

MEMORANDUM

TO: Courtney Joslin, Reporter
Jamie Pedersen, Chair

FROM: Jeff Atkinson

DATE: October 24, 2016

RE: Comments on Revised Uniform Parentage Act

I'll offer comments on the Revised Uniform Parentage Act (October 7, 2016 draft) – generally presented chronologically relative to the draft. Some of my comments are questions about how the UPA will interact with other laws.

On the whole, I think the draft is in good shape. :)

1. Introductory comments concerning “Notes about ULC Acts” – I am not sure if this is in your domain, but when giving examples about bracketed language, I suggest giving examples from this act rather than other acts.
2. Sections 102(6) & 204. It seems awkward and unusual to speak of de facto parenthood as a rebuttable presumption. Perhaps referred to that way in order to facilitate reducing the number of parents to two or less in states that require that – but, still, if a person meets the elements of de facto parenthood, it seems to me that such a person should be a parent.
3. Section 102. Should you have the ULC boilerplate definition of “electronic” (to go with “Record.”) – See Style Rule 304: “‘Electronic’ means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.” ?
4. Section 103. Regarding Choice of Law, are there ever occasions in which a court would apply the law of another state to adjudicate the parent-child relationship? If you are expanding on Comments for this section, perhaps make reference to the requirement of personal jurisdiction in Section 604.
5. Section 105. Might it be useful to provide sample language regarding providing protection of participants for use by states that do not have such language in other statutes?

6. Sections 201 & 204. Have you received any comments or objections from the probate or tort bars about the criteria for establishing a parent-child relationship – particularly the adjudication of de facto parentage? I suspect that probate lawyers would be concerned about disruption of estates if a child (including an adult child) asserts that someone was a de facto parent – e.g., an involved stepparent or a grandparent who raised the child for a few years. Perhaps litigation will focus on whether the person “accepted full and permanent responsibilities as a parent.”
7. Sections 201 & 204. Inclusion of de facto parents as parent also, of course, has implications for child support. Should the involved stepparent, cohabitant, or grandparent who raised a child for 5 years be obliged to pay child support if the child returns to the custody of a parent (without the stepparent, cohabitant, or grandparent still living with the child)?
8. Section 204(a)(4). Like Peter Langrock, I am not sure what the word “voluntarily” adds in the phrase “voluntarily asserted parentage.” Can parentage be “involuntarily asserted”?
9. Sections 308 & 309. Do we need to use two different words for the concepts of “recision” and “challenge” (or is one term sufficient)?
10. Section 309. Would it be helpful to have more explicit provisions (or Comments) about the time period for challenging parentage when facts have been concealed for a long period of time – mother conceals actual paternity from husband or from cohabitant for several years?
11. Section 310. Regarding submitting to personal jurisdiction by signing an acknowledgment or denial of parentage, does that apply only to signing in the state . . . or would an out-of-state signing (without a filing by that person in the state) result in personal jurisdiction being exercised over the signor?
12. Section 312. Probably most states already have VAP forms . . . but would it be helpful to have a uniform or model form?
13. Section 402. Should women (as well as men) be able to use the registry – e.g., two women agree to conceive and raise a child together, but the biological mother has a change of heart, flees, and might place the child for adoption.
14. Section 402(a). Can adoptions be finalized sooner than 30 days after birth of the child? (This section says the man who desires to be notified of a proceeding for adoption must register within 30 days after birth.)
15. Section 411. A uniform or model form for registries?

16. Section 505. I am double- checking the currency of the standard of 99% probability for genetic testing. [750 Ill. Comp. Stat. 46/404(c) (2016) provides: “If the genetic testing results indicate that the alleged father is not excluded and that the combined paternity index is at least 1,000 to 1, and there is at least a 99.9% probability of paternity, the alleged father is presumed to be the father, and this evidence shall be admitted.”]
17. Sections 602 & 603. Would it be helpful to have service on child, and have the child as a party, if the child is above a certain age (e.g., 12 years)?
18. Sections 607 & 612. Can a proceeding to challenge presumed parentage be brought at any time if: (1) a man and woman cohabited prior to the child’s birth, but not during time of conception; (2) the man and woman had intercourse during the time period of conception; (3) the man is not the biological father; (4) the man never resided with the child; and (5) the man did not openly hold the child out as his own, but the man did visit the child and engage in many activities with the child?
19. Section 612(4). I do not think the word “appropriate” in the phrase “In an appropriate action” adds much in the section about allowing a court to find that more than two individuals are parent.
20. Section 613(a). Similarly, I do not think the word “appropriate” adds much in the section about when temporary orders of support can be issued.
21. Section 613(a)(6). In some states, an obligation for support can be imposed even if parental rights have been terminated.
22. Section 615. I thought the deleted list of actions that can be taken before birth was useful to include: service, discovery, genetic testing.
23. Article 8. Is notarization (rather than just a signature) necessary for various surrogacy documents?
24. Section 803(a)(7). I assume the bracketed language about the surrogate’s use of health services being subject to the intended parents’ desires is not enforceable.
25. Section 810. Regarding compliance with surrogacy agreements, perhaps add Comments about what is “nonsubstantial” and “substantial.”
26. Section 812. If all the protections for surrogacy contracts have been utilized, my sense of equity favors enforcement of genetic surrogacy agreements (rather than giving a surrogate a right to withdraw up until three days after birth) . . . but if the current withdrawal provisions make the act more likely to be enacted, I understand the reason for the provision.

Nice work!

I look forward to our meeting.

Jeff