous genetic testing identified a an individual

 man as the genetic parent father of the child under Section 505, the court or agency may not

 order additional testing unless the party provides advance payment for the testing.

 Reporter’s Comment

 Given the state of genetic testing, is Section 507 still appropriate/necessary?

 SECTION 508. GENETIC TESTING WHEN SPECIMENS NOT AVAILABLE.

 (a) Subject to subsection (b), if a genetic-testing specimen is not available from an

 individual man who may be the genetic parent father of a child, for good cause and under

 circumstances the court considers to be just, the court may order the following individuals to

 submit specimens for genetic testing:

 (1) the parents of the individual man;

 (2) brothers and sisters of the individual man;

 (3) other children of the individual man and their mothers; and

 (4) other relatives of the individual man necessary to complete genetic testing.

 (b) Issuance of an order under this section requires a finding that a need for genetic

 testing outweighs the legitimate interests of the individual sought to be tested.

 SECTION 509. DECEASED INDIVIDUAL. For good cause shown, the court may

 order genetic testing of a deceased individual.

 SECTION 510. IDENTICAL BROTHERS SIBLINGS.

 (a) The court may order genetic testing of a sibling brother of a an individual man

 identified as the genetic parent father of a child if the individual man is commonly believed to
have an identical sibling brother and evidence suggests that the sibling brother may be the
genetic parent father of the child.

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

SECTION 511. CONFIDENTIALITY OF GENETIC TESTING.

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

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

ARTICLE 6

PROCEEDING TO ADJUDICATE PARENTAGE

PART 1

NATURE OF PROCEEDING

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

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

(1) the child;
the mother of the woman giving birth to the child;

(3) an individual man whose paternity parentage of the child is to be adjudicated;

(4) the support-enforcement agency [or other governmental agency authorized by other law];

(5) an authorized adoption agency or licensed child-placing agency; [or]

(6) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor [; or

(7) an intended parent under [Articles] 7 or 8].

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

(1) the mother of the woman giving birth to the child;

(2) any presumed, acknowledged, or adjudicated parents; and

(3) a man whose paternity parentage of the child is to be adjudicated.

SECTION 604. PERSONAL JURISDICTION.

(a) An individual may not be adjudicated to be a parent unless the court has personal jurisdiction over the individual.

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

(c) Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.
SECTION 605. VENUE. Venue for a proceeding to adjudicate parentage is in the 
[county] of this State in which:

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

SECTION 606. NO LIMITATION: CHILD HAVING NO PRESUMED OR 
ADJUDICATED PARENT OTHER THAN THE WOMAN GIVING BIRTH AND NO, 
ACKNOWLEDGED, OR ADJUDICATED FATHER. A proceeding to adjudicate the 
parentage of a child having no presumed or adjudicated second parent other than the woman 
giving birth, and no acknowledged, or adjudicated father may be commenced at any time, even 
after:

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

Reporter’s Comment

The wording here is awkward.

SECTION 607. LIMITATION: CHILD HAVING PRESUMED FATHER 
PARENT.

(a) Except as otherwise provided in subsection (b), a proceeding to challenge a presumed 
parent’s parentage brought by a presumed father, the mother, or another individual to adjudicate 
the parentage of a child having a presumed father must be commenced not later than two years 
after the birth of the child.
(b) A proceeding seeking to disprove challenge the father parent-child relationship between a child and the child’s presumed parent father may be maintained at any time if the court determines that:

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

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

Reporter’s Comment

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

SECTION 608. AUTHORITY TO DENY MOTION FOR GENETIC TESTING.

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

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

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

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

(1) the length of time between the proceeding to adjudicate parentage and the time that the presumed parent or acknowledged father was placed on notice that he or she might not
be the genetic parent father;
(2) the length of time during which the presumed parent or acknowledged father has assumed the role of father parent of the child;
(3) the facts surrounding the presumed parent’s or acknowledged father’s discovery of his or her possible nonpaternity nonparentage;
(4) the nature of the relationship between the child and the presumed parent or acknowledged father;
(5) the age of the child;
(6) the harm that may result to the child if presumed or acknowledged paternity parentage is successfully challenged;
(7) the nature of the relationship between the child and any alleged father parent;
(8) the extent to which the passage of time reduces the chances of establishing the paternity parentage of another person man and a child-support obligation in favor of the child; and
(9) other factors that may affect the equities arising from the disruption of the parent father-child relationship between the child and the presumed parent or acknowledged father or the chance of other harm to the child.
(c) In a proceeding involving the application of this section, a minor or incapacitated child must be represented by a guardian ad litem.
(d) Denial of a motion seeking an order for genetic testing must be based on clear and convincing evidence.
(e) If the court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.
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.

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

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

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

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

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

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

SECTION 611. TIME FOR ACTION, ORDER, OR JUDGMENT PROCEEDING
BEFORE BIRTH. A proceeding to determine parentage may be commenced, and an order or
judgment may be entered, before the birth of the child, but may not be concluded until after the
birth of the child. Enforcement of that order or judgment shall be stayed until the birth of the
child. The following actions may be taken before the birth of the child:

(1) service of process;

(2) discovery; and

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

Reporter’s Comment

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

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

There may, however, be circumstances where parents to a child born through means other
than sexual intercourse would like to initiate a pre-birth action.
SECTION 612. CHILD AS PARTY; REPRESENTATION.

(a) A minor child is a permissible party, but is not a necessary party to a proceeding under this [article].

(b) The court shall appoint an [attorney ad litem] to represent a minor or incapacitated child if the child is a party or the court finds that the interests of the child are not adequately represented.

PART 2

SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE

SECTION 621. ADMISSIBILITY OF RESULTS OF GENETIC TESTING;

EXPENSES.

(a) Except as otherwise provided in subsection (c), a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within [14] days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

(1) voluntarily or pursuant to an order of the court or a support-enforcement agency; or

(2) before or after the commencement of the proceeding.

(b) A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.

(c) If a child has a presumed or adjudicated parent or, an acknowledged father, or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless
performed:

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

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

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

(1) the amount of the charges billed; and

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

Reporter’s Comment

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

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

SECTION 622. CONSEQUENCES OF DECLINING GENETIC TESTING.

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

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

(c) Genetic testing of the woman who gave birth mother of a child is not a condition
precedent to testing the child and a man the individual whose genetic paternity parentage is being
determined. If the genetic mother woman who gave birth is unavailable or declines to submit to
genetic testing, the court may order the testing of the child and every individual man whose genetic parentage paternity is being adjudicated.

SECTION 623. ADMISSION OF PATERNITY PARENTAGE AUTHORIZED.

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

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

SECTION 624. TEMPORARY ORDER.

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

(1) a presumed parent father of the child;

(2) petitioning to have his paternity his or her parentage adjudicated;

(3) identified as the father parent through genetic testing under Section 505;

(4) an alleged father parent who has declined to submit to genetic testing;

(5) shown by clear and convincing evidence to be the parent father of the child; or

(6) the woman who gave birth to the child the mother of the child.

(b) A temporary order may include provisions for custody and visitation as provided by other law of this State.
PART 3

HEARINGS AND ADJUDICATION

SECTION 631. RULES FOR ADJUDICATION OF PATERNITY PARENTAGE.

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

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

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

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

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

Reporter’s Comment

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

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

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

SECTION 633. HEARINGS; INSPECTION OF RECORDS.

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

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

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

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

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

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

SECTION 636. ORDER ADJUDICATING PARENTAGE.

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

(b) An order adjudicating parentage must identify the child by name and date of birth.
(c) Except as otherwise provided in subsection (d), the court may assess filing fees, reasonable attorney’s fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this article. The court may award attorney’s fees, which may be paid directly to the attorney, who may enforce the order in the attorney’s own name.

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

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

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

SECTION 637. BINDING RES JUDICATA EFFECT OF DETERMINATION OF PARENTAGE.

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

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

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

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

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

(2) the adjudication of parentage was based on a finding consistent with the
results of genetic testing and the consistency is declared in the determination or is otherwise shown. This subsection does not apply to determinations of parentage under Article 7 or 8; or

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

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

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

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

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

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

ARTICLE 7

CHILD OF ASSISTED REPRODUCTION

SECTION 701. SCOPE OF ARTICLE. This [article] does not apply to the birth of a child conceived by means of sexual intercourse [, or as the result of a gestational agreement as provided in [Article] 8].
SECTION 702. PARENTAL STATUS OF DONOR. A donor is not a parent of a child conceived by means of assisted reproduction.

SECTION 703. PARENTAGE PATERNITY OF CHILD OF ASSISTED REPRODUCTION. A man who provides sperm for a woman as provided in Section 704 with the intent to be the parent of the resulting child, is a parent of the resulting child.

SECTION 704. CONSENT TO ASSISTED REPRODUCTION.
(a) Consent by an individual who intends to be a parent of a child born through assisted reproduction must be in a record writing signed by the woman giving birth and the individual. This requirement does not apply to a donor.
(b) Failure of the individual to sign a consent required by subsection (a), before or after birth of the child, does not preclude a finding of paternity if the woman and the individual, during the first two years of the child’s life, resided together in the same household with the child and openly held out the child as their own.

SECTION 705. LIMITATION ON HUSBAND’S SPOUSE’S DISPUTE OF PATERNITY.
(a) Except as otherwise provided in subsection (b), the husband of a woman who gives birth to a child by means of assisted reproduction may not challenge his own paternity of the child unless:
(1) within two years after learning of the birth of the child he commences a proceeding to adjudicate his paternity, and
(2) the court finds that he did not consent to the assisted reproduction, before or after birth of the child.
(b) A proceeding to adjudicate paternity parentage may be maintained at any time if the court determines that:

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

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

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

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

SECTION 706. EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL OF CONSENT.

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

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

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

ARTICLE 8

GESTATIONAL SURROGACY AGREEMENTS

PART 1

GENERAL REQUIREMENTS

Reporter’s Comment

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

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

SECTION 801. ELIGIBILITY TO ENTER A TRADITIONAL OR GESTATIONAL SURROGACY AGREEMENT.

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

(1) be at least 21 years of age;

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

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

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

(b) In order to execute a surrogacy agreement, the intended parent or parents, whether genetically related to the child or not, must:
(1) complete a mental health consultation; and
(2) retain independent legal representation regarding the terms of the surrogacy agreement and have been advised of the potential legal consequences of the surrogacy agreement.

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

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

(1) The prospective surrogate carrier agrees to pregnancy by means of assisted reproduction;
(2) The prospective surrogate carrier, her spouse if she is married, and the donor or donors if any, relinquish all rights and duties as the parents of a child conceived through assisted reproduction; and
(3) The intended parent or parents become the parent or parents of the child.

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

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

(1) The intended parent or parents, the surrogate carrier, and the surrogate carrier’s husband if she has one, must be parties to the surrogacy agreement.
(2) The agreement must be in writing and signed by all parties.
(3) The agreement must require no more than a one-year term to achieve pregnancy.
(4) At least one of the parties must be a resident of the State.
(5) The agreement must be executed before any medical procedures related to the surrogacy agreement other than the medical evaluations required by Section 801.

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

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

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

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

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

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

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

(d) A surrogacy agreement is enforceable only if it expressly provides that:
(1) the surrogate carrier:
   (A) must undergo assisted reproduction and attempt to gestate and give
   birth to any resulting child;
   (B) has no claim to parentage of all resulting children; and
   (C) must acknowledge the exclusive parentage of the intended parent or
   parents of all resulting children;

(2) if the surrogate carrier is married, her spouse:
   (A) must acknowledge and agree to abide by the obligations imposed on
   the gestational carrier by the terms of the surrogacy agreement;
   (B) has no claim to parentage of any resulting children; and
   (C) must acknowledge the exclusive parentage of the intended parent or
   parents of all resulting children;

(3) the surrogate carrier has the right to use the services of a health-care provider
   of her choosing to provide her care during her pregnancy;

(4) the intended parent or parents must:
   (A) be the exclusive parent or parents and accept parental rights and
   responsibilities of all resulting children immediately upon birth regardless of the number, gender
   or mental or physical condition of the child or children; and
   (B) assume responsibility for the financial support of all resulting children
   immediately upon the birth of the children; and

(e) A traditional surrogacy agreement is valid and enforceable only if it complies with
Sections 801 – 806, and the specific requirements applicable to traditional surrogacy agreements
provided in Sections 810 - 812.
(f) A gestational surrogacy agreement is valid and enforceable only if it complies with Sections 801 – 806, and the specific requirements applicable to gestational surrogacy agreements provided in Sections 807 - 809.

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

SECTION 804. TERMINATION OF SURROGACY AGREEMENT.

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

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

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

(b) Upon proper termination of the surrogacy agreement under subsection (a), the parties are released from all obligations recited in the agreement except that the intended parent or parents remain responsible for all expenses that are reimbursable under the agreement incurred by the surrogate carrier through the date of termination. The surrogate carrier is entitled to keep all payments she has received and obtain all payments to which she is entitled. Neither a prospective surrogate carrier nor her spouse, if any, is liable to the intended parent or parents for terminating a surrogacy agreement.
SECTION 805. INSPECTION OF RECORDS. The petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, and any power of attorney and deposition filed in the office of the clerk of the court pursuant to this part shall not be open to inspection by any person other than the parties to the proceeding and their attorneys and the State Department of Social Services, except upon written court order. A judge of the Superior Court shall not authorize anyone to inspect the petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, or power of attorney or deposition, or any portion of those documents, except in exceptional circumstances and where necessary. The petitioner may be required to pay the expense of preparing the copies of the documents to be inspected.

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

PART 2

SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENTS

SECTION 807. PARENTAGE UNDER GESTATIONAL SURROGACY AGREEMENT.

(a) The intended parent or parents are by operation of law the parent or parents of the resulting child born through gestational surrogacy immediately upon the birth of the child, and the resulting child is considered the child of the intended parent or parents immediately upon the birth of the child.
Neither the gestational surrogate carrier nor her spouse, if any, is the parent of the resulting child.

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

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

SECTION 808. GESTATIONAL SURROGACY AGREEMENT: ORDER OF PARENTEAGE.

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

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

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

(3) sealing the record from the public to protect the privacy of the child and the parties; or
for any relief that the court determines necessary and proper.

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

SECTION 809. EFFECT OF UNENFORCEABLE GESTATIONAL SURROGACY AGREEMENT.

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

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

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

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

(e) Specific performance is not an available remedy for a breach by the gestational surrogate carrier of any term in a gestational surrogacy agreement that requires the gestational surrogate carrier to be impregnated or to terminate a pregnancy. Specific performance is an available remedy for a breach by the gestational surrogate carrier of any term that prevents the intended parent or parents from exercising the full rights of parentage immediately upon birth of
PART 3

SPECIAL RULES FOR TRADITIONAL SURROGACY AGREEMENTS

SECTION 810. REQUIREMENTS OF PETITION TO VALIDATE A

TRADITIONAL SURROGACY AGREEMENT.

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

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

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

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

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

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

SECTION 811. PARENTAGE UNDER VALIDATED TRADITIONAL SURROGACY AGREEMENT.

(a) Upon birth of a child to a traditional surrogate carrier, the intended parent or parents shall file notice with the court that a child has been born to the traditional surrogate carrier within
300 days after assisted reproduction. Thereupon, the court shall [or may?] issue an order:

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

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

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

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

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

SECTION 812. EFFECT OF NONVALIDATED TRADITIONAL SURROGACY AGREEMENT.

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

(b) If a birth results under a traditional surrogacy agreement that is not judicially validated as provided in this [part], the parent-child relationship is determined as provided in other Articles of this Act.
(c) Individuals who are parties to a nonvalidated traditional surrogacy agreement as intended parents may be held liable for support of the resulting child, even if the agreement is otherwise unenforceable. The liability under this subsection includes assessing all expenses and fees as provided in Section 636.

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

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

ARTICLE 9

MISCELLANEOUS PROVISIONS

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

SECTION 902. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to an individual or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.
SECTION 903. TIME OF TAKING EFFECT. This [Act] takes effect on ________.

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

(1) [Uniform Act on Paternity, 1960]
(2) [Uniform Parentage Act, 1973]
(3) [Uniform Putative and Unknown Fathers Act, 1988]
(4) [Uniform Status of Children of Assisted Conception Act, 1988]
(5) [other inconsistent statutes]

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

FEDERAL IV-D STATUTE RELATING TO PARENTAGE


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

* * *

(5) Procedures concerning paternity establishment.

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

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

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

(B) Procedures concerning genetic testing.

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

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

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

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

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

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

(C) Voluntary paternity acknowledgment.

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

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

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

(II) Regulations.

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

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

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

(D) Status of signed paternity acknowledgment.

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

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

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

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

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

(I) 60 days; or

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

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

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

(F) Admissibility of genetic testing results. Procedures:
(i) requiring the admission into evidence, for purposes of establishing paternity, of the results of any genetic test that is:
   (I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and
   (II) performed by a laboratory approved by such an accreditation body;
   (ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and
   (iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

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

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

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

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

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

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

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